



Explainer

Administration of *Conflict of Interest Act*: Changes of practice

In October 2023, the Office of the Conflict of Interest and Ethics Commissioner made four changes to how it administers the Conflict of Interest Act. These changes of practice reflect a common-sense application of the Act's intent. They took effect immediately and only apply prospectively.

1. Definition of term “entity” in rules on post-employment and offers of outside employment

Post-employment

Under the Act's [post-employment rules](#), [reporting public office holders](#) have a cooling-off period that starts when they leave public office. Among other restrictions, for the first one or two years, they may not contract with or accept a job offer from an **entity** they had direct and significant official dealings with during their last year in office. ([subsection 35\(1\)](#))

The practice of the Office is to exclude federal public sector entities from the definition of “entity”. This makes sense because the government is one entity and there cannot be any conflict of interest between different government departments or agencies.

Now, reporting public office holders who want to work for a federal department or agency or a Crown corporation (but not the Senate or House of Commons) as a contractor or public servant do not have to seek an exemption, reduction or waiver of their cooling-off period.

An exemption, reduction or waiver will still be needed for positions at the Senate or the House of Commons, because the Act's definition of [public sector entity](#) does not include the Senate or House.

Offers of outside employment

While still in public office, reporting public office holders must tell the Commissioner about any firm offers of outside employment they receive, within 7 days. ([subsection 24\(1\)](#))

The practice of the Office no longer requires reporting public office holders to disclose any offers of employment from a federal department or agency.

2. Low-value gift exemption

Under the *Conflict of Interest Act*, public office holders and their family members are not allowed to accept any [gift or other advantage](#) that might reasonably be seen to have been given to influence the public office holders in the exercise of an official power, duty or function.

Like the Act's gift rule, under the regime administered by the Commissioner of Lobbying, lobbyists are not allowed to give gifts to an official they lobby or expect to lobby. The new *Lobbyists' Code of Conduct (2023)* introduced an exemption for low-value allowed gifts and hospitality. Its benchmarks are a value of \$40 or less for each gift or instance of hospitality, and an annual limit of \$200 on the cumulative value of such gifts from the same source.

To ensure consistency of application, the practice of the Office now mirrors these provisions of the *Lobbyists' Code of Conduct (2023)*. Under the exception to the Act's gift rule for gifts and other advantages that are within the customary standards that normally accompany their position, public office holders may now accept gifts valued at \$40 or less. They must keep track of these gifts and are not allowed to accept more than \$200 worth of such gifts from the same source.

3. Doubling of minimal value exemption for controlled assets

Reporting public office holders are not allowed to keep any [controlled assets](#) they have when they are appointed to their positions. These are any assets whose value could be directly or indirectly affected by government decisions or policy, including publicly traded securities, self-administered registered funds or plans, commodities and stock options.

They must [divest](#) their controlled assets (get rid of them) by selling them or putting them in a blind trust.

The Commissioner may allow reporting public office holders who are not ministers or parliamentary secretaries to keep some controlled assets. To exempt controlled assets from the Act's divestment requirement, the Commissioner must believe they are of such [minimal value](#) that they do not pose any risk of conflict of interest in relation to the reporting public office holders' official duties and responsibilities.

The Office capped this minimal value exemption at \$30,000 about 10 years ago. It has now doubled it to \$60,000. This is a more realistic amount given the changed economic situation and inflation.

The minimal value exemption applies during the [initial compliance process](#). Reporting public office holders who are granted an exemption cannot exchange or trade their controlled assets or buy new ones. If the value of those assets exceeds the limit (through a market increase), they must sell them or put them in a blind trust.

4. How Canada Energy Regulator appointees can deal with some assets

This change applies only to individuals appointed to the Canada Energy Regulator (CER). It affects how they can deal with some assets.

The [Canadian Energy Regulator Act](#) (CER Act) requires them to meet a broader definition of conflict of interest than that in the *Conflict of Interest Act* by prohibiting certain outside activities and holdings.

To ensure they were not in a conflict of interest under the CER Act, those appointees previously had to sell any open-ended mutual funds and exchange-traded funds (ETFs) containing energy stocks.

This was unnecessarily restrictive. They are now allowed to keep open-ended mutual funds as these are exempt assets under the *Conflict of Interest Act*. They still have to divest ETFs, which are [controlled assets](#) under the Act. However, they now have the option of putting them in a blind trust instead of selling them.