

Post-Employment Rules for Federal Public Office Holders

By Clayton Whitman | 29 April 2009

Introduction

The *Conflict of Interest Act* (Canada) (the “**Conflict Act**”) and the *Lobbying Act* (Canada) (the “**Lobbying Act**”) each contain restrictions on the post-employment activities of federal public office holders. The following summary is an introductory guide for current and former federal public office holders who want a basic understanding of the post-employment rules in the Conflict Act and the Lobbying Act that apply to them after leaving public office. It is not to be relied upon as legal advice.

If you have an issue involving the post-employment rules contained in the Conflict Act or the Lobbying Act, or if you are unsure whether these rules apply to you, please [contact me](#).

Do the Post-Employment Rules Apply to Me?

The post-employment rules apply to individuals who held a range of offices included in the definitions of “former public office holder” and “former reporting public office holder” in the Conflict Act and “designated public office holder” in the Lobbying Act.

These definitions include offices such as Ministers, ministerial staff and advisors, Governor in Council appointees, associate deputy ministers, assistant deputy ministers and senior executives such as deputy ministers and chief executive officers. If you held one of these offices, the post-employment rules contained in these acts may apply to you.

What Restrictions do the Post-Employment Rules Impose on Me?

The Conflict Act imposes certain permanent post-employment restrictions on all former public office holders:

- All former public office holders are prohibited from acting in a manner as to take improper advantage of his or her public office (section 33);
- All former public office holders are prohibited from acting for or on behalf of any person or organization in connection with any specific proceeding, transaction, negotiation or case to which the Crown is a party and with respect to which he or she had acted for or provided advice to the Crown (section 34(1)); and
- All former public office holders are prohibited from giving advice to a client, business associate or employer using information that was obtained in his or her capacity as a public office holder and that is not available to the public (section 34(2)).

In addition, the Conflict Act imposes certain time-limited post-employment restrictions on former reporting public office holders:

- Former reporting public office holders may not enter into a contract of service with, accept an appointment to a board of directors of, or accept an offer of employment with an entity with which he or she had direct and significant official dealings during the period of one year immediately before his or her last day in office (section 35(1));
- Former reporting office holders may not make representations for or on behalf of any other person or entity to any department, organization, board, commission or tribunal with which he or she had direct or significant official dealings during the period of one year immediately before his or her last day in office (section 35(2)); and
- Former Ministers may not make representations to his or her former Ministerial colleagues who are still Ministers (section 35(3)).

For former Ministers, these time-limited restrictions are in effect for a period of two years following his or her last day in office. For all other former reporting public office holders, these restrictions are in effect for one year following his or her last day in office.

The Lobbying Act prohibits former designated public office holders from carrying on lobbying activities (as defined in the Lobbying Act) for a period of five years after the day on which he or she cease to be a designated public office holder. To learn more about the lobbying activities defined in the Lobbying Act, please read my Introduction to the *Lobbying Act* (Canada).

How are the Post-Employment Rules Enforced?

If a member of the Senate or the House of Commons has reasonable grounds to believe that a former public office holder has contravened the Conflict Act, they may make a written request that the Conflict of Interest and Ethics Commissioner examine the matter. The Commissioner may also initiate an examination on his or her own initiative. The Commissioner must issue a public report on the matter, setting out his or her conclusions on whether there has been a contravention of the Conflict Act.

Designated public office holders cannot register as lobbyists during the period of 5 years after the day on which he or she ceases to be a designated public office holder. If an individual carries on lobbying activities during this prohibited period but fails to file a return, or knowingly make a false or misleading statement in a return, they may be subject to a fine of up to \$200,000 and up to 2 years imprisonment.

Clayton Whitman is a lawyer in Vancouver, British Columbia, Canada and can be contacted [by email](#) or at 604-661-1728.