

9.3 Conflict of Interest Policy

Policy Statement

Recognizing and addressing issues that arise from conflict of interest is an important facet of a professional public service. This policy is intended to reduce the potential for conflict of interest within Nova Scotia's public service by defining conflict of interest and by providing tools to address issues that arise when employee's personal and employment interests conflict.

This policy compliments *Values, Ethics and Conduct: A Code for Nova Scotia's Public Servants* and the *Members and Public Employees Disclosure Act, 1991, c. 4, sections 22, - 32*. The act has prevailing authority over this policy.

Definitions

CONFLICT OF INTEREST

Conflict of interest exists when the duties and responsibilities of an employee are or potentially could be compromised by his or her personal and private interests¹. A conflict of interest may be real, apparent or perceived.

"Real" conflict of interest exists when the employee has knowledge of a private interest economic or otherwise that could influence the exercise of his or her public duties and responsibilities.

"Apparent" or "perceived" conflict of interest exists when the employee is in a situation in which a reasonably well-informed person could properly have a reasonable apprehension that a conflict of interest exists, even when there may not be a conflict.

DEPUTY HEAD

The deputy of the member of the Executive Council presiding over a department and all others whom the Governor in Council from time to time designates as having the status of deputy head.

DEPARTMENTS

Any department, office, or public service entity established by the Government of Nova Scotia, as identified under Category I in Appendix I-A of the Management Manuals Policy.

¹ 23 (2) No public employee shall use information acquired in the execution of the office of the public employee that is not available to the general public in order to obtain a personal benefit.. *Members and Public Employees Disclosure Act, 1991. c. 4, s. 23.*

EMPLOYEE

An employee as defined in the *Civil Service Act*, the *Corrections Act*, the *Highway Workers' Collective Bargaining Act*, and any other person directly employed by the Province of Nova Scotia.

Policy Objective

The objective of this policy is to ensure that neither the public's interests nor the private interests of public employees are compromised in the course of government's daily operations by raising awareness of certain conduct and offering tools to assist employees and managers.

Application

This policy applies to all employees whose terms and conditions are set out in accordance with both the *Civil Service Act* and its regulations and other direct employees of the provincial government including all bargaining unit employees.

Policy Principles

Nova Scotia's employees

- recognize that conflict of interest in the public service undermines the confidence of the public and that of elected officials. They also recognize that confidence in the public service is fundamental to the successful management of government overall.
- place the trust and confidence of our citizens and elected officials in the highest regard and work to foster a reputation as being a caring and professional public service.
- must be impartial and accountable and treat all citizens and all matters related to the public interest with respect, integrity and fairness.
- will not unduly benefit through their position within the public service².
- have personal and private interests and the same rights and privileges accorded every Nova Scotian.
- can participate in, have membership in, and serve not-for-profit organizations.

When a conflict of interest exists, the interests of the public supersede those of the employee.

² 23 (4) In this Section, "personal benefit" does not include a benefit that (a) is of general public application; (b) affects a public employee as one of a broad class of persons; (c) concerns the remuneration, allowances and benefits of a public employee; (d) is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the public employee. *Members and Public Employees Disclosure Act 1991*, c. 4, s. 23.

Having a conflict of interest does not necessarily indicate wrongful conduct. Employees will not be disciplined for reporting, discussing, or seeking information about conflict of interest.

Directives / Practices

PREVENTING CONFLICT OF INTEREST

Employees must avoid real, apparent, and perceived conflict of interest, because the mere perception of a conflicting interest and the failure to address real, apparent, or perceived conflicts undermines the public's confidence in the public service.

Employees can help to prevent conflict of interest by using one or both of the following techniques: avoidance and disclosure.

Avoidance

Employees

- will arrange their private interests in a manner that prevents real and/or apparent and/or perceived conflict when carrying out the duties and responsibilities of their job.
- will not engage in private interests that could be affected by government actions in which they participate.
- will not give preferential treatment or disclose confidential information to private or personal interests, or any person or organization intent on securing dealings with the government.
- will not knowingly take advantage of, nor benefit from, information that is obtained in the course of their official duties and not generally available to the public.
- will not benefit from government programs and services beyond the extent of what is available to all members of the public.
- will disclose to the deputy head of their department, details regarding contracts or agreements between government or a minister or a department and the employee's spouse or dependent children.
- will withdraw from activities or situations in which they believe there could be a conflict of interest and they will report in writing, to their manager, details of their actions and the perceived conflict.
- will not solicit economic consideration nor accept gifts in lieu of payment.
- will not directly nor indirectly use or allow the use of, government property of any kind, including property leased to the government, for any purposes other than those that are approved.

- who participate in outside employment or community based activities (e.g., teaching, volunteering, community outreach) will avoid behaviours that could infer that they are participating in an 'official' capacity, are there as an official on behalf of, or a representative of, the government, or government opinion or policy. Employees will ensure that these activities do not unduly interfere with their job related duties and will not use government premises, equipment, or supplies, unless such use is otherwise authorized.

Disclosure

Employees who have a conflict of interest (real, apparent, or perceived) must provide a confidential report to their supervisor outlining the nature of the conflict.

Employees will refer to the *Members and Public Employees Disclosure Act*, when they find themselves in a situation in which a conflict of interest (real, apparent or perceived) exists. The act reads:

- 23 (3) Where a public employee is at a meeting at which consideration of a decision arises in the execution of the office of the public employee and where the public employee knows or ought to know that the decision could result in the public employee receiving a personal benefit, the public employee shall; (a) inform the meeting that the decision could result in a personal benefit to the public employee and the general nature of that benefit; (b) withdraw from the meeting; and (c) refrain from participating in or influencing the decision.

EDUCATION

Every department can

- prepare information and education materials regarding this policy for their employees
- prepare and implement training of employees regarding conflict of interest and post-service behaviour.

Gifts, Hospitality, and Other Benefits

Employees must carefully consider the implications of accepting gifts, hospitality and other benefits. Citizens and corporations will occasionally express their appreciation for the efforts of a public servant by offering gifts, hospitality or benefits. These gestures are usually modest and offered without expectation or in return for special consideration. On the other hand, a citizen or a corporation might offer a gift,

hospitality, or benefit that seems disproportionate or lavish or for which there could appear to be an implicit or explicit expectation of special consideration, (e.g., a service that exceeds what's typically available through a government program). Employees must exercise good judgement and discretion in deciding the intent of such a gesture and whether or not to accept the gift, hospitality, or benefit. The employee must decide if accepting the gift, hospitality or benefit could appear to, or in fact, compromise their integrity and commitment to government.

If an employee is uncertain or concerned about accepting an offer of a gift, hospitality, or benefit, they should decline the offer and report the incident to their immediate supervisor as soon as possible. If an employee is offered a gift, hospitality or other benefit but does not believe that they can refuse the offer for fear of insulting the giver or in fear of their own safety, they must report the incident to their immediate supervisor or deputy head, who will advise the employee on how to proceed with the matter.

Employees will not solicit gifts, hospitality and other benefits from citizens, organizations or companies unless for charitable purposes undertaken by the government and sanctioned by the deputy head. Soliciting gifts, hospitality, and other benefits for personal gain is contrary to this policy and could be reviewed within the context of the Criminal Code of Canada.

Notification

Each employee will receive a copy of this policy and *Values, Ethics and Conduct: A Code for Nova Scotia's Public Servants*. [www.gov.ns.ca/psc/codeofconduct]

Interpretation

Employees who need clarification or direction regarding the interpretation or application of this policy and or the *Values, Ethics and Conduct: A Code for Nova Scotia's Public Servants*, may consult with their supervisor or the Conflict of Interest Commissioner in accordance with Section 27B of the *Members and Public Employees Disclosure Act*.

POST-SERVICE RESTRICTIONS

Post Service restrictions are governed by the *Members and Public Employees Disclosure Act* which provides;

- 24 No person who was a member or public employee shall, within six months of ceasing to be a member or public employee, act for or on behalf of any person or entity in connection with any proceeding, transaction, negotiation or case to which a department is a party, if the former member or public employee acted for or advised the department in connection therewith while holding either such office or employment and if the matter might result in the conferring on a person of a benefit of a purely commercial or private nature or of any other nature on a person or class of persons that is other than the general public or a broad class.

Disclosure of future employment, contracts and appointments

Employees who acted on behalf of or advised a department on matters related to the awarding of contracts for purchases or services of any kind, (as described in section 24 of the *Members and Public Employees Disclosure Act*) are required, prior to their departure to disclose, confidentially to their deputy head, substantiated or accepted offers of future employment and or appointments to boards.

Avoid related business dealings for six months

For a period of six months following an employee's departure from the public service, the former employee (as described in section 24 of the *Members and Public Employees Disclosure Act*) is prohibited from engaging in dealings that are, or create the perception of being in a conflict of interest. During this period, former employees must avoid or withdraw from engaging in any business dealings with persons, businesses, and organizations with which they had dealings while an employee of the province.

Dealing with former employees

Employees who have official dealings (other than those that consist of routine provision of service available to members of the public) with former employees who are or may be governed by the post-service restrictions, must report this activity to their supervisor, who will determine whether the former employee is complying with the prescribed measures. The supervisor may seek a ruling from the Conflict of Interest Commissioner on such matters. Employees will not have official dealings with former employees determined to be acting in violation of the post-service restrictions.

Guidelines

Departments may develop guidelines, as required, to help implement and administer this policy.

The deputy head may augment this policy and *Values, Ethics and Conduct: A Code for Nova Scotia's Public Servants* with procedures and guidance respecting conflict of interest, post-service situations, and conduct issues so as to address responsibilities that are of particular concern to their department. Such augmentations should reflect special requirements contained in statutes governing the operations of the department.

CONTACTING THE CONFLICT OF INTEREST COMMISSIONER

The employer and the employee may, by application, request that the Conflict of Interest Commissioner give an opinion and recommendations, which are confidential, on any matter respecting employees under this policy and the *Members and Public Employees Disclosure Act*. An employee who acts on the opinion and recommendations given by the Conflict of Interest Commissioner is deemed not to be in contravention of this policy nor the *Members and Public Employees Disclosure Act* with respect to the matters dealt with in the opinion and recommendation.

CONFIDENTIALITY

Information concerning the private interest of an employee that is provided to a supervisor in a department will be treated in confidence, subject to the disclosure requirements established by law.

FAILURE TO AGREE

Should an employee and their supervisor disagree about what is necessary to achieve compliance with this policy, the disagreement must be submitted to the deputy head for decision and or a recommendation.

FAILURE TO COMPLY

An employee who fails to comply with this policy is subject to appropriate disciplinary action, up to and including discharge.

Accountability

EMPLOYEES

Employees have a duty to avoid a conflict of interest, to account for their conduct, to report a conflict of interest, and take appropriate action to mitigate conflict of interest.

During the employee's annual performance review, they will be asked to indicate in writing, their agreement to abide by this policy and by the standards and values expressed in *Values, Ethics and Conduct: A Code for Nova Scotia's Public Servants*.

DEPUTY HEAD

The deputy head oversees the administration and compliance with this policy and the *Values, Ethics and Conduct: A Code for Nova Scotia's Public Servants*. Within their department, the deputy head will issue instructions necessary to implement this policy including, but not limited to, the following:

- ensuring employees are informed of the requirements of this policy
- ensuring that procedures are in place so that before or upon any appointment, appointees signify that they have read and understand this policy and the *Values, Ethics and Conduct: A Code for Nova Scotia's Public Servants* and acknowledge that abiding by both is a condition of their employment with the Province of Nova Scotia.
- determining whether a conflict of interest exists and what actions, if any, are to be taken
- establishing procedures for employees to report conflict of interest to their supervisor
- discussing post-employment restrictions during exit interviews, if possible
- consulting with the Conflict of Interest Commissioner

TREASURY AND POLICY BOARD

Treasury and Policy Board administers this policy with respect to deputy heads.

CONFLICT OF INTEREST COMMISSIONER

The Conflict of Interest Commissioner provides employees with opinions and recommendations in relation to conflicts of interest, makes inquiries on his/her own initiative and entertains complaints from anyone concerning conflicts of interests.

PUBLIC SERVICE COMMISSION

The Public Service Commission provides advice and assistance to departments on the application of this policy and the *Values, Ethics and Conduct: A Code for Nova Scotia's Public Servants* and conducts periodic reviews of both. The Commission provides:

- tools to departments to support this policy
- leadership with respect to networking and information sharing

MONITORING

The Public Service Commission will be responsible for monitoring the effectiveness and consistent application of this policy. The Commission may periodically conduct audits of department practices that require access to data maintained by departments with respect to this policy.

REFERENCES

Civil Service Act and Regulations

Members and Public Employees Disclosure Act

Human Rights Act

Values, Ethics, and Conduct: A Code for Nova Scotia's Public Servants

ENQUIRIES

General Enquiries, Public Service Commission (902) 424-7660

Approval date: February 12, 2009

Manual release date: May 15, 2009

Approved by: Executive Council

Most recent review:
