



# Conflict of Interest Rules of The Environmental Review Tribunal

**August 20, 2008**

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## **APPLICATION OF CONFLICT OF INTEREST RULES**

1. Pursuant to section 58 of the *Public Service of Ontario Act, 2006* (“PSOA”), these Rules apply to all staff members and adjudicators (Vice-Chairs, part-time Members and the Chair) of the Tribunal.
2. In addition to complying with these Rules, all staff members and adjudicators of the Tribunal shall comply with the ethical standards set out in Ontario Regulation 381/07 (the “Regulation”) attached to these Rules as Appendix A.
3. Where a provision of these Rules is inconsistent with a provision of the Regulation, the provision of the Regulation prevails.
4. For the purpose of Rule 3 above, a provision in these Rules is inconsistent with a provision of the Regulation where a provision in the Rules establishes a degree of ethical conduct that is lower than is established by the Regulation. An inconsistency does not arise where a provision in these Rules exceeds the degree of ethical conduct established by the Regulation.
5. These Rules govern the conduct of staff members and adjudicators, from the commencement of their term of appointment to the public service. These Rules also set out their continuing responsibilities after ceasing to be public servants.
6. Under the *PSOA*, the Ethics Executive for staff members, Vice-Chairs and part-time Members, is the Chair, unless the Chair has referred a matter to the Conflict of Interest Commissioner under Rule 49. The Ethics Executive for former staff members and adjudicators, and for the current Chair of the Tribunal, is the Conflict of Interest Commissioner.

## **DEFINITIONS**

“confidential information” means information that is not available to the public and that, if disclosed, could result in harm to the Tribunal or the Crown or could give the person to whom it is disclosed an advantage;

“conflict of interest” is any interest, relationship, association or activity that is incompatible with a staff member’s or adjudicator’s obligations to the Tribunal and includes both pecuniary and non-pecuniary interests;

“gift” includes a benefit of any kind;

“spouse” means,

1. a spouse as defined in section 1 of the *Family Law Act*, or

2. either of two persons who live together in a conjugal relationship outside marriage.

## **RULES OF CONDUCT**

### **Prohibited Conduct**

#### **Benefiting Self, Spouse, Child, Parent, Sibling, Friend or Close Associate**

7. A staff member or adjudicator shall not use or attempt to use his or her employment by the Tribunal to directly or indirectly benefit himself or herself, or his or her spouse, child, parent, sibling, friend or close associate.
8. A staff member or adjudicator shall not allow the prospect of his or her future employment, or that of his or her spouse, child, parent, sibling, friend or close associate, by a person or entity to detrimentally affect the performance of his or her duties to the Tribunal.

#### **Accepting Gifts**

9. A staff member or adjudicator shall not accept a gift from persons or entities who may be, or have been, affected by a Tribunal decision, who have dealings with or seek to do business with the Tribunal or to whom the staff member or adjudicator provides service in the course of his or her duties, if a reasonable person might conclude that the gift could influence the staff member or adjudicator in the performance of his or her duties to the Tribunal.

#### **Nominal Gift**

10. Where it is reasonable to do so in the circumstances, a staff member or adjudicator will be allowed to accept a gift of nominal value given as an expression of courtesy. Where a staff member or adjudicator receives a gift in the circumstances described in Rule 9, he or she must inform his or her Ethics Executive.

#### **Disclosing Confidential Information**

11. A staff member or adjudicator shall not disclose confidential information obtained while he or she is employed by the Tribunal unless he or she is authorized to do so by law or by the Tribunal.

#### **Accepting a Gift in Exchange for Confidential Information**

12. A staff member or adjudicator shall not use confidential information in a business or undertaking outside his or her work for the Tribunal, or accept a gift directly or indirectly in exchange for disclosing confidential information.

#### **Hiring and Contracting with Spouse, Child, Parent or Sibling**

13. A staff member or adjudicator shall not, on behalf of the Tribunal, hire his or her spouse, child, parent or sibling, or enter into a contract with them or with a person or entity in which any of them has a substantial interest.

### **Supervising Work of Spouse, Child, Parent or Sibling**

14. A staff member or adjudicator who hires a person on behalf of the Tribunal shall ensure that the person does not report to, or supervise the work of the person's spouse, child, parent or sibling. A staff member or adjudicator who reports to, or supervises the work of his or her spouse, child, parent or sibling shall notify his or her Ethics Executive.

### **Engaging in Business, etc.**

15. A staff member or adjudicator shall not become employed by or engage in a business or undertaking outside his or her employment with the Tribunal in any of the following circumstances:
  - a. if the staff member's or adjudicator's private interests in connection with the employment or undertaking could conflict with his or her duties to the Tribunal.
  - b. if the employment or undertaking would interfere with the staff member's or adjudicator's ability to perform his or her duties to the Tribunal.
  - c. if the employment is in a professional capacity and is likely to influence or detrimentally affect the staff member's or adjudicator's ability to perform his or her duties to the Tribunal.
  - d. if the employment would constitute full-time employment for another person. However, this paragraph does not apply with respect to a staff member or adjudicator who is employed part-time by the Tribunal. This paragraph also does not apply to a staff member or adjudicator who is on an authorized leave of absence from his or her position, so long as the employment is not contrary to or inconsistent with the terms of the leave of absence.
  - e. if, in connection with the employment or undertaking, any person would derive an advantage from the staff member's or adjudicator's employment with the Tribunal or as a public servant.
  - f. if government premises, equipment or supplies are used in the employment or undertaking.

### **Participating in Decision Making**

16. A staff member or adjudicator shall not participate in decision-making by the Tribunal with respect to a matter that the staff member or adjudicator is able to influence in the course of his or her duties, if he or she could benefit from the decision.
17. Rule 16 does not apply if the staff member or adjudicator obtains the prior approval of his or her Ethics Executive.

18. A staff member or adjudicator who, in the course of his or her employment with the Tribunal, is a member of a body or group, shall not participate in or attempt to influence, decision-making by the body or group with respect to a matter if he or she could benefit from the decision or if, as a result of the decision, the interests of the body or group could conflict with the interests of the Tribunal.
19. A staff member or adjudicator described in Rule 18 shall inform the body or group if the circumstances described in that Rule exist.

## **Prohibited Conduct for Former Staff Members and Adjudicators**

### **Application**

20. Rules 21 to 25 apply to every former public servant who, immediately before he or she ceased to be a public servant, was a staff member or adjudicator of the Tribunal. Rules 21 to 25 do not apply to a person who ceases to be a public servant before the day on which section 57 of the *PSOA* comes into force.

### **Preferential Treatment**

21. A former staff member or adjudicator of the Tribunal shall not seek preferential treatment by, or privileged access to, public servants who work in a minister's office, a ministry, the Tribunal, or any other public body.

### **Disclosure of Confidential Information**

22. A former staff member or adjudicator of the Tribunal shall not disclose confidential information obtained during the course of his or her employment by the Tribunal to a person or entity unless authorized to do so by law or by the Tribunal.
23. A former staff member or adjudicator of the Tribunal shall not use confidential information in a business or undertaking.

### **Proceeding, Negotiation or other Transaction**

24. This Rule applies to a former staff member or adjudicator who, while employed by the Tribunal, advised the Crown about a particular proceeding, negotiation or other transaction.
  - a. The former staff member or adjudicator shall not advise or otherwise assist any public body or any other person or entity in connection with the particular proceeding, negotiation or other transaction until the Crown ceases to be involved in it.
  - b. Despite sub-Rule (a), the former staff member or adjudicator may continue to advise or otherwise assist the Crown in connection with the particular proceeding, negotiation or other transaction.

### **Appearance before the Tribunal**

25. An adjudicator is prohibited from appearing before the Tribunal as a representative, expert witness or consultant until 12 months after ceasing to be a member of the Tribunal, or after the release of any outstanding decisions, whichever is later.

### **Conflicts and the Adjudicative Process**

#### **Preferential Treatment**

26. When performing his or her duties to the Tribunal, a staff member or adjudicator shall not give preferential treatment, and shall endeavour to avoid creating the appearance of giving preferential treatment, to any person or entity.

#### **Offering Assistance**

27. A staff member or adjudicator shall not offer assistance to a person or entity in dealing with the Tribunal other than assistance given in the ordinary course of his or her employment.

#### **Financial Interest**

28. An adjudicator shall not adjudicate in any proceeding, or participate in Tribunal discussions of any matter in relation to a proceeding, where the adjudicator or his or her spouse has a significant financial interest in relation to one of the parties, or where the adjudicator is aware that his or her child, parent, sibling, friend or close associate has a significant financial interest in relation to one of the parties to the proceeding.

For the purpose of this Rule, holding a legal or beneficial interest in a mutual fund within the meaning of subsection 1(1) of the *Securities Act*, would not constitute a significant financial interest, even where that mutual fund includes securities of a corporation or entity that is a party to a proceeding before the Tribunal, provided that the mutual fund is not one described in subsection 11(1)4 of the Regulation.

#### **Professional Relationship**

29. An adjudicator shall not adjudicate in any proceeding involving a party or representative with whom he or she was formerly in a significant professional relationship until a period of 12 months has elapsed from the termination of the relationship. A significant professional relationship would include employment, solicitor/client relationship or partnership/association in a law firm.

#### **Personal Relationship**

30. An adjudicator shall not adjudicate in any proceeding involving a party or representative with whom he or she has a close personal relationship, including his or spouse, child, parent, sibling or friend.

### **Prior Involvement**

31. An adjudicator shall not adjudicate in any proceeding in which the adjudicator, his or her spouse, child, parent, sibling, friend, or close associate, has had any prior involvement.

### **Effect on Other Proceedings**

32. An adjudicator shall not adjudicate in any proceeding in which the outcome may have an impact on any other legal proceeding in which the adjudicator or his or her spouse, child, parent, sibling, friend or close associate, has a significant personal or pecuniary interest.

### **Public Statements**

33. An adjudicator shall refrain from publicly taking a partisan position in respect of an issue currently under consideration in a proceeding before the Tribunal.

### **Appearance Before the Tribunal**

34. A staff member or adjudicator shall not appear before the Tribunal as an expert witness or as a representative for a party while he or she is employed by the Tribunal.
35. A staff member or adjudicator shall not act as a professional or legal consultant in the preparation of a case before the Tribunal or in any matter relating to the work of the Tribunal while he or she is employed by the Tribunal.

### **Potential Conflict of Interest**

36. It is the responsibility of each adjudicator to consider and actively inquire into any circumstance that might suggest a possible conflict of interest or raise a perception of bias in respect of any of his or her responsibilities, and any matter under consideration by the Tribunal. The adjudicator may at first be the only person in a position to recognize a possible conflict or an issue of bias. As soon as a potential conflict, or grounds for a perception of bias is identified, an adjudicator should immediately take appropriate steps as outlined in Rules 37 to 42.

### **Potential Conflict of Interest Relating to a Matter Before the Tribunal but not Assigned to the Adjudicator**

37. Where an adjudicator has a potential conflict of interest in respect of a matter before the Tribunal which has been assigned to another adjudicator, the adjudicator will refrain from participating in any discussion of the matter, and will absent him/herself from such discussions until his or her Ethics Executive has been advised of the circumstances. If the adjudicator becomes aware of the potential conflict during a Tribunal meeting, he or she must absent him/herself from the relevant portion of the meeting. If minutes of the meeting are being recorded, the adjudicator should ask that his or her absence be noted and that the relevant portion of the minutes be deleted from any copy distributed to him or her.

### **Potential Conflict of Interest Prior to Commencing a Hearing**

38. Where an adjudicator is assigned to a matter and becomes aware, prior to commencing a hearing, that circumstances exist that suggest a possible conflict of interest on the part of the adjudicator, or that may raise a perception of bias, he or she shall immediately inform his or her Ethics Executive.

### **Conflict of Interest or Bias During a Hearing**

39. Once the adjudicative process has begun, it is for the adjudicator to make determinations on issues of conflict of interest or reasonable apprehension of bias within the context of the proceeding. However, given that allegations of conflict and bias affect the credibility and integrity of the Tribunal as a whole, an adjudicator whose neutrality is challenged must inform his or her Ethics Executive of the nature of the allegations.

### **Allegation of Conflict of Interest or Bias**

40. Where a party raises an allegation of conflict of interest or bias during a hearing, the adjudicator may:
- a. resign from the proceeding immediately if he or she considers this to be appropriate given the nature and circumstances of the alleged conflict (for example, if the adjudicator recognizes an actual personal or pecuniary conflict); or
  - b. hear submissions from the parties with respect to the alleged conflict and make a determination or reserve to consider the submissions; or
  - c. schedule a time for submissions on the allegation of conflict.

and the adjudicator must notify his or her Ethics Executive.

### **Release of Decision where Conflict of Interest or Bias Alleged by a Party**

41. Where a party before the Tribunal has made submissions alleging a conflict of interest or challenging the neutrality of an adjudicator, it will be advisable in most cases for the adjudicator to release a written decision on the allegation of bias or conflict of interest.

### **Possible Conflict of Interest or Bias During a Hearing**

42. Where the adjudicator becomes aware during a hearing of a possible conflict of interest, or of facts that may give rise to a perception of bias, and the related circumstances are unknown to the parties, the adjudicator may,
- a. advise the parties immediately of the possible conflict and hear submissions on the issue; or

- b. recess the hearing to consider the seriousness of the possible conflict and whether it is appropriate to inform the parties of the circumstances and hear submissions;
- c. consult Tribunal Counsel;

and the adjudicator must notify his or her Ethics Executive.

## **Role of Ethics Executive**

### **Promotion of Ethical Conduct by the Ethics Executive**

- 43. The Ethics Executive shall ensure that staff members and adjudicators are familiar with these Rules, and shall promote ethical conduct by staff members and adjudicators.

### **Questions for the Ethics Executive**

- 44. A staff member or adjudicator, or his or her supervisor, where applicable, may request that the Ethics Executive determine a question about the application of the Conflict of Interest Rules to the staff member or adjudicator.

### **Duty to Notify the Ethics Executive**

- 45. If a staff member or adjudicator has personal or pecuniary interests that could raise an issue under these Rules, the staff member or adjudicator shall notify his or her Ethics Executive.

### **Requests and Notifications by Former Staff Member and Adjudicator**

- 46. A former staff member or adjudicator may request that the Ethics Executive determine a question about the application of these Rules, and, where a former staff member or adjudicator has a personal or pecuniary interest that could raise an issue under these Rules, he or shall notify his or her Ethics Executive.

### **Inquiry and Determination upon Request, Notification, or where Concerned**

- 47. The Ethics Executive may make appropriate inquiries and shall make a determination where he or she receives a request by a staff member or adjudicator, or a supervisor, where applicable, under Rule 44 for a determination with regard to the application of the Conflict of Interest Rules. The Ethics Executive may also make appropriate inquiries and shall make a determination where he or she is notified, under Rule 45, or has concerns that a staff member or adjudicator has contravened, or is about to contravene the Conflict of Interest Rules.

### **Inquiry and Determination with Regard to Former Staff Members and Adjudicators**

- 48. The Ethics Executive may make appropriate inquiries and shall make a determination where he or she has concerns that a former staff member or adjudicator has contravened, or is about to contravene the Conflict of Interest

Rules, or where he or she receives a request or a notification by a former staff member or adjudicator under Rule 46.

### **Chair may Refer Matters Mentioned in Rules 44, 45 and 47 to the Conflict of Interest Commissioner**

49. If the Chair considers it appropriate to do so, he or she may refer any matter that is brought to his or her attention under Rules 44 or 45, or that is the subject of inquiry under Rule 47, to the Conflict of Interest Commissioner, to be dealt with by the Commissioner.

### **Conduct Connected to a Hearing**

50. The need to maintain the integrity and impartiality of the hearing process may require the Ethics Executive to defer making an inquiry and a determination until the ongoing proceeding is completed, the decision released, and any appeals or judicial reviews related to the proceeding are concluded.

### **Powers of Inquiry**

51. The Ethics Executive shall collect and use the personal information that is necessary to enable him or her to perform his or her duties under these Rules.

### **Disclosure of Personal Information**

52. The Ethics Executive shall not disclose personal information collected under Rule 47 unless one or more of the following circumstances exist:
  - a. the person to whom the information relates consents to the disclosure.
  - b. the disclosure is required in connection with a legal proceeding relating to the *PSOA* or a regulation made under it.
  - c. the disclosure is made for the purpose of complying with an Act of the Legislature or an Act or Parliament or a treaty, agreement or arrangement made thereunder.
  - d. the disclosure is made to a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result.
  - e. the Ethics Executive considers it to be reasonably necessary to disclose the information to a person or entity in order to verify information provided by a staff member or adjudicator.
  - f. the Ethics Executive considers it to be reasonably necessary to disclose the information to a person or entity in order to determine whether the staff member or adjudicator has contravened, or may have contravened, the Conflict of Interest Rules.

- g. the Ethics Executive considers it to be reasonably necessary to disclose the information to a person or entity in order to enable the person or entity to perform his, her or its duties under the *PSOA*.

**Directions from the Ethics Executive**

- 53. Where the Ethics Executive determines under Rule 47 that there is a conflict of interest or potential conflict of interest, he or she shall provide the staff member or adjudicator, or the supervisor of the staff member or adjudicator, where applicable, with directions, if any, that he or she considers appropriate to address the conflict of interest.

**Directions for Former Staff Members and Adjudicators**

- 54. Where the Ethics Executive determines under Rule 48 that a former staff member or adjudicator has contravened, or is about to contravene the Conflict of Interest Rules, he or she shall provide the former staff member or adjudicator with directions, if any, that he or she considers appropriate to address the conflict of interest.

**Compliance with Direction**

- 55. A staff member or adjudicator shall comply with a direction of his or her Ethics Executive.

**Compliance with Direction by Former Staff Member or Adjudicator**

- 56. A former staff member or adjudicator shall comply with a direction of his or her Ethics Executive.

**Notification of Minister**

- 57. If the Ethics Executive makes a determination under Rules 47 or 48, that an adjudicator or a former adjudicator has contravened a Conflict of Interest Rule, he or she shall notify the minister responsible for the Tribunal.

**Penalty**

- 58. A staff member or adjudicator who contravenes a Conflict of Interest Rule is subject to disciplinary measures, including suspension and dismissal.

**Actions**

- 59. Without limiting the generality of the powers of the Ethics Executive under Rules 47 and 53, he or she may take any of the following actions in respect of a matter referred to in those Rules:
  - a. where applicable, require the staff member or adjudicator to notify his or her supervisor of decisions that he or she proposes to make that could result in a contravention of the Conflict of Interest Rules, and require the staff member or adjudicator to obtain the supervisor's approval for the proposed decisions.

- b. recommend disciplinary measures that may be imposed on the staff member or adjudicator, including suspension or dismissal, or recommend that his or her resignation be accepted.
- c. recommend that the staff member or adjudicator be transferred to another position or assigned to perform other duties in order to avoid or remedy a contravention of the Conflict of Interest Rules.
- d. recommend that the staff member or adjudicator be temporarily relieved from duties that have resulted in a contravention of the Conflict of Interest Rules or that may result in such a contravention.
- e. direct the staff member or adjudicator to transfer ownership or control of an asset to a neutral third party in order to avoid contravening the Conflict of Interest Rules.

# APPENDIX A: O. REG. 381/07

## ONTARIO REGULATION 381/07

made under the

### PUBLIC SERVICE OF ONTARIO ACT, 2006

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### CONFLICT OF INTEREST RULES FOR PUBLIC SERVANTS (MINISTRY) AND FORMER PUBLIC SERVANTS (MINISTRY)

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**PART I**  
**RULES FOR PUBLIC SERVANTS WHO WORK IN A MINISTRY**

INTERPRETATION

**Definitions**

1. In this Part,

“confidential information” means information that is not available to the public and that, if disclosed, could result in harm to the Crown or could give the person to whom it is disclosed an advantage;

“gift” includes a benefit of any kind;

“spouse” means,

(a) a spouse as defined in section 1 of the *Family Law Act*, or

(b) either of two persons who live together in a conjugal relationship outside marriage.

**Application**

2. This Part applies to every public servant who works in a ministry.

PROHIBITED CONDUCT

**Benefiting self, spouse or children**

3. (1) A public servant shall not use or attempt to use his or her employment by the Crown to directly or indirectly benefit himself or herself or his or her spouse or children.

(2) A public servant shall not allow the prospect of his or her future employment by a person or entity to detrimentally affect the performance of his or her duties to the Crown.

**Accepting gifts**

4. (1) A public servant shall not accept a gift from any of the following persons or entities if a reasonable person might conclude that the gift could influence the public servant when performing his or her duties to the Crown:

1. A person, group or entity that has dealings with the Crown.

2. A person, group or entity to whom the public servant provides services in the course of his or her duties to the Crown.

3. A person, group or entity that seeks to do business with the Crown.

(2) Subsection (1) shall not operate to prevent a public servant from accepting a gift of nominal value given as an expression of courtesy or hospitality if doing so is reasonable in the circumstances.

(3) A public servant who receives a gift in the circumstances described in subsection (1) shall notify his or her ethics executive.

**Disclosing confidential information**

5. (1) A public servant shall not disclose confidential information obtained during the course of his or her employment by the Crown to a person or entity unless the public servant is authorized to do so by law or by the Crown.

(2) A public servant shall not use confidential information in a business or undertaking outside his or her work for the Crown.

(3) A public servant shall not accept a gift directly or indirectly in exchange for disclosing confidential information.

**Giving preferential treatment**

6. (1) When performing his or her duties to the Crown, a public servant shall not give preferential treatment to any person or entity, including a person or entity in which the public servant or a member of his or her family or a friend has an interest.

(2) When performing his or her duties to the Crown, a public servant shall endeavour to avoid creating the appearance that preferential treatment is being given to a person or entity that could benefit from it.

(3) A public servant shall not offer assistance to a person or entity in dealing with the Crown other than assistance given in the ordinary course of the public servant's employment.

#### **Hiring family members**

7. (1) A public servant shall not, on behalf of the Crown, hire his or her spouse, child, parent or sibling.

(2) A public servant shall not, on behalf of the Crown, enter into a contract with his or her spouse, child, parent or sibling or with a person or entity in which any of them has a substantial interest.

(3) A public servant who hires a person on behalf of the Crown shall ensure that the person does not report to, or supervise the work of, the person's spouse, child, parent or sibling.

(4) A public servant who reports to, or supervises the work of, his or her spouse, child, parent or sibling shall notify his or her ethics executive.

#### **Engaging in business, etc.**

8. A public servant shall not become employed by or engage in a business or undertaking outside his or her employment by the Crown in any of the following circumstances:

1. If the public servant's private interests in connection with the employment or undertaking could conflict with his or her duties to the Crown.
2. If the employment or undertaking would interfere with the public servant's ability to perform his or her duties to the Crown.
3. If the employment is in a professional capacity and is likely to influence or detrimentally affect the public servant's ability to perform his or her duties to the Crown.
4. If the employment would constitute full-time employment for another person. However, this paragraph does not apply with respect to a public servant who is employed part-time by the Crown. This paragraph also does not apply with respect to a public servant who is on an authorized leave of absence from his or her position, but only if the employment is not contrary to or inconsistent with the terms of the leave of absence.
5. If, in connection with the employment or undertaking, any person would derive an advantage from the public servant's employment as a public servant.
6. If government premises, equipment or supplies are used in the employment or undertaking.

#### **Participating in decision-making**

9. (1) A public servant shall not participate in decision-making by the Crown with respect to a matter that the public servant is able to influence in the course of his or her duties if the public servant could benefit from the decision.

(2) Subsection (1) does not apply if the public servant obtains the prior approval of his or her ethics executive to participate in decision-making by the Crown with respect to the matter.

(3) A public servant who, in the course of his or her employment in a ministry, is a member of a body or group shall not participate in, or attempt to influence, decision-making by the body or group with respect to a matter if the public servant could benefit from the decision or if, as a result of the decision, the interests of the body or group could conflict with the interests of the Crown.

(4) A public servant described in subsection (3) shall inform the body or group if the circumstances described in that subsection exist.

#### **MATTERS THAT MIGHT INVOLVE THE PRIVATE SECTOR**

#### **Interpretation**

10. (1) Sections 11 and 12 apply to every public servant who works in a ministry, who routinely works on one or more matters that might involve the private sector and who has access to confidential information about the matter obtained during the course of his or her employment by the Crown.

(2) In this section and in sections 11 and 12, "matter that might involve the private sector" means a matter,

(a) that relates to services currently provided under a program of the Crown or by a public body, an agency of the Crown or a corporation controlled by the Crown with respect to which it is possible that a private sector entity will provide all or part of the financing for the services or will provide some or all of the services, and

(b) that has been referred to a ministry, a public body or an agency of the Crown by the Executive Council or a member of the Executive Council for review or implementation.

#### **Duty to declare certain financial interests**

**11.** (1) When a public servant described in subsection 10 (1) begins work on a matter that might involve the private sector, he or she shall make a declaration to the Conflict of Interest Commissioner in which the public servant discloses the following matters respecting his or her financial interests:

1. A legal or beneficial interest of the public servant in securities or derivatives of corporations or governments, other than the Government of Ontario.
2. A legal or beneficial interest of the public servant in a business entity or a commercial operation or in the assets of such an entity or operation.
3. A legal or beneficial interest of the public servant in real property.
4. A legal or beneficial interest of the public servant in a mutual fund that is operated as an investment club where,
  - i. its shares or units are held by not more than 50 persons and its indebtedness has never been offered to the public,
  - ii. it does not pay or give any remuneration for investment advice or in respect of trades in securities, except normal brokerage fees, and
  - iii. all of its members are required to make contributions in proportion to the shares or units each holds for the purpose of financing its operations.

(2) Despite subsection (1), the public servant is not required to disclose his or her legal or beneficial interest in any of the following:

1. A mutual fund within the meaning of subsection 1 (1) of the *Securities Act* other than a mutual fund described in paragraph 4 of subsection (1) of this Regulation.
2. Fixed-value securities issued or guaranteed by a government or a government agency.
3. A guaranteed investment certificate or similar financial instrument issued by a financial institution entitled by law to issue such instruments.
4. A registered pension plan, an employee benefit plan, an annuity or life insurance policy or a deferred profit sharing plan.
5. Real property that the public servant, or a member of his or her family, uses primarily as a residence or for recreational purposes.

(3) The public servant shall disclose the information required by subsection (1), with necessary modifications, in respect of his or her spouse and dependent children, but only to the extent that the legal or beneficial interests of the spouse or a child could create a conflict of interest.

(4) For the purpose of subsection (3), the public servant shall make reasonable efforts to obtain information about the financial interests described in subsection (1) of his or her spouse and dependent children.

(5) The public servant shall give the Conflict of Interest Commissioner a revised declaration whenever there is a change in any of the information required to be disclosed.

#### **Prohibition on certain purchases**

**12.** (1) A public servant described in subsection 10 (1) shall not purchase, or cause another person to purchase on his or her behalf, a legal or beneficial interest in an entity that is carrying on, or proposes to carry on, an activity relating to a matter that might involve the private sector.

(2) Despite subsection (1), a public servant may purchase an interest in a mutual fund (within the meaning of subsection 1 (1) of the *Securities Act*) that includes securities of a person or entity described in subsection (1) but not an interest in a mutual fund described in paragraph 4 of subsection 11 (1) of this Regulation that includes such securities.

(3) The prohibition described in subsection (1) ceases to have effect with respect to the matter,

(a) six months after the date on which the action in respect of the matter is completed; or

(b) six months after the date the Crown ceases to work on the matter.

#### **List of positions**

**13.** (1) The Public Service Commission shall maintain a current list of positions in which public servants work in a ministry and routinely work on one or more matters that might involve the private sector.

(2) The Commission shall ensure that public servants employed by the Crown in the positions described in subsection (1) are advised of the duties and restrictions imposed upon them under sections 11 and 12.

(3) Every ethics executive shall notify the Commission of changes to be made to the list with respect to those persons for whom he or she is the ethics executive.

## **PART II RULES FOR FORMER PUBLIC SERVANTS WHO WORKED IN A MINISTRY**

### INTERPRETATION

#### **Definition**

**14.** In this Part,

“designated senior position” means any of the following positions:

1. The Secretary of the Cabinet.

2. Deputy minister, associate deputy minister or assistant deputy minister.

3. A position that is classified under subsection 33 (1) of the Act as SMG 2, XOFA 1, XOFA 2, ITX 2, ITX 3 or ITX 4.

#### **Application**

**15.** (1) This Part applies with respect to every former public servant who, immediately before he or she ceased to be a public servant, worked in a ministry.

(2) Despite subsection (1), this Part does not apply to a person who ceases to be a public servant before the day on which section 57 of the Act comes into force.

### PROHIBITED CONDUCT

#### **Seeking preferential treatment, etc.**

**16.** A former public servant shall not seek preferential treatment by, or privileged access to, public servants who work in a minister’s office, a ministry or a public body.

#### **Disclosing confidential information**

**17.** (1) A former public servant shall not disclose confidential information obtained during the course of his or her employment by the Crown to a person or entity unless the former public servant is authorized to do so by law or by the Crown.

(2) A former public servant shall not use confidential information in a business or undertaking.

#### **Restriction on lobbying**

**18.** (1) This section applies to a former public servant who, immediately before ceasing to be a public servant, was employed in a designated senior position.

(2) For 12 months after ceasing to be a public servant, the former public servant shall not lobby any of the following persons on behalf of a public body or another person or entity:

1. A public servant who works in a ministry or public body in which the former public servant worked at any time during the 12 months before he or she ceased to be a public servant.
2. The minister of any ministry in which the former public servant worked at any time during the 12 months before he or she ceased to be a public servant.
3. A public servant who works in the office of a minister described in paragraph 2.

**Restriction on employment, etc.**

**19.** (1) This section applies to a former public servant who, immediately before ceasing to be a public servant, was employed in a designated senior position and who, at any time during the 12 months before he or she ceased to be employed as a public servant, in the course of his or her employment as a public servant,

- (a) had substantial involvement with a public body or another person or entity; and
- (b) had access to confidential information that, if it were to be disclosed to the public body, person or entity, could result in harm to the Crown or could give the public body, person or entity an unfair advantage in relation to one or more third parties.

(2) For 12 months after ceasing to be a public servant, the former public servant shall not accept employment with the public body, person or entity or serve as a member of the board of directors or other governing body of the public body, person or entity.

**Restriction re certain transactions**

**20.** (1) This section applies to a former public servant who, when he or she was a public servant working in a ministry, advised the Crown about a particular proceeding, negotiation or other transaction.

(2) The former public servant shall not advise or otherwise assist any public body or any other person or entity in connection with the particular proceeding, negotiation or other transaction until the Crown ceases to be involved in it.

(3) Despite subsection (2), the former public servant may continue to advise or otherwise assist the Crown in connection with the particular proceeding, negotiation or other transaction.

**PART III  
COMMENCEMENT**

**Commencement**

**21.** This Regulation comes into force on the day section 57 of the Act comes into force.