



Office of the Ethics Commissioner

Information for Ministers of the Crown and the Leader of Her Majesty's Loyal Opposition

2019

This bulletin provides information about the additional financial, employment and post-employment, or cooling off, restrictions, that are placed upon Ministers of the Crown and the Leader of Her Majesty's loyal opposition under the Conflicts of Interest Act. A reference to Minister includes the Leader of Her Majesty's loyal opposition as the same provisions under the Conflicts of Interest Act apply to both, with the exception of cooling off restrictions.

Ministers must comply with these financial and employment restrictions within 60 days of assuming office and with post-employment restrictions immediately upon ceasing to hold office.

What additional obligations or responsibilities apply to Ministers?

Upon taking office, a Minister has 60 days to comply with the following restrictions:

1. No publicly traded securities – A Minister is prohibited from having a beneficial interest in publicly traded securities, unless they are held in a blind trust or investment arrangement approved by the Ethics Commissioner. However, owning mutual funds is acceptable.
2. No outside employment or business activities – A Minister may not engage in employment or the practice of a profession or carry on a business, including owning rental property. However, a Minister may continue an existing business through the use of a management arrangement approved by the Ethics Commissioner, and may maintain professional status in a profession.
3. No directorships – A Minister may not hold a directorship or other senior officer role in any corporations other than a social club, religious organization or political party. However, under certain circumstances, and with the permission of the Ethics Commissioner, where the Minister is the sole shareholder of a company, the company may continue to exist as long as it is dormant or non-operating.

What are “publicly traded securities”?

Publicly traded securities under the Conflicts of Interest Act means: “securities of a corporation that are listed or posted for trading on a recognized stock exchange, or securities of a corporation that has more than 15 shareholders and any of whose issued securities were part of a distribution to the public”.

This basically covers the entire range of stocks, bonds, warrants, rights, debentures, shares, and credit notes. As previously mentioned, shares in a mutual fund are excluded.

What are blind trusts and investment arrangements?

The Ethics Commissioner may approve blind trusts and investment arrangements. Criteria that must be met before the Ethics Commissioner will provide approval are set out in the Conflicts of Interest Act.

A blind trust is a trust whereby:

1. The trustee is given sole power over investment decisions.
2. The Minister is precluded from having any knowledge of what investments are held in the trust, and is precluded from influencing or guiding investment decisions made by the trustee.
3. The trustee is limited to deposits and investments as set out under the Act.

An investment arrangement is an arrangement whereby:

1. A person other than the Minister is given sole power over investment decisions.
2. The Minister is precluded from having any knowledge of the specific investments.
3. There must be no relationship between the Minister and the person given sole power over investment decisions that would affect or appear to affect the investment decisions.

A Minister can seek reimbursement for costs related to establishing a blind trust or investment arrangement in an amount approved by the Ethics Commissioner.

What is the prohibition against engaging in certain outside activities?

21(1) A Minister breaches this Act if, after the expiration of the relevant period referred to in section 22, the Minister:

- a) engages in employment or in the practice of a profession,
- b) carries on a business, or
- c) holds an office or directorship other than in a social club, religious organization or political party.

that creates or appears to create a conflict between a private interest of the Minister and the public duty of the Minister.

A Minister must cease to be involved in any businesses or companies where the Minister is a proprietor, an employee, a senior officer or a director of a corporation. A Minister must also cease to practice a profession. The only exceptions are:

1. management of routine personal financial interests does not constitute carrying on a business;
2. maintaining qualifications in a profession or occupation as required by the profession or occupation does not constitute carrying on a business or engaging in employment or in the practice of a profession.

There are some special circumstances where the Ethics Commissioner may approve a business being carried on by way of a management arrangement. The Ethics Commissioner must provide advance approval for the arrangement and such requests are considered on a case by case basis. A management arrangement to carry on a business will not be approved by the Ethics Commissioner unless the Commissioner is satisfied that the management arrangement:

1. precludes the Minister from participating in discussions about matters that could affect a private interest of the Minister or of a person directly associated with the Minister,
2. the Minister is precluded from voting on matters that could affect a private interest of the Minister or of a person directly associated with the Minister, and
3. the Minister has no part in the day-to-day management of the business and the Minister only receives yearly audited statements of the business.

What does no directorships or senior officer roles mean?

The Conflicts of Interest Act provides:

s.1(k) “senior officer” means, with reference to a corporation,

- i) the president, vice-president, secretary, comptroller, treasurer or general manager of the corporation, or
- ii) any other person who performs functions for the corporation similar to those normally performed by persons holding the offices referred to in subclause (i);

s. 21(1) A Minister breaches this Act if, after the expiration of the relevant period referred to in section 22, the Minister . . .

- (c) holds an office or directorship other than in a social club, religious organization or political party,

that creates or appears to create a conflict between a private interest of the Minister and the public duty of the Minister.

If a Minister is a senior officer of an organization, the Minister is considered to be in the business of running an organization, whether or not the Minister actually exercises control. If a Minister is a director, s. 21(1)(c) prohibits the Minister from continuing to be a director. The Minister will have to resign from these roles and file any necessary changes with the appropriate registries.

What restrictions are there during the cooling off period?

Under section 23.1(1) of the Conflicts of Interest Act, a former Minister shall not, for a period of twelve months after the last day of their appointment:

- lobby government,
- act on a commercial basis or make representations on the Minister's or someone else's behalf to a government entity in connection with any ongoing matter in connection with which the former Minister, while in office, directly acted for or advised a department or Provincial agency involved in the matter, or
- make representations with respect to a contract with or benefit from, or solicit or accept on his or her own behalf a contract or benefit from, any government entities with which the Minister had a direct and significant official dealing, including a contract of employment.

A former Minister also shall not accept an appointment to a board or employment with any entity with which the former Minister had a direct and significant official dealing for a period of twelve months from the last day of the official dealing.

These provisions do not apply to a former Leader of Her Majesty's loyal opposition.

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

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