

Office of the Integrity Commissioner

C – Conflict of Interest Commissioner
M – Ministry
P – Public Body

CASE SUMMARIES – CONFLICT OF INTEREST – POST-SERVICE

The anonymized summaries in this document are from selected decisions of Ethics Executives. They are provided to promote consistency in the interpretation and application of the conflict of interest and political activity rules.

The summaries below focus on the post-service Conflict of Interest Rules in sections 16 to 20 of O.Reg. 381/07 of the *Public Service of Ontario Act, 2006*.

Post-Service (C03-15/16)

O. Reg. 381/07, s. 19.

- Conflict of Interest
- Conflict of Interest Commissioner
- Post-Service - Restriction on Employment

A public servant formerly in a senior-designated position retired and was re-hired briefly, on contract, by a public body. Upon terminating this employment contract, the former public servant wanted advice about several post-service opportunities.

The intervening employment opportunity impacted the nature of the post-service obligations the public servant was subject to because technically the position that the public servant held immediately before ceasing to be a public servant was not a senior designated position and as such he was not subject to the more stringent lobbying and employment restrictions. The commissioner was concerned that this arrangement might appear to have been made to intentionally circumvent the more stringent restrictions. In order to avoid this perception, the commissioner recommended that the public servant be treated as though the lobbying and employment restrictions applied to him for one year following the original retirement.



Hanging my shingle, Part 2 (C04-14/15)

O. Reg. 381/07, s. 19 & 20.

- Conflict of Interest
- Conflict of Interest Commissioner
- Post-Service - Restriction on Employment
- Post-Service - Switching Sides

A former designated senior public servant wished to provide consulting services. The advertisement for these services indicated that the former public servant had been appointed to a certain public body and was able to assist with matters involving the public body.

The Commissioner determined that the former public servant could advertise this previous experience as it was part of the public servant's resume. Also, more than one year had passed since the former public servant had ceased to be a public servant, and therefore the one-year restriction on employment no longer applied. The Commissioner reminded the former public servant of the post-service conflict of interest rules that were still applicable. In particular, the former public servant could not assist with any matter in which the former public servant had been involved as a public servant.

Can I get a pass? (C06-14/15)

O. Reg. 381/07, s. 19.

- Conflict of Interest
- Conflict of Interest Commissioner
- Post-Service - Restriction on Employment

A designated senior public servant in a public body, who would soon be retiring, asked the Commissioner for a waiver of the one year post-employment restriction. The public servant anticipated post-retirement employment opportunities with certain government organizations.

The Commissioner advised the public servant that there was no provision in law for such a waiver and that accordingly one could not be granted.

The Commissioner reminded the public servant that the one-year restriction only applied to those entities with which the public servant had been substantially involved. The public servant was

advised to contact the Commissioner once a specific opportunity arose, at which time a determination could be made.

Information from a Former Public Servant (C03-13/14)

O. Reg. 381/07, s. 17 & 20.

- Conflict of Interest
- Conflict of Interest Commissioner
- Post-Service - Disclosing Confidential Information
- Post-Service - Switching Sides

A former public servant had worked in a public body where they had reviewed funding applications. The public body subsequently became involved in a hearing with an entity who had previously applied for funding. The former public servant was asked by the entity to provide information about their prior review of its application, and did so. The public body considered this information to be confidential information. The public body asked the Commissioner to make a determination as to whether the former public servant had contravened the conflict of interest rules by providing the entity with this information.

The Commissioner determined that while the information R provided may have been true, R was not permitted to assist the entity by providing this information, some of which was confidential information. R had previously been involved in evaluating the entity's application for funding from the public body, and providing this information would be in contravention of sections 17 and 20 of the conflict of interest rules in Ontario Regulation 381/07.

The Commissioner concluded that an applicant for funding might have interests that are potentially adverse to the interests of a public body and that by advising the entity, R could undermine the public body's ability to protect its interests.

The Commissioner directed R to take steps to withdraw the information R had already provided to the entity from the hearing process.

The Return of a Former Public Servant (C08-13/14)

O. Reg. 381/07, s. 19.

- Conflict of Interest
- Conflict of Interest Commissioner

- Post-Service - Restriction on Employment

A former public servant had worked on an RFP for a public body. They wanted to work on responding to the RFP for their new employer. While still a public servant, they had advised the Crown on a similar project. Their new employer had been involved in that project. There was no indication that the former public servant was seeking preferential treatment or using confidential information improperly. The public body asked the Commissioner to make a determination about whether the former public servant could assist his new employer to respond to the RFP.

Under the post-service conflict of interest rules, a former public servant who previously held a “designated senior position” may not take a job with certain employers. However, this only applies if the person had “substantial” involvement with the new employer in his or her last 12 months as a public servant. In similar cases, the Commissioner indicated that activities like merely sharing information or overseeing staff do not reach the “substantial” involvement level. In this case, the former public servant had not had decision-making authority with respect to the RFP and had not managed the public body’s relationship with his future employer. The Commissioner determined that they had not been substantially involved with their new employer while they were still a public servant, and were therefore able to assist his new employer to respond to the RFP.

Leadership Position with a Not-For-Profit (C14-12/13)

O. Reg. 381/07, s. 16, 17, 18, 19, 20.

- Conflict of Interest
- Conflict of Interest Commissioner
- Post-Service - Disclosing Confidential Information
- Post-Service - Restriction on Employment
- Post-Service - Restriction on Lobbying
- Post-Service - Seeking Preferential Treatment
- Post-Service - Switching Sides

A former designated senior public servant sought a determination as to whether they would have a conflict in accepting a leadership position with a not-for-profit entity that regularly interacts with the Crown and may advocate for policy and/or legislative change.

The Commissioner determined that the former public servant would be permitted to accept the position, provided that they took certain precautions to ensure compliance with the post-service conflict of interest rules. The Commissioner cautioned the former public servant to be mindful of the restrictions against seeking preferential treatment from or privileged access to current public

servants, and recommended that the public servant avoid initiating contact with any public servant, on behalf of the new employer, for a one-year period. The Commissioner reminded the public servant of his/her obligations to refrain from disclosing confidential information, lobbying his/her former ministry, minister, and minister's office staff for a one-year period, or assisting his/her new employer with matters on which they had advised the Crown.

Independent Contractor (C15-12/13)

O. Reg. 381/07, s. 19.

- Conflict of Interest
- Conflict of Interest Commissioner
- Post-Service - Restriction on Employment

A former designated senior public servant sought a determination on the application of the post-service conflict of interest rules with respect to working for a government entity that is neither a ministry nor a public body. The former public servant was to be an independent contractor, not an employee of the entity.

The post-service restriction on employment for designated senior public servants applies only when there has been substantial involvement with the employer while a public servant. For a number of reasons, the individual had imposed an absolute screening while they were a public servant, meaning that they had not been informed on any matters involving this government entity. The Commissioner determined that the former public servant had not had substantial involvement with the government entity in his/her capacity as a public servant, and that therefore the restriction did not apply.

Post-Service Conflict of Interest Rules (C16-12/13)

O. Reg. 381/07, s. 18.

- Conflict of Interest
- Conflict of Interest Commissioner
- Post-Service - Restriction on Employment

A soon-to-be former designated senior public servant of a public body sought a determination on the application of the post-service conflict of interest rules. The public servant had accepted employment with a private entity that intended to submit a proposal in response to an RFP on a matter in which the public servant had been involved.

The Commissioner determined that the conflict of interest rules did not prohibit the public servant from accepting the position, but could restrict his/her ability to engage in some activities in his/her new role. Part of the public servant's role was to oversee RFPs for the public body to ensure that procurement rules were followed, and they had been significantly involved in a specific RFP that would likely be of interest to the new employer. The public servant advised that they would recuse themselves from all related discussions and decisions and would not be involved in the RFP process on behalf of the entity. The Commissioner agreed with this approach and advised that the soon-to-be former public servant could only assist the entity on the matter once the RFP process had closed and an agreement had been signed with the successful proponent.

Co-Chair an Expert Panel (C02-11/12)

O. Reg. 381/07, s. 16, 17, 18.

- Conflict of Interest
- Conflict of Interest Commissioner
- Post-Service - Disclosing Confidential Information
- Post-Service - Restriction on Lobbying
- Post-Service - Seeking Preferential Treatment

The former chair of a public body sought a determination as to whether they could co-chair an expert panel that would report to the minister with oversight for the former public servant's public body. The stated objectives of the panel included the following:

- Broaden the dialogue beyond the role of the government to include all the sectors with a role to play;
- Provide the minister with a set of prioritized, sector-specific and evidence-based recommendations, that build on stakeholders' and partners' new and existing initiatives and strategies; and
- Invest key leaders from various sectors in the success of the strategy and achievement of the advice of the panel.

As a former public servant who had been employed in a senior designated position, the individual was subject to the post-service conflict of interest rules set out in part II of the regulation, including section 18, which places a restriction on lobbying. The Commissioner determined that the former public servant was not prohibited from serving as co-chair of the expert panel, but certain restrictions would apply. In particular, the former public servant was prohibited from lobbying certain public servants for 12 months after leaving the public body. He/she was also

prohibited from seeking preferential treatment from or privileged access to current public servants and from disclosing or using any confidential information obtained while a public servant.

Involvement in a Similar Project (C04-11/12)

O. Reg. 381/07, s. 16, 17, 20.

- Conflict of Interest
- Conflict of Interest Commissioner
- Post-Service - Disclosing Confidential Information
- Post-Service - Seeking Preferential Treatment
- Post-Service - Switching Sides

A former public servant had advised the Crown on a certain project while still employed by a public body. The Ethics Executive of the public body sought a determination as to whether the former public servant's involvement in a seemingly similar project involving the public body, on behalf of his/her new employer, would contravene the post-service conflict of interest rules. The former public servant indicated that the project in question had replaced the earlier project on which they had advised the Crown while still a public servant.

The Commissioner had previously provided advice to the former public servant about the application of the conflict of interests rules to his/her post-service activities. Under these rules, the former public servant was prohibited from assisting any entity in connection with "any particular proceeding, negotiation or other transaction" if they had advised the Crown in the matter. To assess whether the project in question was the same as the original project with which they had assisted the Crown, the Commissioner considered both projects in terms of name, purpose, scope, and the role of the public body. The Commissioner found that the original project was much larger in scope and involved a more defined role for the public body. Accordingly, he concluded that although there were some similarities, the projects were different. The Commissioner therefore determined that the former public servant's involvement on behalf of the new employer would not contravene the conflict of interest rules, but the former public servant continued to be subject to the post service restrictions on seeking preferential treatment from current public servants and on using or disclosing confidential information obtained while a public

Consulting Contracts (C06-11/12)

O. Reg. 381/07, s. 16, 17, 19, 20.

- Conflict of Interest
- Conflict of Interest Commissioner
- Post-Service - Disclosing Confidential Information
- Post-Service - Restriction on Employment
- Post-Service - Seeking Preferential Treatment
- Post-Service - Switching Sides

A soon-to-be former public servant employed in a public body sought a determination as to whether they would be permitted to engage in the following post-service activities:

- Pursuing consulting contracts with the Province of Ontario, as either a vendor of record (VOR) or as a bidder in response to competitive procurements; and
- Assisting persons or entities on matters within the mandate of the public body.

A former public servant is subject to the post-service conflict of interest rules set out in Part II of the regulation. As the individual was not in a senior designated position, the conflict of interest rules did not prohibit the specified post-service activities. However, in this case, certain restrictions, usually reserved for public servants in senior designated positions, should apply. The Commissioner advised that the former public servant was prohibited from seeking preferential treatment from or privileged access to current public servants, and from disclosing or using any confidential information obtained in the course of his/her public service duties. To further minimize the risk of using or disclosing confidential information, the Commissioner directed the public servant to refrain from advising or assisting any person or entity, other than public body or the Crown, in connection with any specific government initiative or project with which they had been involved as a public servant. This restriction would apply for a period of one year. In addition, they were restricted from advising or otherwise assisting any entity in connection with any proceeding, negotiation, or other transaction (such as requests for proposals or requests for services) if they had previously advised the public body or the Crown on the same matter.

The same individual returned to seek a determination on whether they would be permitted to assist the successful proponent of a request for proposals (RFP) issued by the public body where the individual had been a public servant.

The Commissioner first assessed whether the RFP was for a project with which the individual had assisted the public body while still a public servant, and whether the RFP was still open. The

contract stemming from the RFP had yet to be signed, and therefore the RFP was still in process. Given the restrictions previously placed on the former public servant, and the fact that the RFP process was ongoing, the Commissioner was of the view that it would be inappropriate for the former public servant to assist the successful proponent until both of two events occurred:

1. The contract stemming from the RFP was signed, effectively ending the RFP process; and
2. The one-year restriction imposed on the former public servant expired.

Post-Service Rules (C03-10/11)

O. Reg. 381/07, s. 16, 17, 18, 20.

- Conflict of Interest
- Conflict of Interest Commissioner
- Post-Service - Disclosing Confidential Information
- Post-Service - Restriction on Lobbying
- Post-Service - Seeking Preferential Treatment
- Post-Service - Switching Sides

A senior public servant who was employed in a ministry had accepted employment with a public body that had a reporting relationship to that ministry. The public servant sought the commissioner's determination regarding the application of the conflict of interest rules, in particular the post-service rules, to this situation.

The commissioner observed that the post-service rules applicable to public servants who move from ministries to public bodies differ from those applicable to public servants who move between ministries. Read together, sections 15, 18, 19, and 20 restrict a public servant who previously worked in a ministry from lobbying on behalf of a public body, accepting a position with a public body (in some situations), and advising a public body about certain proceedings, negotiations, or transactions. There are no similar restrictions on a public servant who moves from one ministry to another. The differences in the rules take into account the differences between public bodies and ministries.

Although public bodies perform a public function or service, they are not analogous to ministries. Often, a public body is created to perform a specific function that cannot be carried out within the ministry model. Additionally, independence from ministries and other provincial government offices may be integral to a public body's ability to meet its mandate. For that reason, it is reasonable to impose post-service restrictions on a public servant who worked in a ministry and later accepts employment with a public body.

The commissioner determined that the public servant was prohibited from seeking preferential treatment from the ministry on behalf of the public body, using or disclosing confidential information, and advising the public body on matters with which they had previously assisted the ministry. The public servant was also prohibited from lobbying the minister or public servants in the minister's office or ministry. However, the commissioner recognized that communication between the public body and the ministry would be necessary. Accordingly, based on input from the ministry, the commissioner provided advice about specific forms of communication that would not be considered lobbying and would therefore be permissible.

Former Public Servant Taking Part in a Ministry Initiative (C05-10/11)

O. Reg. 381/07, s. 16, 17, 18.

- Conflict of Interest
- Conflict of Interest Commissioner
- Post-Service - Disclosing Confidential Information
- Post-Service - Restriction on Lobbying
- Post-Service - Seeking Preferential Treatment

A ministry and a former public servant who had held a senior position in that ministry sought a determination as to whether the former public servant could take part in a ministry initiative involving his/her current employer, an entity outside the public service.

The former public servant had not been directly involved in any ministry decision-making related to the initiative, had not received any briefings on it, and had not provided any direction. Given this circumstance, the commissioner determined that the post-service conflict of interest rules would not prevent the former public servant from participating in the initiative. However, restrictions did apply to the types of activities in which the former public servant could engage while involved in the initiative. In particular, the former public servant was prohibited from seeking preferential treatment from or privileged access to current public servants, and from disclosing or using any confidential information. He/she was also prohibited from lobbying the minister or public servants in the minister's office or ministry.

Former Public Servant Giving Evidence (C10-10/11)

O. Reg. 381/07, s. 16, 17, 20.

- Conflict of Interest
- Conflict of Interest Commissioner

- Post-Service - Disclosing Confidential Information
- Post-Service - Seeking Preferential Treatment
- Post-Service - Switching Sides

A former public servant sought clarification of the rules about interacting with the public body to which they were formerly appointed, and specifically whether it would be permissible to give evidence before another administratively related public body.

As a former public servant, the individual is subject to the post-service conflict of interest rules set out in Part II of the regulation. These rules may restrict the former public servant's ability to interact with the public body to which they were formerly appointed or with another administratively related public body. For example, the rules may limit the individual's ability to give evidence on a particular matter, as they must not seek preferential treatment from or privileged access to current public servants when doing so. Former public servants must also ensure that they do not disclose or use any confidential information when giving evidence, and they should ensure that they do not advise or otherwise assist a public body, person, or other entity in connection with a proceeding, negotiation, or other transaction if they had previously advised the Crown on that issue.

Employment with a Publicly-Funded Entity (C01-08/09)

O. Reg. 381/07, s. 16, 17, 18, 19, 20.

- Conflict of Interest
- Conflict of Interest Commissioner
- Post-Service - Disclosing Confidential Information
- Post-Service - Restriction on Employment
- Post-Service - Restriction on Lobbying
- Post-Service - Seeking Preferential Treatment
- Post-Service - Switching Sides

An Ethics Executive referred a matter to the commissioner for a determination pursuant to section 65(6) of the PSOA. The issue was whether the conflict of interest rules would restrict a public servant's ability to accept employment with a publicly funded entity.

Following a review of the public servant's positions with the government over the preceding 12 months, the commissioner found that the post-service conflict of interest rules set out in Part II of Ontario Regulation 381/07 would not prevent them from accepting the position. However, the

commissioner also found that restrictions would apply to the public servant in his/her new position, either permanently or with time limits. Section 16 regarding the restrictions on giving preferential treatment and section 17 regarding the restriction on sharing of confidential information would remain in force permanently. The restrictions on lobbying, set out in section 18, would be in force for a period of 12 months from the date the public servant ceased to be a public servant. Section 20, restricting transactions involving the Crown, would remain in effect until the Crown ceased to be involved in any proceeding, negotiation, or other transaction on which the public servant worked while a public servant.

The commissioner also noted that the restrictions on employment set out in section 19 would not apply because, during the preceding 12 months, the public servant had not had substantial involvement with the new publicly funded entity. In addition, the public servant had sufficiently recused themselves from any decisions of the Crown related to that entity.

Post-Service Academic Studies (C14-08/09)

O. Reg. 381/07, s. 17.

- Conflict of Interest
- Conflict of Interest Commissioner
- Post-Service - Disclosing Confidential Information

A former public servant, previously an appointee to a public body, asked the commissioner for advice about post-service activities following the public servant's resignation. The former public servant wished to pursue academic studies.

In his capacity as the former public servant's Ethics Executive, the commissioner said that although the conflict of interest rules do not prohibit a former public servant from pursuing academic studies, the individual was subject to the post-service restrictions in Ontario Regulation 381/07. In particular, the commissioner drew the former public servant's attention to provisions of section 17 regarding the disclosure of confidential information. The former public servant, routinely privy to confidential government information during his/her appointment, was reminded that they were prohibited from using and disclosing any of this confidential information in the course of his/her studies.

Conflict Mitigation in Private Sector Role (C15-08/09)

O. Reg. 381/07, s. 19.

- Conflict of Interest
- Conflict of Interest Commissioner
- Post-Service - Restriction on Employment

A former public servant, previously employed in a public body, requested the commissioner's advice relating to post-service employment with a private sector entity. In particular, the commissioner was asked to advise on any potential conflicts of interest that could arise as a result of the current employer's potential involvement in a project on which the former public servant had worked during the last several months of his/her employment with the public body.

The former public servant advised that his/her current employer was prepared to put barriers in place to isolate them from the project by

- identifying individuals working on the transaction and ensuring that they were instructed not to discuss the matter with the former public servant; and
- developing and implementing procedures to ensure that the former public servant did not participate in meetings where the matter was to be discussed.

The commissioner advised that these steps would likely mitigate the risk that a conflict of interest would arise.

Restrictions for Former Public Servants (C16-08/09)

O. Reg. 381/07, s. 18 & 19.

- Conflict of Interest
- Conflict of Interest Commissioner
- Post-Service - Restriction on Employment
- Post-Service - Restriction on Lobbying

A public servant's Ethics Executive sought the commissioner's advice as to when lobbying and employment restrictions would apply to certain former public servants.

Sections 18 and 19 of the *PSOA* impose lobbying and employment restrictions on certain former public servants for a 12-month period starting when they "cease" to be public servants. However,

the *PSOA* does not define what it means to cease to be a public servant. In the commissioner's view, there are two possible interpretations:

- public servants cease to be public servants when they relinquish all duties and responsibilities related to their former positions as public servants; or
- public servants cease to be public servants when they fully terminate their relationship with the Crown (for example, when they no longer receive payment).

The commissioner said that "ceases," in this context, appears to suggest a complete termination of public servant status. When a public servant relinquishes his/her duties and responsibilities but continues to be paid deferred salary or other payments related to salary, for example, it may appear to members of the public that the former public servant continues to have an employment relationship with the government. The commissioner advised that, although both interpretations of "cease" to be a public servant are possible, the second interpretation appeared to be more in keeping with the language as well as the general purpose and spirit of the *PSOA*.

The Ethics Executive subsequently notified the commissioner that the commissioner's preferred interpretation had been adopted.

Future Consulting Opportunities (C17-08/09)

O. Reg. 381/07, s. 19.

- Conflict of Interest
- Conflict of Interest Commissioner
- Post-Service - Restriction on Employment

A former public servant requested advice about the conflict of interest rules under the *PSOA* for the purpose of assessing the appropriateness of pursuing future consulting opportunities with the Ontario government.

In his capacity as the former public servant's Ethics Executive, the commissioner provided advice about the conflict of interest rules. The commissioner advised that as a former public servant who had been employed in a designated senior position (see section 14 of Ontario Regulation 381/07) immediately before they ceased to be a public servant, they were subject to the restrictions in sections 16, 17, 18, 19 and 20 of Ontario Regulation 381/07. In providing advice, the commissioner distinguished between restrictions that remain in effect permanently and others that are time-limited.

With respect to the application of section 19, which deals with restrictions on employment, the commissioner said that, in his view, public servants would likely be considered to cease to be public servants only when they fully terminate their relationship with the Crown (for example, they are no longer receiving salary-related payments). The commissioner advised that section 19 would not prevent the former public servant from accepting a consulting opportunity, as long as the consulting assignment was unrelated to the responsibilities of the former public servant during the 12 months prior to ceasing to be a public servant.