



## **Conflict of Interest Act**

### **Guideline on Gifts (including Invitations, Fundraisers and Business Lunches)**

The *Conflict of Interest Act* prohibits all public office holders and members of their family from accepting “any gift or other advantage [...] that might reasonably be seen to have been given to influence the public office holder in the exercise of an official power, duty or function”. This directive will provide the public office holder with a better understanding of their obligations.

#### **Table of Contents**

1. Relevant provisions of the <i>Conflict of Interest Act</i> .....	1
2. Where a gift is prohibited.....	3
3. When a gift is allowed.....	5
4. Specific guidance on invitations and fundraisers .....	7
5. Specific guidance on business lunches .....	8
6. Travel on non-commercial or chartered aircraft (Ministers, Parliamentary Secretaries, ministerial staff) .....	9
7. When to disclose a gift to the Commissioner and when to publicly declare it .....	10
8. Determining the value of a gift for the purpose of disclosure and declaration.....	12

**Note: Throughout this guideline the term “gift” is used to refer to a “gift or other advantage” as defined in the Conflict of Interest Act and the term “Office” is used to refer to the Office of the Conflict of Interest and Ethics Commissioner.**

# 1. Relevant provisions of the *Conflict of Interest Act*

2. (1) The following definitions apply in this Act.

“Commissioner” means the Conflict of Interest and Ethics Commissioner appointed under section 81 of the *Parliament of Canada Act*.

“gift or other advantage” means

- (a) an amount of money if there is no obligation to repay it; and
- (b) a service or property, or the use of property or money that is provided without charge or at less than its commercial value.

“public sector entity” means a department or agency of the Government of Canada, a Crown corporation established by or under an Act of Parliament or any other entity to which the Governor in Council may appoint a person, but does not include the Senate or House of Commons.

“reporting public office holder” means a public office holder who is a minister of the Crown, minister of state or parliamentary secretary;

- (a) a member of ministerial staff who works on average 15 hours or more a week;
- (b) a ministerial advisor;
- (c) a Governor in Council appointee, or a ministerial appointee whose appointment is approved by the Governor in Council, who exercises his or her official duties and functions on a part-time basis but receives an annual salary and benefits;
- (d) a Governor in Council appointee, or a ministerial appointee whose appointment is approved by the Governor in Council, who exercises his or her official duties and functions on a full-time basis; or
- (e) a full-time ministerial appointee designated by the appropriate minister of the Crown as a reporting public office holder.

2. (2) The following are the members of a public office holder’s family for the purposes of the Act:

- (a) his or her spouse or common-law partner; and
- (b) his or her dependent children and the dependent children of his or her spouse or common-law partner.

2. (3) Persons who are related to a public office holder by birth, marriage, common-law partnership, adoption or affinity are the public office holder’s relatives for the purposes of this Act unless the Commissioner determines, either generally or in relation to a particular public office holder, that it is not necessary for the purposes of this Act that a person or a class of persons be considered a relative of a public office holder.

11. (1) No public office holder or member of his or her family shall accept any gift or other advantage, including from a trust, that might reasonably be seen to have been given to influence the public office holder in the exercise of an official power, duty or function.
11. (2) Despite subsection (1), a public office holder or member of his or her family may accept a gift or other advantage
- (a) that is permitted under the *Canada Elections Act*,
  - (b) that is given by a relative or friend; or
  - (c) that is received as a normal expression of courtesy or protocol, or is within the customary standards that normally accompany the public office holder's position.
11. (3) When a public office holder or a member of his or her family accepts a gift or other advantage referred to in paragraph (2)(c) that has a value of \$1,000 or more, the gift or other advantage is, unless otherwise determined by the Commissioner, forfeited to Her Majesty in right of Canada.
12. No minister of the Crown, minister of state or parliamentary secretary, or member of his or her family and no ministerial advisor or ministerial staff shall accept travel on non-commercial chartered or private aircraft for any purpose unless required in his or her capacity as a public office holder or in exceptional circumstances or with the prior approval of the Commissioner.
23. If the total value of all gifts or other advantages accepted by a reporting public office holder or a member of his or her family exceeds \$200 from any one source other than relatives and friends in a 12-month period, the reporting public office holder shall disclose the gifts or other advantages to the Commissioner within 30 days after the day on which the value exceeds \$200.
25. (5) If a reporting public office holder or a member of his or her family accepts any single gift or other advantage that has a value of \$200 or more, other than one from a relative or friend, the reporting public office holder shall, within 30 days after accepting the gift or other advantage, make a public declaration that provides sufficient detail to identify the gift or other advantage accepted, the donor and the circumstances under which it was accepted.
25. (6) If travel has been accepted in accordance with section 12, from any source, the minister of the Crown, minister of state or parliamentary secretary concerned shall, within 30 days after the acceptance, make a public declaration that provides sufficient detail to identify the source and the circumstances under which the travel was accepted.

## 2. Where a gift is prohibited

The relevant provisions of the *Conflict of Interest Act* are:

11. (1) No public office holder or member of his or her family shall accept any gift or other advantage, including from a trust, that might reasonably be seen to have been given to influence the public office holder in the exercise of an official power, duty or function. (emphasis added)

2. (1) The following definitions apply in this Act.

“gift or other advantage” means

- (a) an amount of money if there is no obligation to repay it; and
- (b) a service or property, or the use of property or money that is provided without charge or at less than its commercial value.

“public sector entity” means a department or agency of the Government of Canada, a Crown corporation established by or under an Act of Parliament or any other entity to which the Governor in Council may appoint a person, but does not include the Senate or House of Commons.

2. (2) The following are the members of a public office holder’s family for the purposes of the Act:

- (a) his or her spouse or common-law partner; and
- (b) his or her dependent children and the dependent children of his or her spouse or common-law partner.

Gifts can be many types of things. The Office has interpreted the definition to include such things as:

- money, other than a bona fide loan, regardless of format (cash, cheques, etc.);
- property (a book, flowers, a painting or sculpture, a car, a house, furniture, wine, etc.);
- use of property or facilities (a vehicle, an office, a house or cottage, a sports facility, a golf course, etc.) at a reduced rate or at no cost;
- membership in a club or other organization (a golf club, a tennis club, etc.) at a reduced rate or at no cost;
- a service (dry cleaning, a haircut, etc.), at a reduced rate or at no cost;
- a meal paid for by another individual (see Specific guidance on business lunches);
- an invitation to and/or tickets to attend an event (a game, a concert, a play, etc.) at a reduced rate or at no cost (see Specific guidance on invitations and fundraisers); or
- an invitation to attend a gala or fund-raising event at a reduced rate or at no cost (see Specific guidance on invitations and fundraisers).

The purpose of prohibiting public office holders or their family members from receiving gifts is to preserve confidence in the integrity of public decision-making.

The determining factor is whether the gift might reasonably be seen to have been given to influence the public office holder's decision-making.

In order to determine whether a gift is being offered inappropriately, all the circumstances surrounding that gift must be considered; hence, no specific rule exists as to which gifts can be accepted by public office holders. The value of a gift is NOT a criterion of acceptability; it is a threshold for the purpose of disclosure to the Office and the public.

It is important to consider who is offering the gift and why it is being offered. The donor's existing, or future relationship to the public office holder is of particular relevance.

In the following examples, the identity of the donor might reasonably be seen to suggest that the gift was given to influence the public office holder's decision-making.

1. The donor or the donor's client or firm has or may, in the future, have dealings with the public sector entity of the public office holder.
2. The donor or the donor's client or firm is or may, in the future, be affected by programs, policies or regulations reviewed or controlled by the public sector entity of the public office holder.
3. The donor or the donor's firm is a registered lobbyist or has hired a registered lobbyist to lobby the public office holder or the public sector entity of the public office holder.
4. The donor or the donor's client or firm has or may, in the future, have a contract with the public sector entity of the public office holder.
5. The donor or the donor's client or firm could submit a bid in respect of a request for proposals that the public sector entity of the public office holder has issued or may issue in the future.

A public office holder or family member should consider why a gift is being offered. If a gift is being offered by someone whose interests could be affected by a decision the public office holder may be called upon to make, then the Act will likely apply and prohibit its acceptance.

Trinkets or favours of relatively little value such as pens, notepads, key chains, t-shirts or inexpensive carrying cases provided to attendees at a convention or similar event would generally not reasonably be seen to have been given to influence the public office holder's decision-making. However, depending on the public office holder's role or the public sector entity of the public office holder, it may still be inadvisable to possess an article that clearly advertises a particular donor.

The advisors in the Office are available to provide guidance on specific situations. They can be reached at (613) 995-0721.

### 3. When a gift is allowed

11. (2) Despite subsection (1), a public office holder or member of his or her family may accept a gift or other advantage
  - (a) that is permitted under the *Canada Elections Act*;
  - (b) that is given by a relative or friend; or
  - (c) that is received as a normal expression of courtesy or protocol, or is within the customary standards that normally accompany the public office holder's position.
  
11. (3) When a public office holder or a member of his or her family accepts a gift or other advantage referred to in paragraph (2)(c) that has a value of \$1,000 or more, the gift or other advantage is, unless otherwise determined by the Commissioner, forfeited to Her Majesty in right of Canada.
  
2. (2) The following are the members of a public office holder's family for the purposes of the Act:
  - (a) his or her spouse or common-law partner; and
  - (b) his or her dependent children and the dependent children of his or her spouse or common-law partner.
  
2. (3) Persons who are related to a public office holder by birth, marriage, common-law partnership, adoption or affinity are the public office holder's relatives for the purposes of this Act unless the Commissioner determines, either generally or in relation to a particular public office holder, that it is not necessary for the purposes of this Act that a person or a class of persons be considered a relative of a public office holder.

There are three situations in which the general prohibition does not apply and a gift may be accepted even though it might reasonably be seen to have been given to influence the public office holder:

1. Gifts that are permitted under the *Canada Elections Act* are acceptable under the *Conflict of Interest Act*. The *Canada Elections Act* applies to electoral candidates during an election period. [Click here](#) to link to the *Canada Elections Act*.
  
2. Gifts from a relative or friend. While there is a definition of "relatives" in subsection 2(3) of the Act ("persons who are related [...] by birth, marriage, common-law partnership, adoption or affinity [...]"), there is no definition of "friend". The Office has interpreted "friend" to mean a person with whom one has some history of mutual personal regard beyond simple association. While acquaintances can become friends, they do not do so simply because of frequent interactions. When a gift is given by a relative or friend, one does not usually expect it to have been given with a view to influencing public decision-making. In that sense, the rule reinforces this reasonable expectation. However, sometimes there can be both friendship or

family connections, and a business relationship between a public office holder and a person offering a gift. If a friend is offering a gift in a context not normally associated with gift-giving and the friend is also doing or likely to do business directly or indirectly with the public service entity of the public office holder, then the gift should not be accepted. Similarly, the Office takes the view that the nature or substance of a gift may suggest that a gift is being given in a business context rather than between friends.

3. Gifts are acceptable if they are received as a normal expression of courtesy or protocol, or are within the customary standards that normally accompany the public office holder's position. The Office considers a normal expression of "courtesy or protocol" to be a token expression of appreciation in the context of some official interaction. What is considered to be within the "customary standards" of a position depends on the circumstances.

History, tradition, the context of events, as well as the nature of the public office holder's position (either by virtue of rank or because of the nature of the public sector entity represented) must be considered. For example, a gift given by an official from a foreign or international organization who is visiting a public office holder would normally be covered by this exception. Similarly, a token thank you gift following an appearance, speech or presentation is usually acceptable.

It is important to remember that, even if a gift is permissible because it is an expression of courtesy or protocol or is within the customary standards of the office, a public office holder will have to forfeit a gift valued at over \$1,000. Such gifts must be forfeited into the inventory of the public office holder's public sector entity or of the government at large.

Where a gift accepted by a reporting public office holder or a member of his or her family exceeds a value of \$200 from any one source other than from family and friends, or several gifts from one source in a 12-month period have a total value of more than \$200, specific disclosure provisions apply (see section entitled When to disclose a gift to the Commissioner and when to publicly declare it).

Where a minister or parliamentary secretary, or a member of his or her family, or a ministerial advisor or ministerial staff member, is offered travel on non-commercial, chartered or private aircraft, specific provisions apply (see section entitled Travel on non-commercial chartered or private aircraft).

The advisors in the Office are available to provide guidance on specific situations. They can be reached at (613) 995-0721.

## 4. Specific guidance on invitations and fundraisers

An invitation to attend a function where the invitation is duty-related (i.e., for which the public office holder had or has an organizational, ceremonial, presentational or representational role) is not considered to be a gift. Attendance is considered to be the fulfillment of an official function or duty.

However, many events to which public office holders and their family members are invited fall within the definition of a gift. In that regard, the question of whether the invitation “might reasonably be seen to have been given to influence the public office holder in the exercise of an official power, duty or function” must be addressed. It is important for the public office holder to consider the reason for the invitation in the context of the office held. Exceptions may apply if the invitation is:

- from a friend or relative; or
- offered as a normal expression of courtesy or protocol; or
- within the customary standards that normally apply to the public office holder’s position.

Where there are **official dealings**, either current or anticipated, between the public sector entity of the public office holder and the organizers or sponsors of the event, the public office holder should pay the normal price to attend the event rather than accept a free invitation. For example, where a public office holder is part of a public sector entity that **regulates** the sponsor or organizer of the event or the public office holder has **quasi-judicial jurisdiction** in respect of the sponsor or organizer of the event, the public office holder should pay to attend the event.

Sometimes public office holders are invited to attend fundraising events as the guests of an individual or organization that has purchased tickets or a table at the event from the organizers or sponsors of the event. Where there are official dealings, either current or anticipated, or a regulatory or quasi-judicial relationship with the individual or organization, the public office holder should pay to attend the event.

Where there are no official dealings and there is no other reason to be concerned about a perception of trying to influence decision-making, then the Office does not consider it a contravention to accept the invitation (gift); however, reporting public office holders are still subject to the disclosure requirements and public declaration requirements of the Act (see section entitled When to disclose a gift to the Commissioner and when to publicly declare it).

The advisors in the Office are available to provide guidance on specific situations. They can be reached at (613) 995-0721.

## **5. Specific guidance on business lunches**

Accepting a free business lunch could fall under the general prohibition against gifts if it might reasonably be seen to have been given to influence the public office holder. The nature and venue of the lunch as well as the business relationship to the payer are relevant factors to be considered. While a single business lunch may not give rise to such a perception, a series of free business lunches might reasonably be seen to have been given to influence the public office holder.

The Act provides a specific exception for situations where a free lunch (gift) would be considered to be a normal expression of courtesy or protocol or where it would be within the customary standards that normally accompany the public office holder's position. Where such an exception is not applicable, the public office holder should pay for the lunch.

The advisors in the Office are available to provide guidance on specific situations. They can be reached at (613) 995-0721.

## **6. Travel on non-commercial or chartered aircraft (Ministers, Parliamentary Secretaries, ministerial staff)**

12. No minister of the Crown, minister of state or parliamentary secretary, or member of his or her family and no ministerial advisor or ministerial staff shall accept travel on non-commercial chartered or private aircraft for any purpose unless required in his or her capacity as a public office holder or in exceptional circumstances or with the prior approval of the Commissioner.
25. (6) If travel has been accepted in accordance with section 12, from any source, the minister of the Crown, minister of state or parliamentary secretary concerned shall, within 30 days after the acceptance, make a public declaration that provides sufficient detail to identify the source and the circumstances under which the travel was accepted.

The Office interprets the prohibition against the acceptance of certain air travel as referring to an offer of a flight at a reduced rate or at no cost. No minister or any other person referred to in section 12 of the Act is permitted to travel on non-commercial or private aircraft at a reduced rate or at no cost at any time unless one of the following three conditions applies.

1. The flight is required in his or her capacity as a public office holder. An example might be where there is a need to visit a remote business or corporate facility and the only means of travel would be on the business or company aircraft.
2. There are exceptional circumstances such as an emergency or commercial aircraft breakdown and no other commercial flight is reasonable in the circumstances.
3. The prior approval of the Commissioner has been sought and granted.

The advisors in the Office are available to provide guidance on specific situations. They can be reached at (613) 995-0721.

## 7. When to disclose a gift to the Commissioner and when to publicly declare it

23. If the total value of all gifts or other advantages accepted by a reporting public office holder or a member of his or her family exceeds \$200 from any one source other than relatives and friends in a 12 month period, the reporting public office holder shall disclose the gifts or other advantages to the Commissioner within 30 days after the day on which the value exceeds \$200.
25. (5) If a reporting public office holder or a member of his or her family accepts any single gift or other advantage that has a value of \$200 or more, other than one from a relative or friend, the reporting public office holder shall, within 30 days after accepting the gift or other advantage, make a public declaration that provides sufficient detail to identify the gift or other advantage accepted, the donor and the circumstances under which it was accepted. (emphasis added)

2(1) “reporting public office holder” means a public office holder who is

- (a) a minister of the Crown, minister of state or parliamentary secretary;
- (b) a member of ministerial staff who works on average 15 hours or more a week;
- (c) a ministerial advisor;
- (d) a Governor in Council appointee, or a ministerial appointee whose appointment is approved by the Governor in Council, who exercises his or her official duties and functions on a part-time basis but receives an annual salary and benefits;
- (e) a Governor in Council appointee, or a ministerial appointee whose appointment is approved by the Governor in Council, who exercises his or her official duties and functions on a full-time basis; or
- (f) a full-time ministerial appointee designated by the appropriate minister of the Crown as a reporting public office holder.

Section 23 and subsection 25(5) of the Act establish rules for reporting public office holders on disclosing gifts to the Commissioner and publicly declaring their receipt. These rules do not apply to gifts or other advantages received from family or friends.

Gifts received by a reporting public office holder or by a member of his or her family must be disclosed to the Commissioner if the value of an individual gift exceeds \$200 or the total value of all gifts from one source exceeds \$200 in a 12-month period. Disclosure is required within 30 days of receiving a gift exceeding \$200 or within 30 days of the time when the total value of all gifts from one source exceeds \$200 in a 12-month period.

In addition to the disclosure to the Commissioner, a public declaration must also be made within 30 days of receipt each time a single gift exceeds \$200 in value. The declaration of the gift must provide sufficient detail to identify the gift, the donor and the circumstances in which the gift was accepted.

By way of example, in the case of gifts from one source that exceed the total value of \$200 in a 12 month period, a series of four gifts valued at \$51 each received from one source in a 12 month period would have to be disclosed to the Commissioner within 30 days of receipt of the fourth gift, but no public declaration would be required. On the other hand, the receipt of a single gift valued at more than \$200 would have to be both disclosed to the Commissioner and publicly declared within 30 days of receipt.

## **8. Determining the value of a gift for the purpose of disclosure and declaration**

The Office is frequently asked how to determine the value of a gift. All gifts are covered by the Act regardless of value. The value of a gift is NOT a criterion of acceptability; it is a threshold for the purpose of disclosure to the Office and the public.

The value for declaration is based on the commercial value of the gift, that is, the amount one would have to pay to purchase a similar gift. Although abstract external factors may appear to increase the value of a gift, the Office does not generally consider them in determining the value of a gift. The Office does not provide reimbursement for the cost of evaluation of a gift's commercial value.

The advisors in the Office are available to provide guidance on specific situations. They can be reached at (613) 995-0721.