

**MANAGEMENT REPORT TO METROLINX**

<b>Report Title:</b>	<b>Public Service of Ontario Act, 2006</b>				
<b>Report Number:</b>	LS 09-005	<b>Date to Board:</b>	January 16, 2009	<b>Date to Committee:</b>	September 26, 2008
<b>Report To:</b>	<input checked="" type="checkbox"/> BOARD		<input type="checkbox"/> ADVISORY COMMITTEE <input type="checkbox"/> AUDIT COMMITTEE <input type="checkbox"/> GOVERNANCE COMMITTEE <input type="checkbox"/> HUMAN RESOURCES COMMITTEE <input type="checkbox"/> TECHNICAL ADVISORY GROUP <input type="checkbox"/> OTHER:		
<b>Report Referred From:</b>	Governance Committee				
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<b>Item Class:</b>	IN CAMERA	<input type="checkbox"/>	DECISION	<input checked="" type="checkbox"/>	INFORMATION <input type="checkbox"/>

**1.0 RECOMMENDATION:**

*RESOLVED:*

**THAT** the memorandum attached as Appendix A to report LS 09-005 be approved by the Board for inclusion in the Board Manual.

**2.0 PURPOSE & EXECUTIVE SUMMARY:**

The Governance Committee (the “Committee”) previously reviewed a memorandum for inclusion in the Board Manual and recommended revisions to include more illustrations of restricted and prohibited political activities. The revised memorandum analyzes provisions of the *Public Service of Ontario Act, 2006* (the “Act”) relevant to the Corporation’s Board, and contains excerpts of the Act, commentary and illustrative examples.

Compliance with the Act is mandatory and a part of each Director’s duties owed to the Corporation. The memorandum will serve as a reference tool for Board members.

Because the Act is relatively new, the application of its provisions remains untested. However, the context provided by the statutorily dictated Metrolinx governance structure is

relevant in interpreting the Act's application to Board members. In assessing the relevance of the Act to any specific circumstance Board members may contact the General Counsel or the Ethics Executive (the Chair of the Board).

### 3.0 BACKGROUND:

On April 25, 2008 the Governance Committee resolved:

**THAT** staff be directed to prepare a general memorandum analysing provisions in the *Public Service of Ontario Act, 2006* which are relevant to the Corporation's Board focussing in particular on provisions relating to political activity and post-service restrictions;

**THAT** the said memorandum be included as a reference item in the Board Manual described in report LS 08-003; and

**THAT** following receipt and review of the memorandum by the Governance Committee, the Governance Committee will further consider whether a presentation to the full Board is desirable, and will provide direction to staff accordingly.

A memorandum prepared in accordance with the Committee's direction was presented to the Committee on September 26, 2008, at which time it was resolved:

**THAT** the Governance Committee receive report LS 08-005 for information; and

**THAT** staff be directed to amend the memorandum relating to the *Public Service of Ontario Act, 2006* to include illustrative guidelines of prohibited and restricted political activities and to present such amended memorandum to the Board for its information and approval for inclusion in the Board Manual described in report LS 08-003.

### 4.0 DISCUSSION:

The Act provides an ethical framework for the public service by regulating behaviour related to the following:

1. A public servant's ability to engage in political activity;
2. The regulation of conflicts of interest; and
3. A public servant's disclosure of wrongdoing.

Metrolinx Board Members and staff are "public servants" for the purposes of the Act. Political activities by public servants are generally permitted under the Act with limited restrictions and few outright prohibitions.

A review and report on the relevant provisions of the Act is summarized in the memorandum attached to this report as Appendix A. Illustrative examples are included in the memorandum.

**5.0 FINANCIAL MATTERS:**

N/A

**6.0 HUMAN RESOURCES MATTERS:**

N/A

**7.0 ENVIRONMENTAL MATTERS:**

N/A

**8.0 COMMUNICATION MATTERS:**

N/A

**9.0 LEGAL MATTERS:**

As described above.

**10.0 CONCLUSION:**

An understanding of the Act's application to the Metrolinx Board is necessary. Compliance with the Act will contribute to the reputation of the Corporation as a public body committed to the Act's ethical framework supporting the values of professionalism, integrity and accountability.

Respectfully submitted,

Approved for Submission to the Board



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Mary Martin, General Counsel &  
Corporate Secretary



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W. Michael Fern, CEO

*Appendices:*

Appendix A: Public Service of Ontario Act, 2006 Memorandum
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*Staff & Others  
Consulted:*

Name	Telephone
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*Notifications:*

Name	Mailing or E-mail Address
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*Special Instructions:*

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## APPENDIX A

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January 16, 2009

Memorandum to: Metrolinx Governance Committee

Re: **Public Service of Ontario Act, 2006**

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### **Overview**

In August, 2007 the Government of Ontario enacted new legislation to govern the conduct of public servants. The *Public Service of Ontario Act, 2006* (the “Act”), expanded the definition of “public servant” to include employees and Lieutenant Governor in Council (LGIC) appointees of designated public bodies. Metrolinx is designated as a public body under Ontario Regulation 374/07 . Metrolinx directors are LGIC appointees.

The Act provides an ethical framework for the public service supporting the values of professionalism, integrity and accountability. It addresses the following:

1. A public servant’s ability to engage in political activity;
2. The regulation of conflicts of interest; and
3. A public servant’s disclosure of wrongdoing.

The Act codifies Board obligations detailed in other statutes, the common law, and in Board-approved policies such as the Code of Conduct, and Conflict of Interest Policy.

In determining what Board members can and cannot do, context provided by other legislation is helpful. The *Greater Toronto Transportation Authority Act, 2006* specifies Board composition by a nomination process which values municipal participation. Since Board members are recommended by designated municipalities, it is highly likely that several will be elected representatives. Each Board member is intended to bring a local perspective to Board deliberations. Although there is a potential conflict of interest

arising between a member's political activities and a member's board duties there is no *prima facie* conflict.

This memo provides an overview of the relevant sections of the Act affecting the Metrolinx Board of Directors. For additional information or questions relating to the Act, please contact Metrolinx General Counsel, Mary Martin at (416) 874-5915 or [mary.martin@metrolinx.com](mailto:mary.martin@metrolinx.com).

## **Political Activity**

The Act describes the political activity rights and duties of public servants. Relevant sections are attached as Schedule A. Because the Act is relatively new, its interpretation remains untested.

### **(a) What is “Political Activity?”**

**Political activity of public servants is generally permitted under the Act.** Certain specific activities are defined as “political activities” for the purposes of the Act. Of these a small subset is restricted, and a smaller still subset is prohibited.

#### Political Activity

- If a public servant:
  - (a) does anything in support of or opposition to a federal or provincial political party, or candidate in a federal, provincial or municipal election;
  - (b) seeks to become a candidate in a federal, provincial or municipal election;  
or
  - (b) comments publicly and outside the scope of his/her position on matters that are directly related to his/her duties and that are dealt with in the positions or policies:
    - (i) of a federal or provincial political party, or
    - (ii) publicly expressed by a candidate in a federal, provincial or municipal election

then that public servant has engaged in political activity under the Act (“Political Activity”). Whether such Political Activity is prohibited or restricted is analyzed below.

Commentary

“Doing anything” in support of or opposition to a political party or candidate is not further described under the Act. Assisting in a candidate’s campaign, contributing funds to a party and/or candidate, and endorsing or otherwise advocating on behalf of or in opposition to a party or candidate’s platform, including speaking at a political fundraiser, likely fall within the ambit of “Political Activity”. Lobbying a federal or provincial political party or candidate for support on a particular municipal project, however, does not fall within this definition unless it otherwise indicates support or opposition to their policies or positions.

**Note that political activity is expressly permitted under the Act, provided that it is not prohibited or restricted.** A Board member who engages in political activity in compliance with the Act is protected from reprisal. **Once an activity is determined to be “Political Activity”, a Board Member must consider whether that activity is prohibited or restricted before engaging in it.**

Schedule B to this memo provides a schematic of the process to be followed to determine whether certain activities are subject to the Act and if so, how the matter is resolved. This process is further described below.

**(b) What “political activity” is specifically prohibited?**

Most prohibited political activities are of no relevance to a Metrolinx Board member. Under subsection 77(d) of the Act it is prohibited to Associate your position as a public servant with Political Activity, except where seeking to become a candidate in a government election (and then only to the extent necessary to identify your position and work experience).

Commentary

Identifying a member’s position to indicate relevant experience during the course of an election is acceptable.

Going further to identify a member’s position as evidence of commitment to a cause which forms a part of a party or candidate’s platform(s) or policies, including speaking of such matters at a political fundraiser, may be problematic. A specific examination of the relevant circumstances would be warranted.

**(c) What “Political Activity” is restricted but not prohibited?**

Certain actions qualifying as Political Activity are restricted but not prohibited outright:

- Soliciting funds on behalf of a federal, provincial or municipal candidate if your duties as a public servant include either supervising other public servants or dealing directly with members of the public, where such members may perceive you to have the ability to exercise power over them;

Commentary

Board members have limited opportunity to supervise Metrolinx staff. In practical terms, therefore, the application of this section is limited.

Board members can influence spending decisions made by Metrolinx. If a Board Member solicited funds on behalf of a candidate, and in so doing approached an actual or potential Metrolinx service provider or consultant, that service provider or consultant may feel coerced to contribute.

A Board member's fundraising activity may also lead to the perception of a conflict of interest where Board decisions on a certain matter conflict with the platform(s) and/or policies of a party/candidate. For example, soliciting funds for a party/candidate whose transportation policies run contrary to the principles of the Regional Transportation Plan may lead to such a conflict.

In the absence of any other considerations, attending a fundraising event, speaking at such an event, and personal financial contributions are acceptable.

- commenting publicly outside the scope of your duties as a public servant, on matters directly related to those duties that are addressed in the policies of a federal or provincial party or federal/provincial/municipal party candidate;

Commentary

Since many Board members are elected representatives, commenting publicly on provincial/federal policies can be an important means of effecting change for constituents. This context not only informs a reasonable interpretation of the Act but also is reflected in the Board Code of Conduct which provides:

- Directors may comment to the public on behalf of Metrolinx on matters previously considered and decided by the Board provided that such comments are consistent with the Board's decision or, where inconsistent, are clearly established as being made on the Director's own behalf and not on behalf of Metrolinx.
- Where matters have not been previously decided by the Board, a Director may comment publicly provided that the Director establishes such comments are being made on his/her own behalf.
- A Director will not comment on Metrolinx matters where such comment would potentially breach confidentiality or other Corporation obligations.

On this basis, a Metrolinx Board member may, for example, criticise a Provincial or Federal transportation policy even if such policy is a stated position in an election campaign platform provided that such member's comments are consistent with the Board's previous decisions on such matters, or, if inconsistent, where the member has established that such comments are made on his/her own behalf.

The contents of a Board member's public comments are also restricted by the Metrolinx Conflict of Interest policy. For example, public commentary made for personal or non-Metrolinx purposes on matters known by a Director simply by virtue of his/her position as Director of Metrolinx are restricted by the Policy. Certain restrictions contained in the Policy extend beyond the Director's term of office. These are further described below (Post Service Obligations).

- otherwise engaging in political activity if doing so could interfere or conflict with the performance of your duties as a public servant, or the interests of Metrolinx.

#### Commentary

This restriction is very general and captures all defined Political Activities which conflict with a Board member's duties or are adverse to Metrolinx's interests.

Campaigning on behalf of an election candidate whose policies conflict with plans and decisions of Metrolinx may be problematic. Financing a party whose platform(s) or policies run counter to those of Metrolinx may also be caught.

By contrast, publicly supporting or opposing a candidate or party's unrelated policies, such as education or healthcare, would be unlikely to offend this restriction.

- becoming or seeking to become a candidate in a federal or provincial election

During an election period, a public servant seeking or becoming a candidate in a federal or provincial election must be granted an unpaid leave of absence by his/her ethics executive. The Act does not specifically address how these leave of absence sections apply to non-employee public servants.

Outside of an election period, a public servant running for office need not be granted a leave of absence if his/her ethics executive determines that leave is not necessary in the circumstances.

Where a public servant has been elected to provincial or federal office, his /her appointment to a public body is terminated. By contrast, election to municipal office only results in termination where the ethics executive determines that the public servant's responsibilities in municipal office would interfere with his/her duties as a public servant. In the case of the Metrolinx Board, however, election to municipal office is contemplated by the legislated Board composition requirements.

Commentary

A Board member's ability to become or seek to become a candidate in such an election is permitted provided that a leave of absence has been obtained. This requirement does not apply to municipal election candidates.

### **Disclosure of Wrongdoing**

Where a public servant has reason to believe there has been wrongdoing, s/he may disclose it to the ethics executive. While this section is of greater relevance to Metrolinx employees it also applies to Board members in their capacity as public servants.

A wrongdoing under the Act is defined as:

- any contravention by a public servant of provincial or federal legislation,
- any act of omission that creates a grave danger to the life, health, or safety of persons or the environment,
- any gross mismanagement, or
- otherwise directing or counselling others to commit such act(s).

A public servant may also disclose wrongdoing to the Integrity Commissioner at the Provincial Office of the Integrity Commissioner if, for example, the public servant believes it would be inappropriate to disclose the wrongdoing to his/her ethics executive. The current Integrity Commissioner, appointed by Order-in-Council dated July 30, 2007, is Lynn Morrison.

Penalties for engaging in wrongdoing vary depending on the nature of the wrongdoing and any legislation under which the wrongdoing has been committed.

### **Conflicts of Interest**

The Act prohibits public servants from engaging in behaviour which would reasonably be found to constitute a conflict of interest. There are no inherent conflicts between Board members' duties as directors and their obligations as municipal representatives. Board members are reasonably expected to voice the interests of the communities they represent as part of their duty to the Board.

Metrolinx staff and Board Members are required to comply with the Board-approved Conflict of Interest Policy, which broadly defines a "conflict of interest" as a situation in which private business or personal interests may affect or be perceived by others to affect an individual's judgement in acting in the best interests of the Corporation. As

well, the Board Code of Conduct reaffirms each Board member's commitment to act in the best interests of the Corporation.

The Act requires that conflicts be disclosed to the ethics executive and sets out the manner in which such conflicts may be investigated and resolved. A regulation made under the Act contains a comprehensive code of circumstances in which a conflict of interest may be deemed to exist. The conflict of interest regulation is substantively the same as the existing Metrolinx Conflict of Interest policy. However, Former Justice Sidney Linden, the Conflict of Interest Commissioner appointed under the Act, is required to review the Metrolinx Conflict of Interest Policy and confirm that it is aligned with the particular restrictions contained in the regulation.

The Metrolinx Conflict of Interest Policy has been submitted to the Commissioner for review. Staff are currently working with Commissioner's staff to consider amendments to the Metrolinx Policy to align it with the more specific requirements of the regulation. The proposed amendments are not substantive and an update will follow in due course.

### **Post Service Obligations**

Regulations to the Act impose restrictions on former public servants from seeking certain kinds of employment or directorships or lobbying the public body by which they are employed or serve for 12 months after ceasing to be a public servant.

For 12 months after ceasing to be a public servant a former director cannot be either employed or serve as a director of another agency or entity where, in the course of his or her directorship with Metrolinx he or she had

- substantial involvement with that agency or other entity; and
- access to certain of its confidential information (see subsection 19(2) of the attached regulation excerpt for further information).

In addition, former public servants remain subject to the disclosure of wrongdoing(s) provisions of the Act, and may be required to assist the Integrity Commissioner in the investigation of a wrongdoing.

Many of the post-service restrictions are mirrored in the Board-approved Conflict of Interest Policy, which requires that:

- the confidentiality of information be maintained,
- former Board members not take improper advantage of their prior position, and

- former Board members not act in any ongoing proceeding to which the Corporation is a party and in respect of which the individual was involved at any time while a Board member.

### **Role of the Ethics Executive**

The ethics executive assists public servants in determining their right(s) to engage in Political Activity.

- The Metrolinx ethics executive for staff is the Chief Executive Officer.
- The ethics executive for Board members, is the Chair.

A schematic of the role and decision-making process of the ethics executive is attached to this memo as Schedule C.

If a public servant, including a Board member, wishes to engage in political activity, s/he must make an application to the ethics executive.

- His/her application must specify the political activity in issue.
- S/he cannot thereafter engage in restricted political activity unless a determination has been made by the ethics executive.
- The ethics executive may make such inquiries as he considers appropriate in assessing the application.
- Where appropriate the ethics executive may refer the matter to the Conflict of Interest Commissioner.

The ethics executive may independently make inquiries where he has concerns that a public servant is or is about to engage in political activity in contravention to the Act. Leave may be granted by the ethics executive should he consider it appropriate to do so.

### **Consequences of Breaching the Act**

Contraventions of the Act may lead to disciplinary measures, including notification to the Ministry of Transportation and removal from office.

**Schedule A**

**Public Service of Ontario Act, 2006, S.O. 2006 c. 35, Sched. A.**

**and**

**Ontario Regulation 381/07  
Conflict of Interest Rules for Public Servants (Ministry) and Former Public  
Servants (Ministry)**

**Excerpted Sections**

**PART V  
POLITICAL ACTIVITY**

**Political activity**

**72.** For the purposes of this Part, a public servant engages in political activity when,

- (a) the public servant does anything in support of or in opposition to a federal or provincial political party;
- (b) the public servant does anything in support of or in opposition to a candidate in a federal, provincial or municipal election;
- (c) the public servant is or seeks to become a candidate in a federal, provincial or municipal election; or
- (d) the public servant comments publicly and outside the scope of the duties of his or her position on matters that are directly related to those duties and that are dealt with in the positions or policies of a federal or provincial political party or in the positions or policies publicly expressed by a candidate in a federal, provincial or municipal election.

**Right to engage**

**75.** A public servant is entitled to engage in political activity, subject to the restrictions set out under this Part.

**Right to decline**

**76.** A public servant is entitled to decline to engage in political activity.

**Prohibited political activities**

**77.** A public servant shall not,

- (a) engage in political activity in the workplace;
- (b) engage in political activity while wearing a uniform associated with a position in the public service of Ontario;
- (c) use government premises, equipment or supplies when engaging in political activity; or
- (d) associate his or her position with political activity, except if the public servant is or is seeking to become a candidate in a federal, provincial or municipal election,

and then only to the extent necessary to identify the public servant's position and work experience.

**Definition, "election period"**

**78.** In sections 79 to 82, "election period" means,

- (a) in respect of a political activity that relates to a federal or provincial election, the period starting on the day that a writ is issued for the election and ending on the polling day for the election,
- (b) in respect of a political activity that relates to a municipal election, the period starting 60 days before the polling day for the election and ending on the polling day for the election.

**Restricted political activities**

**79.** (1) Subject to subsection (2), unless a public servant has been granted an unpaid leave of absence under section 80, he or she shall not,

- (a) be or seek to become a candidate in a federal or provincial election;
- (b) solicit funds on behalf of a federal or provincial party or a federal, provincial or municipal candidate if his or her duties include,
  - (i) supervising other public servants, or
  - (ii) dealing directly with members of the public if those members of the public may perceive him or her as a person able to exercise power over them;
- (c) comment publicly, outside the scope of his or her duties as a public servant, on matters that are directly related to those duties and that are addressed in the policies of a federal or provincial party or in the policies of a candidate in a federal, provincial or municipal election;
- (d) engage in political activity if doing so could interfere with the performance of his or her duties as a public servant; or
- (e) engage in political activity if doing so could conflict with,
  - (i) in the case of a public servant who works in a ministry, the interests of the Crown,
  - (ii) in the case of a public servant who works in a public body, the interests of the public body.

**Exception**

**79.** (2) A public servant who is or seeks to become a candidate in a federal or provincial election at any time other than during an election period is not required to be on an unpaid leave of absence to do so, if his or her ethics executive determines under subsection 80 (3) that a leave is not necessary in the circumstances.

**Application to engage in restricted political activity**

**80.** (1) A public servant who wishes to engage in political activity described in subsection 79 (1) may apply under this section to his or her ethics executive and the application shall specify the political activity.

**Same**

- 80.** (2) Subject to subsection (3), on receiving the application, the ethics executive,
- (a) shall grant the public servant an unpaid leave of absence, in the case of an application to engage in political activity during an election period; and
  - (b) may grant the public servant an unpaid leave of absence, in the case of an application to engage in political activity at a time other than during an election period, if the ethics executive considers it appropriate to do so.

**Same**

**80.** (3) In the case of an application to be or seek to become a candidate in a federal or provincial election at a time other than during an election period, the ethics executive shall determine whether an unpaid leave of absence is necessary in the circumstances and, if it is necessary, shall grant the leave.

**Leave of absence for other political activity**

**81.** (1) A public servant may apply under this section to his or her ethics executive for an unpaid leave of absence for the purposes of engaging in political activity other than political activity that is prohibited under section 77 or restricted under subsection 79 (1).

**Same**

- 81.** (2) On receiving the application, the ethics executive,
- (a) shall grant the public servant an unpaid leave of absence, in the case of an application to engage in political activity during an election period; and
  - (b) may grant the public servant an unpaid leave of absence, in the case of an application to engage in political activity at a time other than during an election period, if the ethics executive considers it appropriate to do so.

**Role of ethics executive**

**Questions for ethics executive**

**84.** (1) A public servant or his or her supervisor may request that the public servant's ethics executive determine a question about the political activity rights that apply in respect of the public servant.

**Duty to notify**

- 84.** (2) A public servant shall notify his or her ethics executive if the public servant's political activities could conflict with,
- (a) in the case of a public servant who works in a ministry, the interests of the Crown;
  - (b) in the case of a public servant who works in a public body, the interests of the public body.

**Inquiries**

**84.** (3) The ethics executive may make such inquiries as he or she considers appropriate in response to a request, a notification or where the ethics executive has

concerns that a public servant has engaged or is about to engage in political activity in contravention of this Part or a direction or regulation under this Part.

**Determinations and directions**

- 84.** (4) An ethics executive shall,
- (a) make a determination with respect to any matter that is brought to the attention of the ethics executive under subsection (1) or (2) or that is the subject of inquiry under subsection (3); and
  - (b) in the case of a determination that a public servant has or is about to engage in political activity in contravention of this Part or a direction or regulation under this Part, give the public servant directions, if any, that the ethics executive considers appropriate to address the matter.

**Same**

**84.** (5) If an ethics executive, other than the Conflict of Interest Commissioner or Integrity Commissioner, considers it appropriate to do so, the ethics executive may refer any matter that is brought to the ethics executive's attention under subsection (1) or (2) or that is the subject of inquiry under subsection (3) to the Conflict of Interest Commissioner to be dealt with by the Commissioner under subsection (4).

**Same**

**84.** (6) Where an ethics executive has referred a matter to the Conflict of Interest Commissioner under subsection (5), the Commissioner shall inform the ethics executive of any determination made or direction given by the Commissioner under subsection (4) as a result of the referral.

**Compliance with direction**

**84.** (7) A public servant shall comply with a direction of the ethics executive or the Conflict of Interest Commissioner.

**Contravention by government appointee**

**84.** (8) If an ethics executive or the Conflict of Interest Commissioner makes a determination under subsection (4) that a government appointee has engaged in political activity in contravention of this Part or of a direction or regulation under this Part, the ethics executive or the Commissioner, as the case may be, shall notify the minister responsible for the body to which the government appointee is appointed regarding the matter.

**Penalty**

**99.** A public servant who engages in political activity in contravention of this Part or a direction or regulation under this Part is subject to disciplinary measures, including suspension and dismissal.

**Effect of election, provincial or federal**

**100.** If a public servant is elected to the Parliament of Canada or to a provincial Assembly, his or her employment by the Crown or by a public body, or his or her appointment to a public body, is terminated.

**Effect of election, municipal**

**101.** (1) If a public servant is elected to a municipal office, his or her employment by the Crown or by a public body, or his or her appointment to a public body, is terminated if it is determined under subsection (3) that termination is warranted.

**Same**

**101.** (2) A public servant who is considering seeking election to a municipal office may ask his or her ethics executive to make the determination under subsection (3) before the election.

**Determination by ethics executive**

**101.** (3) The ethics executive shall determine that termination is warranted if, in the opinion of the ethics executive, the public servant's responsibilities in the municipal office,

- (a) would interfere with the performance of his or her duties as a public servant; or
- (b) would,
  - (i) in the case of a public servant who works in a ministry, conflict with the interests of the Crown, or
  - (ii) in the case of a public servant who works in a public body, conflict with the interests of the body.

**Referral by ethics executive**

**101.** (4) If an ethics executive, other than the Conflict of Interest Commissioner or Integrity Commissioner, considers it appropriate to do so, the ethics executive may refer the making of the determination under subsection (3) to the Conflict of Interest Commissioner.

**Same**

**101.** (5) Where an ethics executive has referred the making of the determination under subsection (3) to the Conflict of Interest Commissioner, the Commissioner shall inform the ethics executive of his or her determination.

**Notice to minister**

**101.** (6) Where a determination under subsection (3) relates to a government appointee to a public body, the ethics executive or the Conflict of Interest Commissioner, as the case may be, shall inform the minister responsible for the public body of the determination.

**Ontario Regulation 381/07**  
**Conflict of Interest Rules for Public Servants (Ministry) and Former Public Servants (Ministry)**

**Restriction on lobbying**

**18.** (1) This section applies to a former public servant who, immediately before ceasing to be a public servant, was employed in a designated senior position.

(2) For 12 months after ceasing to be a public servant, the former public servant shall not lobby any of the following persons on behalf of a public body or another person or entity:

1. A public servant who works in a ministry or public body in which the former public servant worked at any time during the 12 months before he or she ceased to be a public servant.
2. The minister of any ministry in which the former public servant worked at any time during the 12 months before he or she ceased to be a public servant.
3. A public servant who works in the office of a minister described in paragraph 2.

**Restriction on employment, etc.**

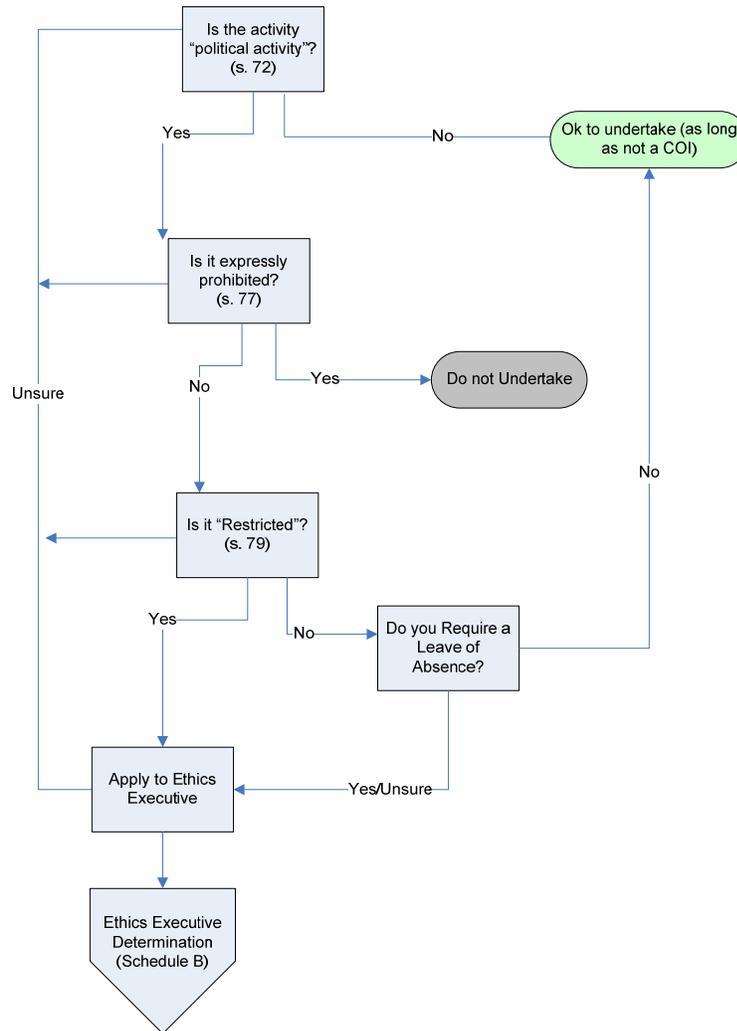
**19.** (1) This section applies to a former public servant who, immediately before ceasing to be a public servant, was employed in a designated senior position and who, at any time during the 12 months before he or she ceased to be employed as a public servant, in the course of his or her employment as a public servant,

- (a) had substantial involvement with a public body or another person or entity; and
- (b) had access to confidential information that, if it were to be disclosed to the public body, person or entity, could result in harm to the Crown or could give the public body, person or entity an unfair advantage in relation to one or more third parties. O. Reg. 381/07, s. 19 (1).

(2) For 12 months after ceasing to be a public servant, the former public servant shall not accept employment with the public body, person or entity or serve as a member of the board of directors or other governing body of the public body, person or entity.

## Schedule B

### Board Member Determination



The PSOA defines "political activity" at s. 72 as:

- a) doing anything in support of or opposition to a federal or provincial political party, or candidate in a federal, provincial or municipal election; or
- b) commenting publicly and outside the scope of your position on matters that are directly related to your duties and that are dealt with in the positions or policies
  - (i) of a federal or provincial political party; or
  - (ii) are publicly expressed by a candidate in a federal, provincial or municipal election.

Engaging in political activity in the workplace, using government premises, equipment or supplies for such purposes, or associating your position with political activity, except if you are seeking to become an electoral candidate and then only to the extent necessary to identify your position and work experience, are all "**prohibited**" political activities enumerated at s. 77.

**Restricted political activities** may only be pursued upon having been approved for a leave of absence. Restricted political activities are as follows:

- a) fundraising on behalf of an electoral party/candidate if your duties include dealing directly with members of the public where such members may perceive you to have the ability to exercise power over them;
- b) commenting publicly outside the scope of your duties on matters directly related to your duties as a public servant that are addressed in the policies of an electoral party/candidates' policies; or
- c) otherwise engaging in political activity if doing so could interfere or conflict with the performance of your duties as a public servant, or the interests of Metrolinx.

### Schedule C



#### Ethics Executive Determination & Obligations

