

# **ONTARIO PENSION BOARD**

**CONFLICTS OF INTEREST, CONFIDENTIALITY AND POLITICAL ACTIVITY:**

**THE PUBLIC SERVICE OF ONTARIO ACT, 2006**

**Rules & Explanatory Notes**

**May 1, 2019**

**PUBLIC SERVICE OF ONTARIO ACT, 2006**  
**Conflicts of Interest, Confidentiality and Political Activity Rules**

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## INTRODUCTION

OPB is responsible for the administration and management of one of Canada's largest public sector pension plans and funds, and approximately 90,000 active, retired and former members of Ontario's Public Service Pension Plan depend on OPB for a secure financial retirement. OPB has committed itself to the highest levels of honesty and integrity. As part of that commitment, OPB maintains conflict of interest and confidentiality policies. It continues to be of the utmost importance that OPB employees and Board Members try to avoid even the appearance of a conflict of interest, and it is important that the words and actions of every one of us contribute to a culture of ethics and integrity at OPB.

In August 2007, the *Public Service of Ontario Act, 2006* (PSOA) came into force. The PSOA applies to Ontario ministries and the broader Ontario public sector, including OPB. The PSOA sets out an ethical framework to address:

- conflicts of interest and confidentiality;
- political activity;
- disclosure of wrongdoing; and
- oaths of allegiance and office.

The purpose of this booklet is to set out the rules governing conflicts of interest, confidentiality, and political activity. The PSOA requirements regarding oaths have been incorporated into OPB's Code of Conduct and Ethics and "new hire" procedures, and the requirements regarding disclosure of wrongdoing are included in OPB's Reporting Suspected Wrongdoing Policy.

The conflict of interest and confidentiality rules are set out in Ontario Regulation 381/07 under the PSOA, and the rules for political activity are set out in sections 75 to 84 and 99-106 of the PSOA. This booklet contains both sets of rules and provides OPB's employees and Board Members with explanatory notes. The explanatory notes are italicized and appear throughout the booklet in text boxes. The notes will help you understand:

- how Conflicts of Interest can occur;
- what you must do in a Conflict of Interest situation;
- how you must respect Confidential Information;
- how you can report potential or suspected violations of the rules and the protections in place for those who do so;
- your continuing obligations after you cease to be an employee or Board Member;
- how you can obtain additional guidance with respect to the rules; and
- the possible consequences if you violate the rules.

Please note the following in your review of this booklet:

- You will see that certain words and expressions in the explanatory notes have been capitalized, such as Conflict of Interest and Confidential Information. This indicates that they have a defined meaning. The definitions are set out in the Glossary of Terms, which begins at page 22.
- The wording of the PSOA and Ontario Regulation 381/07 has been modified to refer to OPB and its employees and Board Members. This will make the legislation easier to understand and apply to your own situation. However, if any conflict should arise between the wording of the booklet and the legislation, the wording of the legislation will prevail. The reference to each section of the legislation is provided for your assistance.

Employees and Board Members who are, or were, employed by another government entity outside of OPB may be bound by other provisions of the PSOA. If in doubt as to which provisions apply in particular circumstances, you should seek direction from your Ethics Executive.

## **PART I – CONFLICTS OF INTEREST & CONFIDENTIALITY: RULES FOR OPB EMPLOYEES AND BOARD MEMBERS (Ontario Regulation 381/07, sections 1–13)**

### **Interpretation**

#### **Definitions**

1. In this Part,

“confidential information” means information that is not available to the public and that, if disclosed, could result in harm to the Crown or could give the person to whom it is disclosed an advantage;

“gift” includes a benefit of any kind;

“spouse” means,

- (a) a spouse as defined in section 1 of the Family Law Act, or
- (b) either of two persons who live together in a conjugal relationship outside marriage.

[O. Reg. 381/07, s. 1]

#### **Application**

2. This Part applies to [OPB employees and Board Members].

[O. Reg. 381/07, s. 2]

*OPB’s employees and Board Members are public servants under the PSOA and regulations. The PSOA and regulations apply to you if you are an employee or Board Member, and continue to apply to you after you cease to be an employee or Board Member. These explanatory notes are written on the basis that they apply to you.*

### **Prohibited Conduct**

#### **Benefiting self, spouse or children**

3. (1) No [OPB employee or Board Member] shall use or attempt to use his or her employment by the Crown to directly or indirectly benefit himself or herself or his or her spouse or children.

(2) No [OPB employee or Board Member] shall allow the prospect of his or her future employment by a person or [service to] an entity to detrimentally affect the performance of his or her duties to the Crown.

[O. Reg. 381/07, s. 3]

## Accepting gifts

4. (1) An [OPB employee or Board Member] shall not accept a gift from any of the following persons or entities if a reasonable person might conclude that the gift could influence the public servant when performing his or her duties to the Crown:
- (a) A person, group or entity that has dealings with the Crown.
  - (b) A person, group or entity to whom the [OPB employee or Board Member] provides services in the course of his or her duties to the Crown.
  - (c) A person, group or entity that seeks to do business with the Crown.
- (2) Subsection (1) shall not operate to prevent an [OPB employee or Board Member] from accepting a gift of nominal value given as an expression of courtesy or hospitality if doing so is reasonable in the circumstances.
- (3) An [OPB employee or Board Member] who receives a gift in the circumstances described in subsection (1) shall notify his or her ethics executive.

[O. Reg. 381/07, s. 4]

*You or any member of your Family must not seek or accept, in any manner, any gift, favour or personal financial benefit (“Personal Benefits”) other than Acceptable Gifts in the course of or in conjunction with your employment or your directorship with OPB.*

*“Family” means your spouse, children, parents and siblings.*

*“Acceptable Gifts” means gifts, including discounts, rewards, prizes, entertainment, occasional meals, or other customary gestures of courtesy of a nominal value given in the ordinary course of business which are free of any conflict of interest and which comply with OPB’s General Guidelines on Gifts and Conflict of Interest.*

*Also, except for Acceptable Gifts, you or any member of your Family must not give gifts to, entertain or otherwise provide hospitality to any person (such as suppliers of goods or services to OPB) with whom you have a relationship that would reasonably be regarded as impairing your ability to act impartially.*

*You must not accept any Personal Benefit, of any kind from OPB employees junior to you, but this shall not prohibit the acceptance of items such as birthday, congratulatory, condolence or seasonal greeting cards.*

*If you receive, or expect to receive, a Personal Benefit which may not be an Acceptable Gift, you must promptly notify OPB's Ethics Executive who will determine whether it is an Acceptable Gift and, if not, direct you how to proceed.*

*"OPB's Ethics Executive" means:*

- *for employees other than the President and Chief Executive Officer of OPB, the Chief Executive Officer;*
- *for Board Members, the Chair of the Board; and*
- *for the Chair of the Board and the President and Chief Executive Officer, the Integrity Commissioner.*

Your Ethics Executive may be different if you are currently, or were previously, employed in the Ontario government outside of OPB or are a former employee or Board Member of OPB.

### **Disclosing confidential information**

5. (1) An [OPB employee or Board Member] shall not disclose confidential information obtained during the course of his or her employment by [or service to] the Crown to a person or entity unless the [OPB employee or Board Member] is authorized to do so by law or by the Crown.
- (2) An [OPB employee or Board Member] shall not use confidential information in a business or undertaking outside his or her work for the Crown.
- (3) An [OPB employee or Board Member] shall not accept a gift directly or indirectly in exchange for disclosing confidential information.

[O. Reg. 381/07, s. 5]

*OPB employees and Board Members must not collect, retain, disclose or use confidential information except for the purpose of fulfilling his or her duties and responsibilities to OPB, or as otherwise permitted by OPB policy or law. This Policy shall not prevent a Board Member from reporting to his or her nominating stakeholder as to the business conducted or matters considered at meetings of the Board of Directors or Committees of the Board of Directors unless such business or matters have been specifically designated as confidential or are privileged at law.*

*No current or former OPB employee or Board Member shall:*

- disclose to any person, group or entity any confidential information obtained by him or her while employed by or serving OPB unless authorized to do so by an OPB policy or OPB's Ethics Executive;*
- use any confidential information obtained by him or her while employed by or serving OPB except for fulfillment of his or her particular duties; or*
- seek preferential treatment by, or privileged access to, OPB employees or Board Members or any other member of the Ontario public service.*

### **Giving preferential treatment**

6. (1) When performing his or her duties to the Crown, an [OPB employee or Board Member] shall not give preferential treatment to any person or entity, including a person or entity in which the [OPB employee or Board Member] or a member of his or her family or a friend has an interest.

(2) When performing his or her duties to the Crown, an [OPB employee or Board Member] shall endeavour to avoid creating the appearance that preferential treatment is being given to a person or entity that could benefit from it.

(3) An [OPB employee or Board Member] shall not offer assistance to a person or entity in dealing with the Crown other than assistance given in the ordinary course of the [OPB employee or Board Member]'s employment by [or service to] the Crown.

[O. Reg. 381/07, s. 6]

### **Hiring family members**

7. (1) An [OPB employee or Board Member] shall not, on behalf of the Crown, hire his or her spouse, child, parent or sibling.

(2) An [OPB employee or Board Member] shall not, on behalf of the Crown, enter into a contract with his or her spouse, child, parent or sibling or with a person or entity in which any of them has a substantial interest.

(3) An [OPB employee or Board Member] who hires a person on behalf of the Crown shall ensure that the person does not report to, or supervise the work of, the person's spouse, child, parent or sibling.

(4) An [OPB employee or Board Member] who reports to, or supervises the work of, his or her spouse, child, parent or sibling shall notify his or her ethics executive.

[O. Reg. 381/07, s. 7]

### **Engaging in business, etc.**

8. An [OPB employee or Board Member] shall not become employed by or engage in a business or undertaking outside his or her employment by [or service to] the Crown in any of the following circumstances:

1. If the [OPB employee or Board Member]'s private interests in connection with the employment or undertaking could conflict with his or her duties to the Crown.

2. If the employment or undertaking would interfere with the [OPB employee or Board Member]'s ability to perform his or her duties to the Crown.

3. If the employment is in a professional capacity and is likely to influence or detrimentally affect the [OPB employee or Board Member]'s ability to perform his or her duties to the Crown.

4. If the employment would constitute full-time employment for another person. However, this paragraph does not apply with respect to an [OPB employee or Board Member] who is employed part-time by [or provides service on a part-time basis to] the Crown. This paragraph also does not apply with respect to an [OPB employee or Board Member] who is on an authorized leave of absence from his or her position, but only if the employment is not contrary to or inconsistent with the terms of the leave of absence.

5. If, in connection with the employment or undertaking, any person would derive an advantage from the [OPB employee or Board Member]'s employment as a public servant.

6. If government premises, equipment or supplies are used in the employment or undertaking.

[O. Reg. 381/07, s. 8]

### **Participating in decision-making**

9. (1) An [OPB employee or Board Member] shall not participate in decision-making by the Crown with respect to a matter that the [OPB employee or Board Member] is able to influence in the course of his or her duties if the [OPB employee or Board Member] could benefit from the decision.

(2) Subsection (1) does not apply if the [OPB employee or Board Member] obtains the prior approval of his or her ethics executive to participate in decision-making by the Crown with respect to the matter.

(3) An [OPB employee or Board Member] who, in the course of his or her employment by [or service to] the Crown, is a member of a body or group shall not participate in, or attempt to influence, decision-making by the body or group with respect to a matter if the [OPB employee or Board Member] could benefit from the decision or if, as a result of the decision, the interests of the body or group could conflict with the interests of the Crown.

(4) An [OPB employee or Board Member] described in subsection (3) shall inform the body or group if the circumstances described in that subsection exist.

[O. Reg. 381/07, s. 9]

### ***Disclosure of Conflict of Interest***

*“Conflict of Interest” means a situation where the interests of an OPB employee or Board Member or his or her Family member or friend conflict with or would reasonably be regarded as conflicting with the interests of OPB.*

*You must disclose any personal circumstances that give rise or may give rise to a Conflict of Interest:*

- that exist when you become an OPB employee or Board Member and annually thereafter; and*
- that arise at any time during your tenure as an OPB employee or Board Member.*

*As part of your disclosure, you must disclose any other organizations of which you are a director or officer.*

*Board Members shall request that the nature and extent of any Conflict of Interest be entered in the minutes of the first Board meeting in which the matter raising the Conflict of Interest is addressed.*

*In all cases, your disclosure must be accurate, complete and timely.*

*With respect to any matter in which you are affected by a Conflict of Interest, you must withdraw from any discussions and decision-making relating to the matter, unless your participation has been approved by your Ethics Executive.*

### ***Avoidance of Conflict of Interest***

*You must not do or fail to do anything in which you are affected by an apparent or actual Conflict of Interest. In particular, but without limiting that general prohibition, you must not:*

- use any confidential information for your personal benefit.*
- if you are an OPB employee, involve yourself in Outside Business on OPB time without the prior written approval of OPB’s Ethics Executive.*
- involve yourself in any Outside Business in any manner that is or gives the appearance of being a Conflict of Interest.*
- use OPB premises, equipment or supplies in Outside Business (defined below) without reimbursing OPB for the cost of such usage,*

*unless such usage is of insignificant value. OPB letterhead and pre-printed envelopes must never be used for Outside Business without the prior written approval of OPB's Ethics Executive.*

- *influence or attempt to influence OPB policies or decisions for your Personal Benefit or the Personal Benefit of a member of your Family, a close friend or any other person with whom you have a relationship that would reasonably be regarded as impairing your ability to act impartially.*
- *use your position with OPB to gain, or attempt to gain, any Personal Benefit.*
- *give preferential treatment to any person, group or entity, including a person, group or entity in which you or a member of your Family has an interest or could obtain an advantage.*
- *participate in any decision affecting OPB in which you have a personal interest, unless your participation is approved by OPB's Ethic Executive.*
- *if you are an OPB employee, accept a paid directorship of any other organization without the written approval of the President & CEO (in the case of the President & CEO, written approval of the Chair), unless you have been asked to accept a directorship in the course of your employment by OPB (for further information, refer to our External Directorships Policy), or*
- *allow the prospect of future employment or appointments in the private sector to detrimentally affect the performance of your duties to OPB.*

*"Outside Business" means commercial, educational, charitable, political, cultural, or civic activities not related to the business and affairs of OPB.*

## **Matters that might involve the Private Sector**

### **Interpretation**

10. (1) Sections 11 and 12 apply to every [OPB employee and Board Member] who routinely works on one or more matters that might involve the private sector and who has access to confidential information about the matter obtained during the course of his or her employment by [or service to] the Crown.

(2) In this section and in sections 11 and 12, "matter that might involve the private sector" means a matter,

(a) that relates to services currently provided under a program of the Crown or by a public body, an agency of the Crown or a corporation controlled by the Crown with respect to which it is possible that a private sector entity will provide all or part of the financing for the services or will provide some or all of the services, and

(b) that has been referred to a ministry, a public body or an agency of the Crown by the Executive Council or a member of the Executive Council for review or implementation.

[O. Reg. 381/07, s. 10]

### **Duty to declare certain financial interests**

11. (1) When an [OPB employee or Board Member] described in subsection 10 (1) begins work on a matter that might involve the private sector, he or she shall make a declaration to the Integrity Commissioner in which the [OPB employee or Board Member] discloses the following matters respecting his or her financial interests:

1. A legal or beneficial interest of the [OPB employee or Board Member] in securities or derivatives of corporations or governments, other than the Government of Ontario.
2. A legal or beneficial interest of the [OPB employee or Board Member] in a business entity or a commercial operation or in the assets of such an entity or operation.
3. A legal or beneficial interest of the [OPB employee or Board Member] in real property.
4. A legal or beneficial interest of the [OPB employee or Board Member] in a mutual fund that is operated as an investment club where,
  - i. its shares or units are held by not more than 50 persons and its indebtedness has never been offered to the public,
  - ii. it does not pay or give any remuneration for investment advice or in respect of trades in securities, except normal brokerage fees, and
  - iii. all of its members are required to make contributions in proportion to the shares or units each holds for the purpose of financing its operations.

(2) Despite subsection (1), the [OPB employee or Board Member] is not required to disclose his or her legal or beneficial interest in any of the following:

1. A mutual fund within the meaning of subsection 1 (1) of the *Securities Act* other than a mutual fund described in paragraph 4 of subsection (1) of this section.
2. Fixed-value securities issued or guaranteed by a government or a government agency.
3. A guaranteed investment certificate or similar financial instrument issued by a financial institution entitled by law to issue such instruments.
4. A registered pension plan, an employee benefit plan, an annuity or life insurance policy or a deferred profit sharing plan.
5. Real property that the [OPB employee or Board Member], or a member of his or her family, uses primarily as a residence or for recreational purposes.

(3) The [OPB employee or Board Member] shall disclose the information required by subsection (1), with necessary modifications, in respect of his or her spouse and dependent children, but only to the extent that the legal or beneficial interests of the spouse or a child could create a conflict of interest.

(4) For the purpose of subsection (3), the [OPB employee or Board Member] shall make reasonable efforts to obtain information about the financial interests described in subsection (1) of his or her spouse and dependent children.

(5) The [OPB employee or Board Member] shall give the Integrity Commissioner a revised declaration whenever there is a change in any of the information required to be disclosed.

[O. Reg. 381/07, s. 11]

### **Prohibition on certain purchases**

12. (1) An [OPB employee or Board Member] described in subsection 10 (1) shall not purchase, or cause another person to purchase on his or her behalf, a legal or beneficial interest in an entity that is carrying on, or proposes to carry on, an activity relating to a matter that might involve the private sector.

(2) Despite subsection (1), an [OPB employee or Board Member] may purchase an interest in a mutual fund (within the meaning of subsection 1 (1) of the *Securities Act*) that includes securities of a person or entity described in subsection (1) of this Regulation but not an interest in a mutual fund described in paragraph 4 of subsection 11 (1) of this Regulation that includes such securities.

(3) The prohibition described in subsection (1) ceases to have effect with respect to the matter,

(a) six months after the date on which the action in respect of the matter is completed; or

(b) six months after the date the Crown ceases to work on the matter.

[O. Reg. 381/07, s. 12]

### **List of positions**

13. (1) The Public Service Commission shall maintain a current list of positions in which public servants work in a ministry and routinely work on one or more matters that might involve the private sector.

(2) The Commission shall ensure that public servants employed by the Crown in the positions described in subsection (1) are advised of the duties and restrictions imposed upon them under sections 11 and 12.

(3) Every ethics executive shall notify the Commission of changes to be made to the list with respect to those persons for whom he or she is the ethics executive.

[O. Reg. 381/07, s. 13]

## **PART II - CONFLICTS OF INTEREST & CONFIDENTIALITY: RULES FOR FORMER OPB EMPLOYEES AND BOARD MEMBERS (Ontario Regulation 381/07, sections 14–20)**

### **Interpretation**

#### **Definition**

14. In this Part, “designated senior position” means the position of [director and higher].

[O. Reg. 381/07, s. 14]

## **Application**

15. (1) This Part applies with respect to every former [OPB employee or Board Member].

[O. Reg. 381/07, s. 15]

## **Prohibited Conduct**

### **Seeking preferential treatment, etc.**

16. A former [OPB employee or Board Member] shall not seek preferential treatment by, or privileged access to, public servants who work in a minister's office, a ministry or a public body.

[O. Reg. 381/07, s. 16]

### **Disclosing confidential information**

17. (1) A former [OPB employee or Board Member] shall not disclose confidential information obtained during the course of his or her employment by [or service to] the Crown to a person or entity unless the former [OPB employee or Board Member] is authorized to do so by law or by the Crown.

(2) A former [OPB employee or Board Member] shall not use confidential information in a business or undertaking.

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

### **Restriction on lobbying**

18. (1) This section applies to a former [OPB employee or Board Member] who, immediately before ceasing to be a public servant, was employed in a designated senior position.

(2) For 12 months after ceasing to be an [OPB employee or Board Member], the former [OPB employee or Board Member] 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 [OPB employee or Board Member] 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.

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

### **Restriction on employment, etc.**

19. (1) This section applies to a former [OPB employee or Board Member] who, immediately before ceasing to be a [OPB employee or Board Member], 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 or to provide services as an [OPB employee or Board Member], in the course of his or her employment as or providing services to the Crown as an [OPB employee or Board Member],

- (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.

(2) For 12 months after ceasing to be an [OPB employee or Board Member], the former [OPB employee or Board Member] 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.

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

### **Restriction re certain transactions**

20. (1) This section applies to a former [OPB employee or Board Member] who, when he or she was a public servant working in a ministry, advised the Crown about a particular proceeding, negotiation or other transaction.

(2) The former [OPB employee or Board Member] shall not advise or otherwise assist any public body or any other person or entity in connection with the particular proceeding, negotiation or other transaction until the Crown ceases to be involved in it.

(3) Despite subsection (2), the former [OPB employee or Board Member] may continue to advise or otherwise assist the Crown in connection with the particular proceeding, negotiation or other transaction.

[O. Reg. 381/07, s. 20]

#### ***Post-Service Restrictions***

*During the 12-month period after ceasing to be an employee or Board Member, the former OPB employee or Board Member must not, without the prior written approval of OPB's Ethics Executive, accept employment with, appointment to the board of, lobby on behalf of, or advise, any supplier to OPB or person, group or entity in which OPB has made an investment, if the OPB former employee or Board Member:*

- *had substantial involvement with that supplier or investee entity during the 12 months before that individual ceased to be an OPB employee or Board Member; or*
- *had, or had access to, confidential information during the 12 months before he or she ceased to be an OPB employee or Board Member which, if disclosed to that supplier or investee entity, could result in loss or damage to OPB or could give that supplier or investee entity an unfair commercial advantage.*

***Internal Disclosure of Personal Information***

*“Personal Information” means information held by or on behalf of OPB with respect to any individual including any member, retired member, former member or beneficiary of the Public Service Pension Plan or any employee or Board Member.*

*OPB recognizes that employees and Board Members are required to disclose Personal Information in order to carry out their duties to OPB. OPB employees and Board Members should use discretion regarding the disclosure of Personal Information to other OPB employees and Board Members. In general, such information should be discussed or disclosed internally only to the extent that it is required by other OPB employees or Board Members to discharge their respective duties to OPB.*

**PART III- POLITICAL ACTIVITY: RULES FOR OPB EMPLOYEES AND BOARD MEMBERS (PSOA sections 75-84 and 99-106)**

**Right to engage**

75. An [OPB employee or Board Member] is entitled to engage in political activity, subject to the restrictions set out under this Part.

[2006, c. 35, Sched. A, s. 75]

***Political Activity***

*OPB has received advice from Osler Hoskins Harcourt LLP on this issue, a copy of which can be obtained from Jennifer Burton, Corporate Secretary or Kim Norton, Director of Compliance.*

**Right to decline**

76. An [OPB employee or Board Member] is entitled to decline to engage in political activity.

[2006, c. 35, Sched. A, s. 76]

## **Prohibited political activities**

77. An [OPB employee or Board Member] 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 [OPB employee or Board Member] 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 [OPB employee or Board Member]'s position and work experience.

[2006, c. 35, Sched. A, s. 77]

## **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.

[2006, c. 35, Sched. A, s. 78]

## **Restricted political activities**

79. (1) Subject to subsection (2), unless an [OPB employee or Board Member] 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 [OPB employees or Board Members], 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 an [OPB employee or Board Member], 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 an [OPB employee or Board Member]; or
- (e) engage in political activity if doing so could conflict with,
  - (i) [not applicable],
  - (ii) the interests of OPB.

### **Exception**

(2) An [OPB employee or Board Member] 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.

[2006, c. 35, Sched. A, s. 79]

### **Application to engage in restricted political activity**

80. (1) An [OPB employee or Board Member] 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.
- (2) Subject to subsection (3), on receiving the application, the ethics executive,
- (a) shall grant the [OPB employee or Board Member] 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 [OPB employee or Board Member] 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.
- (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.

[2006, c. 35, Sched. A, s. 80]

### **Leave of absence for other political activity**

81. (1) An [OPB employee or Board Member] 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).
- (2) On receiving the application, the ethics executive,
- (a) shall grant the [OPB employee or Board Member] 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 [OPB employee or Board Member] 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.

[2006, c. 35, Sched. A, s. 81]

### **Length of leave**

82. If an unpaid leave of absence is granted under section 80 or 81, the following rules apply to the length of the leave:

1. A leave of absence granted to enable an [OPB employee or Board Member] to engage in political activity during an election period shall not begin earlier than the beginning of the election period and shall not end later than the end of the election period.
2. A leave of absence granted to enable an [OPB employee or Board Member] to engage in political activity other than during an election period shall begin and end in accordance with the regulations under clause 107 (1) (a) or, if no regulation applies in respect of the leave, on dates determined by the ethics executive to be appropriate in the circumstances.

[2006, c. 35, Sched. A, s. 82]

### **Continuous service**

83. The period of an unpaid leave granted under section 80 or 81 shall not be counted in determining the length of the [OPB employee or Board Member]'s service, but the service before and after the period of leave is deemed to be continuous for all purposes.

[2006, c. 35, Sched. A, s. 83]

### **Role of ethics executive**

#### **Questions for ethics executive**

84. (1) An [OPB employee or Board Member] or his or her supervisor may request that the [OPB employee or Board Member]'s ethics executive determine a question about the political activity rights that apply in respect of the [OPB employee or Board Member].

#### **Duty to notify**

(2) An [OPB employee or Board Member] shall notify his or her ethics executive if the [OPB employee or Board Member]'s political activities could conflict with,

- (a) [not applicable];
- (b) the interests of OPB.

#### **Inquiries**

(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 an [OPB employee or Board

Member] 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**

- (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 an [OPB employee or Board Member] has or is about to engage in political activity in contravention of this Part or a direction or regulation under this Part, give the [OPB employee or Board Member] directions, if any, that the ethics executive considers appropriate to address the matter.
- (5) If an ethics executive, other than the 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 Integrity Commissioner to be dealt with by the Commissioner under subsection (4).
- (6) Where an ethics executive has referred a matter to the Integrity 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**

- (7) An [OPB employee or Board Member] shall comply with a direction of the ethics executive or the Integrity Commissioner.

### **Contravention by government appointee**

- (8) If an ethics executive or the Integrity Commissioner makes a determination under subsection (4) that an [OPB Board Member] 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 of Treasury Board Secretariat regarding the matter.

[2006, c. 35, Sched. A, s. 84]

### **Penalty**

99. An [OPB employee or Board Member] 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.

[2006, c. 35, Sched. A, s. 99]

### **Effect of election, provincial or federal**

100. If an [OPB employee or Board Member] 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 an [OPB employee or Board Member] 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.

(2) An [OPB employee or Board Member] 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**

(3) The ethics executive shall determine that termination is warranted if, in the opinion of the ethics executive, the [OPB employee's or Board Member'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 an [OPB employee or Board Member] who works in a ministry, conflict with the interests of the Crown, or

(ii) in the case of an [OPB employee or Board Member] who works in a public body, conflict with the interests of the body.

### **Referral by ethics executive**

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

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

### **Notice to minister**

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

### **Reinstatement**

102. (1) This section does not apply to the following:

1. A former [OPB employee or Board Member] whose employment was terminated under section 100 or 101 and whose employment immediately before the termination was for a fixed term.

2. A former [Board Member] whose appointment was terminated under section 100 or 101.

(2) If a former [OPB employee or Board Member] ceases to be a member of the Parliament of Canada within five years after his or her employment is terminated by section 100, the former [OPB employee or Board Member] may apply to be reinstated.

(3) If a former [OPB employee or Board Member] ceases to be a member of a provincial Assembly within five years after his or her employment is terminated by section 100, the former [OPB employee or Board Member] may apply to be reinstated.

(4) If a former [OPB employee or Board Member] ceases to hold a municipal office within four years after his or her employment is terminated by section 101, the former [OPB employee or Board Member] may apply to be reinstated.

(5) An application for reinstatement must be made within 12 months after the applicant ceases to be a member of the Parliament of Canada, a member of a provincial Assembly or the holder of a municipal office, as the case may be.

(6) A former [OPB employee or Board Member] appointed by the Public Service Commission whose employment was terminated under section 100 or 101 may apply to the Commission for reinstatement.

(7) A former [OPB employee or Board Member] whose employment by a public body was terminated under section 100 or 101 may apply for reinstatement to the public body.

(8) An application under subsection (6) or (7) shall be granted if a position for which the applicant is qualified is vacant.

(9) Another person's right to be appointed or assigned to the vacant position by virtue of a collective agreement or under a directive issued under section 43 prevails over the right conferred by subsection (8).

### **Continuous service**

(10) The period during which the applicant's employment is terminated shall not be counted in determining the length of the public servant's service, but the service before and after the termination is deemed to be continuous for all purposes.

[2006, c. 35, Sched. A, s. 102]

### **Protection from reprisal**

#### **No reprisals**

103. (1) No person shall take a reprisal against an [OPB employee or Board Member] because he or she has,

- (a) engaged in political activity in accordance with this Part or the regulations; or
- (b) exercised his or her right under this Part to decline to engage in political activity.

(2) For the purposes of subsection (1), a reprisal is any measure taken against an [OPB employee or Board Member] that adversely affects his or her employment or appointment and includes but is not limited to,

- (a) ending or threatening to end an [OPB employee's or Board Member's] employment or appointment;
- (b) disciplining or suspending or threatening to discipline or suspend an [OPB employee or Board Member];
- (c) imposing or threatening to impose a penalty related to the employment or appointment of an [OPB employee or Board Member];
- (d) intimidating or coercing an [OPB employee or Board Member] in relation to his or her employment or appointment.

[2006, c. 35, Sched. A, s. 103]

### **Complaint about reprisal, discipline**

104. (1) An [OPB employee or Board Member] described in subsection (2), (3) or (4) may complain under this section that he or she,

- (a) has suffered a reprisal prohibited by section 103; or
- (b) is disciplined for a contravention of this Part or a direction or regulation under this Part.

### **Public servant subject to collective agreement**

(2) An [OPB employee] who is subject to the terms and conditions of a collective agreement may have the complaint dealt with by final and binding settlement by arbitration in accordance with the agreement.

### **Public servant not subject to collective agreement**

(3) A [Board Member] employed under Part III who is not subject to the terms and conditions of a collective agreement may file the complaint with the Public Service Grievance Board.

### **Other public servant**

(4) An [OPB employee or Board Member] employed by a public body who is not subject to the terms and conditions of a collective agreement may file the complaint with the Ontario Labour Relations Board.

### **Inquiry by Board**

(5) The Ontario Labour Relations Board may inquire into a complaint filed under subsection (4) and section 96 of the Labour Relations Act, 1995, except subsection (5), applies with necessary modifications as if such section, except subsection (5), is enacted in and forms part of this Act.

(6) On an inquiry by the Ontario Labour Relations Board into a complaint filed under subsection (4), sections 110, 111, 114 and 116 of the Labour Relations Act, 1995 apply with necessary modifications.

### **Exception**

(7) Despite anything in this section, a person who is subject to a rule or code of discipline under the Police Services Act shall have his or her complaint dealt with under that Act.

## Order

(8) If the Public Service Grievance Board, the Ontario Labour Relations Board or the Grievance Settlement Board determines, on the completion of an inquiry into a complaint made under subsection (2), (3) or (4), that a reprisal has been taken in contravention of subsection 103 (1), or that the employee should not be disciplined or that a lesser penalty would be more appropriate, the Board may make an order that it considers just and reasonable in the circumstances, directing the relevant ministry or public body or a person acting on behalf of the ministry or public body to do or refrain from doing anything in relation to the contravention.

(9) Without limiting the generality of subsection (8), an order under that subsection may direct the ministry or public body, or person acting on behalf of the ministry or public body, to do one or more of the following:

1. Cease doing an action that is the subject of a complaint under subsection (1).
2. Take steps to rectify harm related to a complaint under subsection (1).
3. Reinstate the employment of an [OPB employee or Board Member] whose employment was terminated.
4. Compensate the [OPB employee or Board Member] for loss of any remuneration, including benefits.

(10) A board may not make an order under subsection (8) for punitive damages or for costs.

[2006, c. 35, Sched. A, s. 104]

## Settlements may be filed with board

105. (1) A written and signed settlement of a complaint made under subsection 104 (1) may, if a party to the settlement believes that the settlement has been breached, be filed,

- (a) in the case of a settlement of a complaint by an [OPB employee] described in subsection 104 (2), if the collective agreement is governed by the Crown Employees Collective Bargaining Act, 1993, with the Grievance Settlement Board;
- (b) in the case of a settlement of a complaint by a [Board Member] described in subsection 104 (3), with the Public Service Grievance Board;
- (c) in the case of a settlement of a complaint by an [OPB employee or Board Member] described in subsection 104 (4), with the Ontario Labour Relations Board.

(2) Where a settlement of a complaint is filed with a board under this section, the board shall inquire into the matter and, if the board concludes that the settlement has been breached, the board may,

- (a) make an order requiring compliance with the settlement; or
- (b) make an order respecting the complaint that could have been made in respect of that complaint under subsection 104 (8).

(3) Subsections 104 (5) and (6) apply with necessary modifications to the Ontario Labour Relations Board acting under subsection (2).

[2006, c. 35, Sched. A, s. 105]

### **Order may be filed in court**

106. (1) An order of the Grievance Settlement Board, the Public Service Grievance Board or the Ontario Labour Relations Board under subsection 104 (8) or 105 (2) may be filed in the Superior Court of Justice.

(2) An order that is filed under subsection (1) is enforceable as if it were an order of the Superior Court of Justice.

(3) Section 129 of the Courts of Justice Act applies in respect of an order filed with the Superior Court of Justice under subsection (1) and, for the purpose, the date on which the order is filed is deemed to be the date of the order.

[2006, c. 35, Sched. A, s. 106]

## GLOSSARY OF TERMS

**“Acceptable Gifts”** means gifts, including discounts, rewards, prizes, entertainment, occasional meals, or other customary gestures of courtesy of a nominal value given in the ordinary course of business which are free of any conflict of interest and which comply with OPB’s General Guidelines on Gifts and Conflict of Interest.

**“Board”** means the Board of Directors of OPB.

**“Conflict of Interest”** means a situation where the interests of an Employee or Board Member or his or her Family member or friend conflict with or would reasonably be regarded as conflicting with the interests of OPB.

**“Confidential Information”** means all information not available to members of the public which is:

- (a) Inside Information; or
- (b) Personal Information;  
or which relates to:
- (c) OPB or any of its stakeholders; or
- (d) other individuals and businesses that is received in the course of OPB business.

**“Ethics Executive”** means:

- (a) for Employees other than the President and Chief Executive Officer of OPB, the Chief Executive Officer;
- (b) for Board Members, the Chair of the Board; and
- (c) for the Chair of the Board and the President and Chief Executive Officer of OPB, the Integrity Commissioner.

Your Ethics Executive may be different if you are currently, or were previously, employed in the Ontario government outside of OPB or are a former employee or Board Member of OPB. Refer to the PSOA for further information.

**“Employees”** means employees of OPB.

**“Family”** means a person’s spouse, children, parents and siblings.

**“Inside Information”** means all information not available to members of the public relating to the business and affairs of a Securities issuer that would significantly affect or would reasonably be expected to have a significant effect on the market price or value of the issuer’s Securities if it was generally known (e.g. plans involving mergers or acquisitions, significant changes in management, unannounced changes in earnings, stock splits, and changes in dividend policies).

**“OPB”** means the Ontario Pension Board.

**“Outside Business”** means commercial, educational, charitable, political, cultural, or civic activities not related to the business and affairs of OPB.

**“Personal Benefit”** means a gift, favour, or personal financial benefit, of any kind, including a Personal Financial Interest.

**“Personal Information”** means information held by or on behalf of OPB with respect to any individual including any member, pensioner or beneficiary of the Public Service Pension Plan or any Employee.

**“Public Servants”** includes employees and appointees of agencies, boards and commissions of the Province of Ontario, as specified in the PSOA.

**“Securities”** means securities of or any other type of interest in a corporation or other form of business organization.

**“Stakeholder”** includes any active, retired or former member, or other beneficiary of the Public Service Pension Plan, any bargaining agent that represents any members of the Plan, any employer participating in the Plan and the sponsor of the Plan.