

Conflict of Interest and Post-Service Directive

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Conflict of Interest and Post-Service Directive for Public Servants

Introduction

The public is entitled to expect the highest standards of conduct from all individuals who work for the government of Ontario. This directive outlines the public service values and standards that will ensure government activities are conducted in an open, fair and transparent manner.

What is Conflict of Interest?

Any situation where an individual's private interests may be incompatible or in conflict with their public service responsibilities.

PART 1: APPLICATION AND PRINCIPLES

Purpose

1. The purpose of this directive is to enhance public confidence in the integrity of public servants and the decision-making process in government by:
 - (a) setting clear rules of conduct for conflict of interest and post-service practices that apply to all public servants
 - (b) reducing the possibility of conflicts between the private interests and public service duties of public servants
 - (c) providing the means to resolve such conflicts in the public interest.
2. This directive complements a regulation under the *Public Service Act*. The wording in this directive is not intended to substitute for the actual wording in the regulation. Where there are differences between this directive and the regulation on matters addressed in the regulation, the regulation will prevail.
3. All information collected, used and disclosed under this directive is employment related and the government maintains a legal interest in it. Information may be collected, used and disclosed as is necessary to comply with this directive.

Confidentiality

4. (a) Information obtained from public servants under this directive shall not be disclosed unless:
 - (i) the person to whom the information relates consents to the disclosure; or
 - (ii) the disclosure is required by law in connection with a legal proceeding relating to this directive.
- (b) Despite subsection (a), the designated official or the designated third party may disclose information in the following circumstances:
 - (i) when he or she is engaged in meetings, consultations, discussions or communicating for the purpose of determining whether this directive has been or may be contravened
 - (ii) when he or she is advising the public servant about whether this directive has been or may be contravened
 - (iii) when he or she considers it to be reasonably necessary to disclose information to a person or entity in order to enable the person or entity to perform his, her or its duty in relation to the conduct of public servants under this directive.

Application and Scope

5. The Conflict of Interest and Post-Service Directive applies as follows:
 - (a) The “Mandatory Requirements - Conflict of Interest Provisions for Public Servants (Part 2) apply to all public servants
 - (b) The “Mandatory Requirements - Post-Service Restrictions” (Part 3) apply to senior public servants
 - (c) The “Mandatory Requirements - Provisions Relating to Matters Referred to SuperBuild” (Part 4) apply to senior public servants involved on a routine basis or on a particular “privatization matter”.

Interpretation

6. For the purpose of this directive,

- (a) “Public Servant” means:
 - a person who is appointed under the *Public Service Act* to the service of the Crown.
- (b) “Designated Official” is the individual or party that is responsible for applying the conflict of interest provisions that govern the day-to-day in-service activities of public servants (as set out in Part 2) and of former public servants for certain circumstances (as set out in Parts 2 and 3). The designated officials are:
 - the Deputy Minister or agency head, as appropriate, for public servants
 - the Secretary of Cabinet for Deputy Ministers
 - the Premier for the Secretary of Cabinet
 - the Conflict of Interest Commissioner, with duties as assigned by the Chair of Management Board of Cabinet, for staff in the Premier’s office and ministers’ offices and staff of the Ontario SuperBuild Corporation.
- (c) “Designated Third Party” is the individual or party that is responsible for applying the conflict of interest provisions that deal with post-service employment issues (as set out in Part 3) and any conflict of interest issues relating to “privatization matters” (as set out in Part 4). The designated third parties are:
 - the Conflict of Interest Commissioner, with duties as assigned by the Chair of Management Board of Cabinet, or
 - the Civil Service Commission.(see Part 5 for full description of roles and responsibilities)
- (d) “Senior Public Servants” mean:
 - (i) Secretary of Cabinet
 - (ii) Deputy Ministers
 - (iii) senior staff in the Premier’s Office and Ministers’ Offices (as set out in Appendix C)
 - (iv) public servants (except for clerical and secretarial staff) in the Ontario SuperBuild Corporation
 - (v) Senior Management Group (XSMC 2 and 3, XOFA 1 and 2, ITX 2,3 and 4)
 - (vi) any other individuals designated under Part 3, to whom the post-service employment restriction will apply.

For the purposes of this directive, subsections (v) will be collectively referred to as “SMG 2 and 3 or equivalent level”.

- (e) “Confidential Information” means:
- information that is not available to the public and that, if disclosed, could result in loss or damage to the Crown or could give the person to whom it is disclosed an advantage.

Principles

7. Every public servant shall conform to the following principles:

(a) *Ethical Standards*

Public servants must act honestly and uphold the highest ethical standards. This will maintain and enhance public confidence and trust in the integrity, objectivity and impartiality of government.

(b) *Public Scrutiny*

Public servants are obligated to perform their official duties and conduct themselves in a manner that will bear the closest public scrutiny. Public servants cannot fulfil this obligation simply by acting within the law.

(c) *Private Interests*

Public servants shall not have private interests, other than those permitted pursuant to this directive, laws or statutes, that would be affected particularly or significantly by government actions in which those public servants participate.

(d) *Public Interests*

When appointed to office, and thereafter, public servants must arrange their private interests to prevent real or potential conflicts of interest. If a conflict does arise between the private interests of a public servant and the official duties and responsibilities of that individual, the conflict shall be resolved in favour of the public interest.

Failure to Comply

8.
 - (a) A public servant who does not comply with the measures in this directive will be disciplined as appropriate. Disciplinary measures may include discharge or termination of appointment.
 - (b) Civil action may be taken against any individual, outside entity or organization where failure to comply with the requirements of the Corporate Management directives and/or the regulation under the *Public Service Act* dealing with conflict of interest results in loss or damage to the Crown.
 - (c) An employee of the government who is found to have engaged in influence peddling may be prosecuted under the Criminal Code of Canada.

PART 2: MANDATORY REQUIREMENTS

CONFLICT OF INTEREST PROVISIONS THAT APPLY TO ALL PUBLIC SERVANTS

Objective

9. The conflict of interest provisions in this Part set out the requirements that must be observed to reduce the risk of conflict of interest and to resolve such conflicts should they arise.

General Conflict of Interest Provisions

A. Outside Activities

10. A public servant shall not engage in any outside work or business undertaking:
 - (a) that is likely to result in a conflict of interest
 - (b) that interferes with the individual's ability to perform his or her duties and responsibilities; for example, by placing demands on the individual that are inconsistent with his or her duties or calling into question the individual's ability to perform his or her official duties objectively
 - (c) in which an advantage is derived from his or her employment as a public servant
 - (d) in which the outside work would otherwise constitute full-time employment for another person
 - (e) in a professional capacity that will, or is likely to, influence or affect the carrying out of his or her duties as a public servant
 - (f) that involves the use of government premises, equipment or supplies.

B. Prohibited Use of Position

11. Public servants shall not use, or seek to use, their positions or employment with the Crown to:
- (a) gain direct or indirect benefit for themselves or their spouses, same sex partner or children
 - (b) solicit or accept favours or economic benefits from any individuals, organizations or entities known to be seeking business or contracts with the Crown
 - (c) favour any person, organization or business entity.

C. Confidential Information

12. Public servants shall not:
- (a) disclose any confidential information about any Crown undertaking, acquired in the performing of duties for the Crown, to any person or organization not authorized by law or by the Crown to have such information
 - (b) benefit directly or indirectly in return for or in consideration for revealing confidential information
 - (c) use confidential information in any private undertaking in which they are involved.

D. Gifts, Hospitality and Other Benefits

13. Public servants must refuse gifts, hospitality or other benefits that could influence their judgment and performance of official duties. Public servants must not accept, directly or indirectly, any gifts, hospitality or other benefits from:
- (a) persons, groups or organizations dealing with the government
 - (b) clients or other persons to whom they provide services in the course of their work as public servants.

14. All the same, public servants may accept incidental gifts, hospitality or other benefits associated with their official duties and responsibilities if such gifts, hospitality or other benefits:
- (a) are appropriate, a common expression of courtesy or within the normal standards of hospitality
 - (b) do not cause suspicion about the objectivity and impartiality of the public servant
 - (c) would not compromise the integrity of the government.
15. When they cannot refuse unauthorized gifts, hospitality or other benefits, public servants must immediately report the matter to the designated official. The designated official may require that such a gift be held by the ministry or given to charity or such other action as he or she may determine.

E. Avoidance of Preferential Treatment

16. A public servant shall not:
- (a) grant preferential treatment in relation to any official matter to any person, organization, family member or friend, or to any organization in which the public servant, family member or friend has an interest. The public servant must avoid being obligated, or seeming to be obligated, to any person or organization that might profit from special consideration
 - (b) offer assistance in dealing with the government to any individual or entity where such assistance is outside the official role of the public servant.
17. Subject to the decision of or conditions set by the designated official, a public servant shall not:
- (a) hire or contract with members of his or her immediate family, that is, his or her spouse, same sex partner, parents, children, siblings
 - (b) occupy a position where one immediate family member reports directly to another.

F. Procurement

18. A public servant shall not:
- (a) help any outside entities or organizations in any transactions or dealings with the Crown in a way that contravenes the provisions of this directive (for complete details on the procurement process, see the directive on procurement)

- (b) give confidential information associated with a transaction, except as required in a transaction, to any outside entity or organization about a Crown undertaking before the transaction or dealing with the Crown is completed.

G. Political Activity

- 19. The political activities of Crown employees are governed by the *Public Service Act*.
- 20. These individuals must not engage in political activity at work and must not associate their positions with political activity. A general prohibition in the statute warns against engaging in political activity that would place the employee in a position of conflict of interest with the Crown. For complete details on the rights and prohibitions relating to political activity for Crown employees, refer to the *Public Service Act*.

H. Taking Improper Advantage of Past Office

- 21. The government of Ontario maintains a legal interest in the post-service activities of former public servants. As such, public servants shall not, after leaving employment with the Crown, take improper advantage of their past offices. For example, a public servant shall not do the following, including:
 - (a) allow prospects of outside employment to create a real or potential conflict of interest while in public service with the Crown
 - (b) seek preferential treatment or privileged access to government after leaving public service with the Crown
 - (c) take personal advantage of information obtained through official duties and responsibilities that is not available to the public
 - (d) use public office to unfair advantage in gaining opportunities for outside employment.

In addition to these general provisions, individuals should refer to Part 3 and review their circumstances to determine whether further post-service restrictions may apply when leaving employment with the Crown.

Any determination made under this section by the designated official does not bind the designated third party in the application of post-service restrictions under Part 3.

I. Switching Sides

22. (a) A public servant who has advised the government on a specific proceeding, transaction, negotiation or case shall not upon ceasing employment with the Crown act for or on behalf of any person, commercial entity, association or union in connection with that specific proceeding, transaction, negotiation or case to which the government is a party.
- (b) Subsection 22 (a) does not apply where a proceeding, transaction, negotiation or case is completed or the Crown has ceased to be involved.

The Duty to Notify the Designated Official

23. (a) A public servant shall notify his or her designated official if circumstances could arise in which the public servant's private interests could conflict with his or her duties to the Crown:
- (i) any conflict of interest in which the individual may benefit personally from the matter that, in the course of the individual's duties, he or she can influence
 - (ii) any conflict of interest situation arising from the individual's outside activities.
- (b) Where there may be a conflict of interest in a particular situation, the public servant must make a confidential report to the designated official. The report must identify the nature of the potential conflict of interest.
- (c) The designated official may require that the identified activity be curtailed, modified or stopped if he or she concludes that a real or potential conflict of interest exists.
24. Where the conflict of interest relates to consideration of a matter by a board, selection panel or other decision-making group, the public servant must tell the other members of the board, panel, committee or group about the general nature of the conflict. The public servant must withdraw from consideration of the matter without participating.

PART 3: MANDATORY REQUIREMENTS

POST-SERVICE RESTRICTIONS FOR SENIOR PUBLIC SERVANTS

Application

25. The government of Ontario maintains a legal interest in the post-service activities of former public servants. As such, in addition to the general provisions in Part 2, this Part details the additional post-service restrictions that apply to senior public servants as identified in Part 1, section 6.

Principles

26. It is in the public interest to facilitate the movement of individuals and the transfer of skills and knowledge to private and public sector organizations dealing with the Crown.
27. In dealings with the private sector, the interests of the Crown must be protected. At the same time, post-service restrictions should not unjustifiably restrict the movement of senior public servants to the private sector. In addition, senior public servants should not be restricted from using their knowledge and expertise gained through employment with the Crown about the operation of government.
28. When service to the Crown ends, a former senior public servant continues to owe obligations to the Crown because of the confidentiality of the information to which he or she was privy. Confidential government information must not be used for personal gain or commercial advantage.

Post-Service Restrictions

29. The intention of this part is to clarify that individuals are allowed to use their expertise and knowledge gained through employment with the Crown to gain post-service employment with outside entities unless specific circumstances as described in sections 30, 31 and 32 apply, in which case the individual is required to get a decision in accordance with Part 5.
30. (a) After leaving service with the Crown, a former senior public servant is restricted for 12 months from accepting employment with or appointment to the board of an outside entity:
- (i) if that individual had substantial involvement with that outside entity in the course of his or her employment by the Crown during the 12 months before he or she ceased to be a senior public servant; and

- (ii) if he or she had, or had access to, confidential information (in the course of his or her employment by the Crown during the 12 months before he or she ceased to be a senior public servant) that, if disclosed to that outside entity, could result in loss or damage to the Crown or could give the outside entity an unfair advantage.

Where a former senior public servant accepts a position with an outside entity and possesses or had access to confidential information, the release of which could provide that entity with an unfair advantage or cause loss or damage to the Crown, that outside entity may be restricted during the 12 month period from doing business with the Crown (with respect to matters in which that confidential information may result in an unfair advantage or loss or damage to the Crown).

The Crown may seek damages for the misuse of confidential information from the former public servant and/or any organization which uses the confidential information where the damages are quantifiable and recoverable.

- (b) For 12 months after leaving the service of the Crown, a former senior public servant is restricted from lobbying for or on behalf of any person, entity or organization, to any ministry or organization with the Crown with which the individual worked in the 12 months prior to leaving the service of the Crown.

Where a former senior public servant lobbies the Crown on behalf of an organization in contravention of the requirements of this section, the Crown reserves the right not to do business with that organization with respect to that particular issue or transaction.

Designation of Additional Persons to whom the Post-Service Employment Restriction will apply

- 31. As noted in subsection 6(d), clause (vi), in the circumstances noted in section 32, from time to time, other individuals not defined in subsection 6(d), clauses (i) through (v) may be designated as being subject to the 12 month post-service employment restriction period in accordance with subsection 30(a).
- 32. An individual may be designated as being subject to the post-service employment restriction if he or she is performing or has performed a function in a position (in the course of his or her employment with the Crown during the past 12 months) requiring that individual:
 - (i) to have substantial involvement with the outside entity; and
 - (ii) to have, or had access to, confidential information that, if disclosed to that outside entity, could result in loss or damage to the Crown or could give the outside entity an unfair advantage.

33. The following person may designate, from among the group of persons specified, one or more individuals to whom the post-service employment restriction shall apply:
- (a) The Principal Secretary to the Premier may designate persons employed in the Premier's Office
 - (b) A minister may designate persons employed in his or her office
 - (c) The chief executive officer of the Ontario SuperBuild Corporation may designate persons employed by the Corporation
 - (d) A deputy minister may designate persons employed in the ministry of which he or she is deputy.
34. (a) The person who under section 33 designates an additional person to whom the post-service employment restriction applies shall inform the Civil Service Commission of such persons.
- (b) The Civil Service Commission shall maintain a list of designated persons and shall notify individuals on the list and the appropriate designated third party that the individual has been designated as being subject to the post-service employment restriction.
 - (c) The conflict of interest provisions relating to the post-service employment restriction applies to an identified individual only once the individual has been specifically notified under section 34 (b).

Review of Post-Service Employment Restrictions

35. (a) The designated third party may, in accordance with Part 5:
- (i) decide whether post-service restrictions apply in particular situations
 - (ii) set out the terms and conditions as to post-service restrictions.
- (b) The designated third party may consider the following matters when making a decision in a particular case:
- (i) the importance of the confidential information held by or accessible to the individual in the course of performing his or her duties to the Crown
 - (ii) the desirability of a rapid transfer of the individual's knowledge and skills from the government to private, non-profit or other government sectors

- (iii) the degree to which the outside group or entity could gain a commercial advantage or cause loss or damage to the Crown by hiring the individual
 - (iv) the extent to which the employee had substantial involvement and confidential information
 - (v) decisions made and conditions imposed in other cases
 - (vi) other matters that the designated third party considers relevant.
- (c) In accordance with Part 5, a decision shall consist of advice that is communicated in writing to the applicant.

36. In some situations the function of a senior public servant may be transferred to an outside entity or organization and the senior public servant may have had substantial involvement with that outside entity.

In such instances, as part of the staffing strategy in the business case a ministry may request the Civil Service Commission to provide an exemption from the post-service restriction on the basis that it is in the government's best interests to transfer the identified individuals to the receiving entity or organization.

PART 4: MANDATORY REQUIREMENTS

PROVISIONS RELATING TO MATTERS REFERRED TO SUPERBUILD

37. No person acting on behalf of the Crown in relation to matters referred to the Ontario SuperBuild Corporation by the Executive Council shall benefit personally from such matters. Benefits to such persons must be limited to the remuneration they receive from the Crown for their services.

Application

38. Senior public servants working on matters referred to the Ontario SuperBuild Corporation by the Executive Council are subject to additional requirements and restrictions.
39. The conflict of interest provisions in this Part apply to:
- (a) Senior public servants as listed in Appendix A who routinely work on matters that have been referred to the Ontario SuperBuild Corporation by the Executive Council and
 - (b) Senior public servants who hold positions listed in Appendix B who are working on a particular “privatization matter” that has been referred to the Ontario SuperBuild Corporation by the Executive Council for review, implementation or monitoring and who have access to confidential information about the matter obtained during the course of their employment in the service of the Crown
 - (i) the person who designates a person under subsection 39 (b) shall inform the Civil Service Commission of such persons
 - (ii) the Civil Service Commission shall maintain a list of designated persons and shall notify individuals on the list and the appropriate designated third party that the individual has been designated as being subject to Part 4 as it pertains to persons designated under subsection 39 (b)
 - (iii) the conflict of interest provisions relating to involvement in a particular “privatization matter” apply to an identified individual only once the individual has been specifically notified under this section.

Routinely Working on Matters Referred to SuperBuild by the Executive Council

40. (a) A senior public servant who routinely works on matters that have been referred to the Ontario SuperBuild Corporation by the Executive Council shall make a declaration to the Conflict of Interest Commissioner in which the public servant discloses the financial interests in subsection 40 (c).
- (b) The financial interests of a designated individual's spouse, same sex partner or dependent children shall also be declared where these interests could create a conflict of interest.
- (c) Financial interests to be declared are defined for the purposes of subsections 40(a) and (b) to be:
- (i) a legal or beneficial interest of the public servant in securities or derivatives of corporations or governments, other than the Government of Ontario
 - (ii) a legal or beneficial interest of the public servant in a business entity or commercial operation or in the assets of such an entity or operation
 - (iii) a legal or beneficial interest of the public servant in real property
 - (iv) a legal or beneficial interest of the public servant in a mutual fund that is operated as an investment club where,
 - its shares or units are held by not more than 50 persons and its indebtedness has never been offered to the public,
 - it does not pay or give any remuneration for investment advice or in respect of trades in securities, except normal brokerage fees, and
 - 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.
- (d) For the purposes of subsection 40(a) and (b), the following financial interests are not required to be declared:
- (i) a mutual fund within the meaning of subsection 1 (1) of the *Securities Act* other than a mutual fund described in subsection 40(c)(iv) above
 - (ii) fixed-value securities issued or guaranteed by a government or by a government agency

- (iii) a guaranteed investment certificate or similar financial instrument issued by a financial institution entitled by law to issue such instruments
 - (iv) a registered pension plan, an employee benefit plan, an annuity or life insurance policy or deferred profit sharing plan
 - (v) real property that the public servant, or a member of his or her family, uses primarily as a residence or for recreational purposes.
- (e) All information on financial interests that is declared is provided in the strictest confidence and shall not be disclosed except as required by law in connection with a legal proceeding in relation to this directive or in accordance with sections 4 and 46 of this directive.

Working on a Particular “Privatization Matter”

41. (a) A senior public servant working on a “privatization matter” that has been referred to the Ontario SuperBuild Corporation by the Executive Council for review, implementation or monitoring shall make a declaration to the Conflict of Interest Commissioner about whether the public servant’s private interests could conflict with his or her duties to the Crown respecting the matter.
- (b) In this Part, “privatization matter” means a matter that relates to services currently provided under a program of the Crown or by an agency of the Crown or a corporation controlled by the Crown with respect to which the following circumstances exist:
- i) there may be a change in the way in which the services are to be provided, a change in the way in which services are to be financed or a change of the entity that is to provide some or all of the services; and
 - ii) 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.

Duty to Declare Any Change in Circumstances

42. Senior public servants shall promptly declare any change in their circumstances under this Part, such that their private interests could conflict with their duties to the Crown, to the designated third party. Individuals shall comply with the direction of the designated third party.

Purchase of Shares or Equity

43. (a) A senior public servant who routinely works on matters that have been referred to the Ontario SuperBuild Corporation by the Executive Council shall not purchase or cause another person to purchase on his or her behalf a legal or beneficial interest in a person or entity,

- (i) that is carrying on an activity formerly carried on by the Crown that has been referred to the Ontario SuperBuild Corporation by the Executive Council; or
 - (ii) that proposes to carry on an activity formerly carried on by the Crown that has been referred to the Ontario SuperBuild Corporation by the Executive Council.
- (b) A senior public servant working on a “privatization matter” that has been referred to the Ontario SuperBuild Corporation by the Executive Council for review, implementation or monitoring shall not purchase or cause another person to purchase on his or her behalf a legal or beneficial interest in a person or entity,
 - (i) that is carrying on an activity relating to the matter that he or she worked on that has been referred to the Ontario SuperBuild Corporation by the Executive Council; or
 - (ii) that proposes to carry on an activity relating to the matter that he or she worked on that has been referred to the Ontario SuperBuild Corporation by the Executive Council.
- (c) The prohibition described in subsection (a) and (b) ceases to have effect with respect to a matter,
 - (i) six months after the date on which the action in respect of the matter referred to the Ontario SuperBuild Corporation is completed; or
 - (ii) six months after the date the Crown ceases to work on the matter referred to the Ontario SuperBuild Corporation.
- (d) This restriction does not apply to the purchase of mutual funds, as defined in subsection 40(d)(i), which include shares and equity of such companies.
- (e) For those designated as routinely working on matters referred to the Ontario SuperBuild Corporation by the Executive Council, this restriction applies to all such matters
- (f) For those designated as working on a particular “privatization matter”, this restriction applies to those particular matters.

PART 5: ROLES AND RESPONSIBILITIES

Overview

44. This Part describes the roles and responsibilities of the designated official and the designated third parties:
- (a) The “Designated Official” is the individual or party that is responsible for making decisions regarding the in-service conflict of interest provisions that govern the day-to-day in-service activities of public servants. The “Designated Official” also has certain responsibilities related to the post-service activities of public servants. The designated officials are:
 - the Deputy Minister for public servants
 - the Secretary of Cabinet for Deputy Ministers
 - the Premier for the Secretary of Cabinet
 - the Conflict of Interest Commissioner for staff in the Premier’s office and ministers’ offices and staff of the Ontario SuperBuild Corporation.
 - (b) The “Designated Third Party” is the individual or party that is responsible for making decisions regarding the conflict of interest provisions that deal with post-service issues and any conflict of interest issues relating to matters referred to the Ontario SuperBuild Corporation by the Executive Council. The designated third parties are:
 - the Conflict of Interest Commissioner, or
 - the Civil Service Commission, or
 - the Deputy Minister.
45. The designated official or the designated third party may collect, use and disclose information as is necessary in accordance with this directive to undertake his or her duties under this directive. All information collected, used and disclosed under this directive is employment related and the government maintains a legal interest in it.
46. (a) All information on financial interests that is disclosed is provided in the strictest confidence. The designated official or designated third party shall not disclose information obtained from public servants under this directive unless:
- (i) the person to whom the information relates consents to the disclosure; or
 - (ii) the disclosure is required by law in connection with a legal proceeding relating to this directive.

- (b) Despite subsection (a), the designated official or the designated third party may disclose information in the following circumstances:
- (i) when he or she is engaged in meetings, consultations, discussions or communicating for the purpose of determining whether this directive has been or may be contravened
 - (ii) when he or she is advising the public servant about whether this directive has been or may be contravened
 - (iii) when he or she considers it to be reasonably necessary to disclose information to a person or entity in order to enable the person or entity to perform his, her or its duty in relation to the conduct of public servants under this directive.

47. (a) A public servant shall cooperate with the designated official or designated third party or their agent in the discharge of his or her duties under this directive. For that purpose, he or she shall give the designated official or designated third party such information and documents as he or she may request.
- (b) A public servant is not required to give the designated official or designated third party any information or documents that, by law, the public servant is personally required to keep confidential.

The Designated Official

48. The provisions in this section apply to all designated officials (Deputy Minister, Secretary of Cabinet, Premier, and Conflict of Interest Commissioner).

Who deals with day-to-day in-service issues and certain post-service issues

Individuals	Designated Official for In-Service Issues & for Post-Service Lobbying and Switching Sides Responsibilities
Secretary of Cabinet	Premier
Deputy Ministers	Secretary of Cabinet
Senior Public Servants (SMG 2 and 3 or equivalent levels)	Deputy Minister*
Public Servants below SMG 2 level	Deputy Minister*
Senior staff in the Premier's Office and Ministers' Offices	Conflict of Interest Commissioner
Other staff in the Premier's Office and Ministers' Offices	Conflict of Interest Commissioner
Staff of the Ontario SuperBuild Corporation	Conflict of Interest Commissioner

(* or agency head as appropriate)

The Role of the Designated Official

49. In accordance with the provisions of the *Public Service Act*, the designated official is responsible for making decisions as to whether the conflict of interest provisions have been contravened that apply to public servants employed by the ministry or program area for which the designated official is responsible. The following chart summarizes the conflict of interest provisions that apply to all public servants and that will be dealt with by the designated official:

Individuals to whom provisions apply	Conflict of Interest provisions that will be dealt with by the Designated Official
All public servants in the ministry for which the designated official is responsible	(a) engaging in outside activities (s.10) (b) use of position or employment with the Crown to gain an unfair benefit (s.11) (c) use of confidential information to gain unfair advantage or benefit (s.12) (d) the acceptance of gifts, hospitality and other benefits (s.13-15) (e) the avoidance of preferential treatment in relation to official matters and family members (s.16-17) (f) the procurement process (s.18) (g) political activity (s.19-20) (h) taking improper advantage of past office (s.21) (i) switching sides (s.22) - for in-service switching sides circumstances not related to post-service employment (j) the duty to disclose a real or potential conflict of interest (s.23-24)
Positions not subject of the post-service employment restriction (below SMG 2 & non-designated)	(k) switching sides (s.22) - switching sides circumstances related to post-service employment
Senior public servants	(l) lobbying circumstances that arise in day-to-day business related to the post-service lobbying restrictions (s.30(b))

50. The authority of a designated official to make a decision with respect to the existence of a real or potential conflict of interest is not to be delegated. However, the ability to undertake remedial or disciplinary actions considered appropriate may be exercised by a duly authorized individual.

Powers of the Designated Official

51. Under the authority of the *Public Service Act*, the designated official has the authority to deal with the day-to-day, in-service conflict of interest issues of public servants by:
- (a) reviewing and/or investigating a conflict of interest matter
 - (b) deciding whether a real or potential conflict of interest situation will result or has resulted in the public servant contravening or failing to comply with the general conflict of interest provisions.
52. (a) A designated official shall make a decision regarding the existence of a real or potential conflict of interest when requested to do so by Cabinet, the minister of the ministry in which the individual works, or the public servant.
- (b) The designated official may initiate a review or investigation of a possible conflict of interest matter at the request of the public servant's supervisor.
- (c) The designated official may investigate or make a decision regarding the following circumstances:
- (i) current or former public servants not subject to the post-service employment restriction (below SMG2 & non-designated) involved in switching sides (s.22) related to their post-service employment
 - (ii) former senior public servants involved in lobbying that may arise in day-to-day business related to the post-service lobbying restriction (s.30(b)).
53. If the designated official determines that the public servant has or will be in a position where he or she will contravene or fail to comply with this directive, the designated official or other duly authorized individual may take such actions as he or she considers appropriate in the circumstances, including:
- (a) transferring the public servant to another position or assigning him or her to other duties
 - (b) temporarily relieving the public servant from the duties that resulted in the contravention
 - (c) requiring the public servant to notify his or her supervisor of the decisions that he or she proposes to make that could give rise to a contravention; and requiring the public servant to obtain the supervisor's approval for the proposed decisions
 - (d) requiring the individual to take or refrain from taking such steps as the designated official may specify in order to comply with the conflict of interest provisions, including advising the individual to divest himself or herself of an interest in a business or undertaking or to transfer control of it to a neutral third party

- (e) taking disciplinary measures, imposing penalties, terminating the employment of the public servant, accepting his or her resignation
- (f) or such other action as reasonably necessary.

54. Where it is determined that a conflict of interest exists and the individual complies with the decisions made by the designated official or other duly authorized individual to resolve the conflict, the individual shall be deemed to be in compliance with the applicable conflict of interest provision.

55. The designated official shall notify the public servant's supervisor of the decisions made and the actions taken by the designated official as necessary in accordance with this directive.

The Designated Third Party

56. Each designated third party, has specific responsibilities in relation to the post-service and privatization provisions of this directive for specific groups of individuals.

Who deals with Post-Service Employment Matters & Matters Referred to SuperBuild

Individuals	Designated Third Party for Post-Service Employment Matters	Designated Third Party for Matters Referred to SuperBuild
Secretary of Cabinet	Conflict of Interest Commissioner	Conflict of Interest Commissioner
Deputy Ministers	Conflict of Interest Commissioner	Conflict of Interest Commissioner (as applicable)
Public Servants at the SMG 2 and 3 or equivalent level	Civil Service Commission	- Conflict of Interest Commissioner where routinely working on matters referred to SuperBuild by the Executive Council - Conflict of Interest Commissioner where working on a particular "privatization matter" (as applicable)
Public Servants designated under s.31 as subject to the post-service employment restriction	Civil Service Commission	N/A
Senior Staff in the Premier's Office and Ministers' Offices	Conflict of Interest Commissioner	Conflict of Interest Commissioner
Other staff in Premier's Office and Ministers' Offices	Conflict of Interest Commissioner	Conflict of Interest Commissioner
Staff in the Ontario SuperBuild Corporation	Conflict of Interest Commissioner	Conflict of Interest Commissioner

A. The Conflict of Interest Commissioner

The Role of the Conflict of Interest Commissioner as the Designated Third Party

57. The Conflict of Interest Commissioner is the designated third party responsible for dealing with any real or potential contraventions of conflict of interest provisions as follows:

Individuals to whom provisions apply	Conflict of Interest provisions dealt with by the Conflict of Interest Commissioner
(a) - Senior staff in the Premier's Office and Ministers' Offices - Secretary of Cabinet - Deputy Ministers - Ontario SuperBuild Corporation staff	➤ post-service employment provisions
(b) The following individuals, as identified in Appendix A, who routinely work on matters referred to SuperBuild by the Executive Council: - identified staff in the Office of the Premier and the offices of members of the Cabinet Committee on Privatization and SuperBuild; - the Secretary of Cabinet and identified staff in Cabinet Office; - identified Deputy Ministers; - identified individuals at the SMG 3 or equivalent level; - staff of the Ontario SuperBuild Corporation.	➤ privatization provisions, including declaration of financial disclosures
(c) Individuals, as identified in Appendix B, who work on a particular "privatization matter" that has been referred to SuperBuild by the Executive Council	➤ privatization provisions, including declaration of no conflict between private interests and duties to the Crown

Powers of the Conflict of Interest Commissioner

58. For the purposes of this directive and with respect to any duties noted in this directive, the Conflict of Interest Commissioner is the designated third party with the authority to:
- (a) review and/or investigate a conflict of interest matter
 - (b) decide whether an actual or potential conflict of interest situation will result or has resulted in the individual (as identified in section 57) contravening or failing to comply with the post-service employment restriction (as detailed in Part 3), or the privatization provisions (as detailed in Part 4); the decision must be made within 10 working days following receipt of all information necessary to make the decision
 - (c) ensure compliance with the mandatory financial declaration requirements for individuals who are routinely involved in “privatization matters” (Appendix A)
 - (d) ensure compliance with the declaration requirements for individuals who are involved in particular “privatization matters” (Appendix B)
 - (e) determine the course of action required to resolve any conflict of interest issue resulting from disclosures relating to “privatization matters”
 - (f) retain full control of records relating to his or her duties under this directive.
59. Where it is determined that post-service restrictions as outlined in Part 3 apply, the Conflict of Interest Commissioner has the authority to:
- (a) set out the terms and conditions as to the post-service restriction
 - (b) advise on the possible consequences for both the individual and the outside entity with respect to the employment of a public servant for which post-service restrictions apply.
60. (a) Cabinet, the minister of the ministry in which the individual works, the individual's supervisor, or the public servant may cause the Conflict of Interest Commissioner to review conduct and make a decision regarding a real or potential conflict of interest.
- (b) The Conflict of Interest Commissioner may initiate a review or investigation of a possible conflict of interest matter as a result of a real or potential conflict of interest being identified through mandatory financial disclosure or through the making of a declaration of no conflict of interest in relation to a particular “privatization matter”.

61. In some cases, the Conflict of Interest Commissioner may determine that the individual has or will be in a position where he or she will contravene or fail to comply with this directive. In such cases, the Conflict of Interest Commissioner may take such actions as he or she considers appropriate in the circumstances, including:
- (a) recommending to the appropriate official that the individual be transferred to another position or assigned to other duties
 - (b) recommending to the appropriate official that the individual be temporarily relieved from the duties that resulted or may result in the contravention
 - (c) requiring the individual to notify his or her supervisor of the decisions that he or she proposes to make that could give rise to a contravention; and requiring the individual to obtain the supervisor's approval for the proposed decisions
 - (d) requiring the individual to take or refrain from taking such steps as the Conflict of Interest Commissioner may specify in order to comply with the conflict of interest provisions, including advising the individual to divest himself or herself of an interest in a business or undertaking, or to transfer control of it to a neutral third party
 - (e) recommending to the appropriate official that disciplinary measures be taken against the employee, penalties imposed, the employee be instructed to cease certain activities, the employee be released or terminated from employment, or the employee's resignation be accepted
 - (f) recommending to the appropriate official that the Crown not do business with the outside entity with which the individual is employed
 - (g) or other actions as considered reasonably necessary.
62. Where it is determined that a breach of this directive exists and the individual complies with the recommendations made by the Conflict of Interest Commissioner to resolve the conflict, the individual shall be deemed to be in compliance with the applicable provision.
63. The Conflict of Interest Commissioner shall notify the individual's supervisor of the decisions made and the actions taken by the Conflict of Interest Commissioner as necessary in accordance with this directive.

B. The Civil Service Commission

The Role of the Civil Service Commission

64. The Civil Service Commission is the designated third party responsible for dealing with applying conflict of interest provisions as follows:

Individuals to whom provisions apply	Conflict of Interest provisions dealt with by the Civil Service Commission
- Individuals at the SMG 2 and 3 or equivalent level	- post-service employment provisions
- Individuals designated as being subject to the post-service employment restriction (s.31)	- switching sides in post-service related circumstances

Powers of the Civil Service Commission

65. For the purposes of this directive and with respect to any duties noted in this directive, the Civil Service Commission is the designated third party with the authority to:

- (a) review and/or investigate a conflict of interest matter
- (b) decide whether the post-service employment restriction (s. 30(a)) applies to individuals identified in section 64; the decision must be made within 10 working days following receipt of all information necessary to make the decision
- (c) investigate or make a decision regarding the existence of a real or potential conflict of interest of individuals identified in section 64 involved in switching sides (s.22) circumstances related to their post-service employment.

66. Where it is determined that the post-service employment restriction applies, the Civil Service Commission has the authority to:

- (a) set out the terms and conditions as to the post-service restriction
- (b) advise on the possible consequences for both the individual and the outside entity with respect to the employment of a public servant to which post-service restrictions apply.

67. (a) The Civil Service Commission shall make a decision regarding a real or potential conflict of interest when requested to do so by Cabinet, the minister of the ministry in which the individual works, or the public servant.
- (b) The Civil Service Commission may initiate a review or investigation of a possible conflict of interest matter at the request of the senior public servant's Deputy Minister.
68. In some cases, the Civil Service Commission may determine that the individual has or will be in a position where he or she will contravene or fail to comply with the conflict of interest provisions. In such cases, the Civil Service Commission may take such actions as it considers appropriate in the circumstances, including:
- (a) recommending to the appropriate official that the individual be transferred to another position or assigned to other duties
- (b) recommending to the appropriate official that the individual be temporarily relieved from the duties that resulted or may result in the contravention
- (c) requiring the individual to notify his or her supervisor of the decisions that he or she proposes to make that could give rise to a contravention, and requiring the individual to obtain the supervisor's approval for the proposed decisions
- (d) requiring the individual to take or refrain from taking such steps as the Civil Service Commission may specify in order to comply with the conflict of interest provisions, including advising the individual to divest himself or herself of an interest in a business or undertaking, or to transfer control of it to a neutral third party
- (e) recommending to the appropriate official that disciplinary measures be taken against the employee, penalties imposed, the employee be instructed to cease certain activities, the employee be released or terminated from employment, or the employee's resignation be accepted
- (6) recommending to the appropriate official that the Crown not do business with the outside entity with which the individual is employed
- (e) or other actions as considered reasonably necessary.
69. Where it is determined that a conflict of interest exists and the individual complies with the recommendations made by the Civil Service Commission to resolve the conflict, the individual shall be deemed to be in compliance with the applicable conflict of interest provision.
70. The Civil Service Commission shall notify the public servant's Deputy Minister of the decisions made and the actions taken by the Civil Service Commission as necessary in accordance with this directive.

Related Responsibilities

Lists of Positions and Individuals Subject to Provisions Related to Matters Referred to SuperBuild by the Executive Council

71. The Civil Service Commission shall maintain a current listing of:
- (a) the names of the individuals and the positions in which public servants routinely work on matters referred to the Ontario SuperBuild Corporation by the Executive Council (see Appendix A for a current listing of positions);
 - (b) the names of the individuals and the positions in which public servants work on a particular “privatization matter” that has been referred to SuperBuild by the Executive Council for review, implementation or monitoring and who have access to confidential information about that matter obtained during the course of their employment in the service of the Crown (see Appendix B for a current listing of positions).
72. (a) The Civil Service Commission is responsible for notifying individuals who perform the duties of the positions identified in section 71 that they are subject to the rules applying to individuals working on “privatization matters”. The appropriate designated third party must receive a copy of the notification.
- (b) The Civil Service Commission is responsible for informing these individuals of the applicable conflict of interest provisions and the implications.
- (c) The conflict of interest provisions relating to “privatization matters” apply to an identified individual only once the Civil Service Commission has specifically notified that individual.

List of Additional Persons Designated as Subject to Post-Service Restrictions

73. The Civil Service Commission shall maintain a current listing of:
- individuals who are not senior public servants who have been designated in accordance with Part 3 as being subject to the post-service employment restriction.
74. Every designated official shall notify the Civil Service Commission of changes to be made to the lists with respect to those persons for whom he or she is the designated official.

APPENDIX A

Positions (or positions of equivalent responsibility) that are routinely involved in matters that have been referred to the Ontario SuperBuild Corporation by the Executive Council and designated for the purposes of Part 4:

- a. The Chief Executive Officer and all persons appointed to or retained on a full-time basis by the Ontario SuperBuild Corporation with the exception of those positions where the duties and responsibilities are entirely clerical;
- b. In the Office of the Premier:
 - (i) Chief of Staff;
 - (ii) Principal Secretary;
 - (iii) Department Heads and staff equivalent to Department Heads;
 - (iv) Staff in the Policy Department, except administrative staff.
- c. In the offices of the members of the Cabinet Committee on Privatization and SuperBuild:
 - (i) the Executive Assistant;
 - (ii) Special Assistants or any other person employed whose duties involve advising the member on issues relating to “privatization matters” being dealt with by the Ontario SuperBuild Corporation.
- d. In Cabinet Office:
 - (i) The Secretary of Cabinet;
 - (ii) Deputy Minister and Associate Secretary of Cabinet, Communications;
 - (iii) Assistant Deputy Ministers, Cabinet Office, Communications (3 positions);
 - (vi) Deputy Minister & Associate Secretary of Cabinet, Policy;
 - (v) Assistant Deputy Minister, Health, Social & Education Policy, Cabinet Office;
 - (vi) Assistant Deputy Minister, Policy and Strategic Planning, Cabinet Office;
 - (vii) Executive Coordinator, Executive Council Office.
- e. The Secretary of Management Board of Cabinet;
- f. The Deputy Minister of Finance;
- g. The Assistant Deputy Minister, Program Management and Estimates Division at Management Board Secretariat;
- h. The Assistant Deputy Minister, Fiscal & Financial Policy at the Ministry of Finance;
- i. The Chief Executive Officer and the Director, Corporate Finance at the Ontario Financing Authority.

APPENDIX B

Positions (or positions of equivalent responsibility) that may be involved in one or more “privatization matters” and designated for the purposes of Part 4:

- a. In a ministry working on a “privatization matter” which has been referred to the Ontario SuperBuild Corporation by the Executive Council for review, implementation or monitoring and who have access to confidential information about the matter obtained during the course of their employment in the service of the Crown:
 - (i) the Executive Assistant to the minister;
 - (ii) Special Assistants and any other persons on the staff of a minister who is involved in advising on a “privatization matter”;
 - (iii) the Deputy Minister;
 - (iv) all public service positions classified at the SMG 2 or 3 level (or equivalent positions) which involve advising the minister and/or deputy minister on a “privatization matter”;
- b. Any public service positions at Cabinet Office, the Ministry of Finance and Management Board Secretariat, classified at the SMG 2 or 3 level (or equivalent positions) which involve the provision of advice or assistance on a “privatization matter”;
- c. Any other positions in the Office of the Premier which involve the provision of advice or assistance on a “privatization matter”.

APPENDIX C

Senior positions in the Office of the Premier and ministers' offices (or positions of equivalent responsibility) that are designated as being subject to the post-service restrictions as detailed in Part 3:

- a. In the Office of the Premier:
 - (i) Chief of Staff;
 - (ii) Principal Secretary;
 - (iii) Department Heads and staff equivalent to Department Heads;
 - (iv) Staff in the Policy Department, except administrative staff.
- b. In ministers' offices:
 - (i) Executive Assistants
 - (ii) Special Assistants:
 - Legislative Assistants;
 - Press Secretary / Communications Assistant;
 - Policy Advisors.
 - (iii) any other person employed in a minister's office in a senior position whose duties routinely involve advising the minister or any other official or employee of the Crown.