

Responsibilities of the Directors of Canada Post Corporation

Standards of Conduct

INTRODUCTION

This document outlines the responsibilities of the Directors of the Canada Post Corporation (CPC) and constitutes the "Standards of Conduct" to be followed by Directors. It brings together in a single document, for the guidance of Directors, various provisions of the *Canada Post Corporation Act* (CPCA), the *Financial Administration Act* (FAA), the *Government Conflict of Interest and Post Employment Code for Public Office Holders*, the International Financial Reporting Standards ('IFRS') and other elements of good practice.

Depending on the circumstances and the context, these "Standards of Conduct" apply equally to the close family members of Directors (spouse, domestic partner, children or dependents, and any children or dependents of a spouse or domestic partner). The objective of this document is to facilitate the avoidance of any actual or potential conflict between a Director's direct and indirect private interest and his/her duties and responsibilities to CPC.

I. STATUTORY AND GENERAL RESPONSIBILITIES

Responsibility for the management of CPC is vested in the Board of Directors by virtue of Subsection 10(I) of the CPCA:

"10.(1) The Board shall direct and manage the affairs of the Corporation and may for such purposes exercise all the powers and perform all the duties of the Corporation."

The statutory norm that complete power of management is vested in the Directors of CPC is found in Section 109 of the FAA:

"109. Subject to this Part*, the Board of Directors of a Crown Corporation is responsible for the management of the businesses, activities and other affairs of the Corporation."

* (Part X applies to all Crown corporations.)

The provisions of Subsection 10(I) of the CPCA and of Section 109 of the FAA should, however, be read in the light of Section 22 of the CPCA and Sections 89 and 89.1 of the FAA.

Section 22 of the CPCA authorizes the Minister Responsible for CPC, and Section 89 of the FAA authorizes the Government, acting through the Governor in Council, to give directives to CPC following consultation with the CPC Board of Directors. While as a Crown Corporation, CPC is ultimately accountable, through the Minister responsible, to Parliament for the conduct of its affairs, it is provided in Section 89.1 of the FAA that the Directors are not accountable for any consequences arising from the implementation of directives given by the Minister or the Governor in Council.

Directors should participate actively, through the Board, in overseeing CPC's activities and establishing CPC's policies; such participation includes reviewing information and documentation furnished to them, attending meetings, contributing to the shaping of CPC's policies, forward plans and budgets and monitoring management performance or accomplishments in relation to such plans and budgets.

The Board having delegated the day-to-day management of the Corporation to the President/CEO through the By-laws, directors should not involve themselves in the daily operations of CPC and its subsidiaries; however, when requested by the Chairman or President/CEO, they should provide the requested assistance to CPC management.

Directors should, at all times, act within the powers conferred on them by the CPCA, and in the manner prescribed by the CPC By-laws and any resolution approved by the Board, and should act in the name and on behalf of CPC only where they have been requested and authorized to do so.

II. SPECIFIC RESPONSIBILITIES

1. General Standards of Conduct

Sections 115 and 116 of the FAA which apply to the Directors of all Crown Corporations set out the standards of care which must be observed by Directors in performing their duties, and prescribe disclosure rules they must follow in conflict of interest situations. These standards of care are, for all practical purposes, the same as the standards of care which apply to Directors of Corporations incorporated pursuant to the *Canada Business Corporations Act*.

Section 115 of the FAA reads as follows:

"115. (1) Every Director and every Officer of a Crown Corporation in exercising his/her powers and performing his/her duties shall

- (a) act honestly and in good faith with a view to the best interests of the Corporation; and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) Every Director and every officer of a parent Crown Corporation or of a wholly-owned subsidiary of a parent Crown Corporation shall comply with this Part, the regulations, the charter and by-laws of the Corporation or subsidiary and any directive given to the Corporation.

(3) A Director or Officer is not liable for a breach of his/her duty under subsection (1) or (2) if he/she relies in good faith on:

- (a) financial statements of the Crown Corporation represented to him/her by an Officer of the Corporation or in a written report of the Auditor of the Corporation as fairly reflecting the financial condition of the Corporation; or
- (b) a report of a lawyer, accountant, engineer, appraiser or other person whose position or profession lends credibility to a statement made by him/her."

Subsection 115(l) of the FAA constitutes a general formulation of the principles underlying the fiduciary relationship between a corporation and its directors, which principles have long been recognized by the courts in Canada. This document, a codification of the responsibilities of Directors, may be useful in the sense that it gives an indication to present and prospective Directors of the standards of comportment which would likely serve as benchmarks in assessing the facts in a particular situation where a Director may be held liable.

2. Responsibility of Honesty

i) Basic Rules

There are three basic rules underlying the responsibility of honesty:

- a) obviously a Director must not act fraudulently nor consent to a transaction which is not authorized by the CPCA or CPC's By-laws;
- b) a Director should not make any false representation to his/her fellow Directors with a view to influencing their decision in respect of a particular transaction; and
- c) a Director must be open in respect of any interest he/she or a close family member may have as a party to a proposed material contract with CPC.

ii) Duty to disclose - material contracts

Section 116 of the FAA imposes on a Director the obligation to disclose his/her direct or indirect interest

in a material contract or a proposed material contract with CPC, and prescribes a procedure for timely disclosure:

- a) a Director must disclose his/her interest in writing or request to have entered in the minutes of a meeting of the Board the nature and extent of that interest;
- b) disclosure should be made at the meeting at which the contract or the proposed contract is first considered or at the first meeting of the Board after he/she becomes interested;
- c) a Director shall not vote on any resolution to approve the contract unless it relates to the terms of his/her own employment with CPC; and
- d) a general notice to the Board by a Director declaring that he/she is a Director or Officer of or has a material interest in a person and is to be regarded as interested in any contract made with that person, is a sufficient declaration of his/her interest for the purposes of Section 116. A Director is required to disclose all contracts that, to his/her knowledge, are in place between the Corporation and any business or organization of which he/she is a Director or Officer or in which he/she has a direct or indirect material interest.

iii) Duty to disclose – Material Interest in another entity

A Director may hold a directorship, be an officer, have a controlling interest (as a shareholder, partner or otherwise and be it alone or jointly, direct or indirect) or have another material interest in an entity, including a business, organization, corporation or person, other than CPC. A Director:

- a) who holds such a material interest in such other entity shall disclose the same in writing to the Board forthwith upon his/her appointment and annually, afterward; and
- b) who acquires such a material interest in such other entity after his/her appointment to the Board, he/she shall disclose the same in writing to the Board forthwith after he/she acquires such a material interest.

The form in Annex A, when completed and forwarded to CPC, constitutes the prescribed disclosure for subparagraphs (ii) and (iii).

iv) Government of Canada's Conflict of Interest Code

Part I of Government of Canada *Conflict of Interest and Post-Employment Code for Public Office Holders*, lists 12 Principles that should govern the conduct of public office holders, including Directors of CPC. These principles may be termed as guidelines to assist Directors in exercising their powers and in discharging their responsibilities honestly and in good faith, with a view to the best interests of CPC. The 12 Principles are set out in Annex B.

The responsibility for preventing or avoiding apparent, potential or real conflicts of interest rests with each Director.

To assist the Directors in making decisions regarding political involvement, examples and guidelines are set out in Annex C.

If a Director fails to give a specific or general notice of his/her interest in a proposed material contract with CPC, the Crown or CPC may apply to a court to set aside the contract on such terms as it thinks fit.

v) Secretary's Role

The Secretary shall not provide any documentation related to a contract or other interests with a corporation to a director that has disclosed an interest in that corporation.

The Secretary shall enter all general and specific notices of interest, as the case may be, in the minutes of the proceedings of the Board.

3. Responsibility of Loyalty & Confidentiality

A Director's personal interest, or the sole interest of the shareholder, should not be allowed to interfere with that Director's responsibility of loyalty to CPC. Each proposal submitted for the consideration of the Board should be considered essentially on its merits and with a view to the best interests of CPC.

Directors should communicate to the Chairman any information that may be necessary or useful to CPC management in the conduct of CPC's business.

Directors should not communicate, or allow to be communicated to any person not entitled thereto any information related to the business and affairs of CPC which has not been made available, nor allow any such person to have access to or inspect any books or documents relating to the business and affairs of CPC made available to them as Directors or belonging to or in the possession of CPC.

Communications with Ministers or government officials in respect of CPC's business and affairs are the prerogative of the Chairman and the President/CEO and accordingly Directors should not initiate such communications unless requested to do so by the Chairman.

4. Responsibility of Care and Prudence

Generally, a Director is expected to follow the "business judgment rule" which requires the Director to act at all times in accordance with what the Director believes to be in the best interests of CPC, relying on past experience, skill and applying plain common sense. Acting prudently implies acting with care and caution in trying to foresee probable consequences of his/her decisions, with a view to the best interests of CPC. In addition, decisions must be based on the Director's informed and reasoned business judgment that is not vitiated by any conflict of interest.

5. Responsibility of Diligence

A Director must familiarize himself/herself with the policies, businesses and affairs of CPC so that he/she may attend meetings and be prepared to express his/her point of view on any matter put forward for consideration by the Board. In this respect, Section 115(3) of the FAA allows a Director to rely in good faith on financial statements represented to him/her by an officer of CPC or in a report of the Auditor as fairly reflecting the financial condition of CPC, or on a report of a lawyer, accountant, engineer, appraiser or other person whose position or profession lends credibility to a statement made by such person.

In connection with this responsibility of diligence, Directors should remember that Sections 111 and 112 of the FAA stipulate that a director of a Crown Corporation is deemed to have consented to any resolution passed or action taken at a meeting, unless (i) in the case of a Director who is present at the meeting, he/she requests that written notice of his/her dissent be entered in the minutes of the meeting, gives notice of his/her dissent to the Secretary before the meeting is adjourned or sends his/her written dissent immediately after the meeting (provided he/she did not vote in favour or consent to the resolution) and (ii) in the case of a Director who is not present at the meeting, he/she causes written notice of his/her dissent to be placed with the minutes of the meeting or he/she sends written notice of his/her dissent to the head office of the Corporation, within seven days after he/she becomes aware of the resolution or action taken at the meeting.

6. Responsibility of Skill

A Director must exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, having regard to that Director's knowledge and experience.

A determination of the appropriate exercise of this responsibility should include consideration of the following circumstances:

- a) the qualifications of the Director,
- b) the information available to the Director, and
- c) the time available for making the decision.

ANNEX A
CANADA POST CORPORATION - GENERAL DECLARATION OF INTEREST



To: The Board of Directors of Canada Post Corporation

I, the undersigned, hereby declare for the purpose of subsection 116(6) of the FAA and International Financial Reporting Standards that:

1) that I am a director or officer of, or have a direct or indirect material interest in, the following businesses or organizations (including, as the case may be, corporations, partnerships, or sole proprietorships):

BUSINESS(ES) OR ORGANIZATION(S)	NATURE OF INTEREST [Director, officer or controlling¹ interest (shareholder, partner or otherwise be it alone or jointly, and direct or indirect)]	DATES [To/From]
1 _____		
2 _____		
3 _____		
4 _____		
5 _____		

and that I am to be regarded as interested in any contract made with any of the foregoing.

2) to my knowledge, the following contracts are in place between Canada Post Corporation and/or its subsidiaries and the businesses and organizations listed in paragraph 1 above:

NATURE OF CONTRACT	BUSINESS(ES) OR ORGANIZATION(S)
1. _____ —	
2. _____ —	

¹ **Control** refers to the ability to direct the financial and operating policies of an entity so as to obtain benefits from its activities (typically through greater than 50% ownership or ability to elect more than 50% of the entity's directors) and **joint control** refers to being able to do so through an agreement with another person or persons.

3. _____

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4. _____

—

5. _____

—

3) to my knowledge, a close family member [spouse, domestic partner, child or dependant and a child or dependent of a spouse or domestic partner is a director or officer of, or have a direct or indirect material interest in, the following businesses or organizations (including, as the case may be, corporations, partnerships, or sole proprietorships)]:

INDIVIDUAL'S NAME AND RELATIONSHIP²	BUSINESS(ES) OR ORGANIZATION(S)	NATURE OF INTEREST [Director, officer or controlling interest (shareholder, partner or otherwise be it alone or jointly, and direct or indirect)]	DATES [To/From]
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1. _____

2. _____

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3. _____

—

4. _____

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5. _____

6. _____

—

4) should my personal situation, or should I gain new knowledge regarding the situation of my close family members, with regard to subsection 116(6) change before the yearly renewal of this Declaration, I will notify the Chairman of the Board or, in his/her absence, the Secretary of the Board, in the shortest delay possible.

5) in the event that I gain new knowledge that a close family member is a party to a material contract or a proposed material contract with Canada Post Corporation and/or its subsidiaries, or is a director or officer of, or has a material interest in, any business or organization which is

²



From anywhere... to anyone

a party to a material contract or a proposed material contract with Canada Post Corporation and/or its subsidiaries and there is a change of some sort, I will notify the Chairman of the Board or, in his/her absence, the Secretary of the Board, in the shortest delay possible.

Name

Date

(Forms completed and signed by Directors are of a personal nature and cannot be released to the public)

ANNEX B
GOVERNMENT OF CANADA
CONFLICT OF INTEREST AND POST-EMPLOYMENT CODE FOR
PUBLIC OFFICE HOLDERS
PRINCIPLES

Short Title

1. This Code may be cited as the Conflict of Interest Code.

Part I

Object and Principles

Object

2. The object of this Code is to enhance public confidence in the integrity of public office holders and the decision-making process in government
 - a) while encouraging experienced and competent persons to seek and accept public office;
 - b) while facilitating interchange between the private and public sector;
 - c) by establishing clear rules of conduct respecting conflict of interest for, and post-employment practices applicable to all public office holders; and
 - d) by minimizing the possibility of conflicts arising between the private interests and public duties of public office holders and providing for the resolution of such conflicts in the public interest should they arise.

Principles

3. Every public office holder shall conform to the following principles:

Ethical Standards

- (1) Public office holders shall act with honesty and uphold the highest ethical standards so that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced.

Public Scrutiny

- (2) Public office holders have an obligation to perform their official duties and arrange their private affairs in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law.

Decision-Making

- (3) Public office holders, in fulfilling their official duties and responsibilities, shall make decisions in the public interest and with regard to the merits of each case.
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Private Interests

- (4) Public office holders shall not have private interests, other than those permitted pursuant to this Code, that would be affected particularly or significantly by government actions in which they participate.

Public Interest

- (5) On appointment to office, and thereafter, public office holders shall arrange their private affairs in a manner that will prevent real, potential or apparent conflicts of interest from arising but if such a conflict does arise between the private interests of a public office holder and the official duties and responsibilities of that public office holder, the conflict shall be resolved in favour of the public interest.

Gifts, Hospitality and Benefits

- (6) Public office holders and their families shall not solicit or accept transfers of economic benefit, other than incidental gifts, customary hospitality, or other benefits of nominal value, unless the transfer is pursuant to an enforceable contract or property right of the public office holder.

Preferential Treatment

- (7) Public office holders shall not use their position of office to assist private entities or persons where this would result in preferential treatment to any person.

Insider Information

- (8) Public office holders shall not knowingly take advantage of, or benefit from, information that is obtained in the course of their official duties and responsibilities and that is not generally available to the public.

Government Property

- (9) Public office holders shall not directly or indirectly use, or allow the use of, government property of any kind, including property leased to the government, for anything other than officially approved activities.

Post-Employment

- (10) Public office holders shall not act, after they leave public office, in such a manner as to take improper advantage of their previous office.

Fundraising

- (11) Public office holders are not personally to solicit funds from any person, group, organization or corporation where such fundraising could place public office holders in a position of obligation incompatible with their public duties.

Respect for Administration of the Code

- (12) Public office holders shall respect the administration of this Code, and shall exercise appropriate restraint when commenting upon matters under review by the Ethics Commissioner.

ANNEX C

PUBLIC OFFICE HOLDERS AND POLITICAL ACTIVITY *

Limitations on outside activities:

- A public office holder (including the Directors of Crown Corporations) should not participate in a political activity where it may reasonably be seen to be incompatible with the public office holder's duty, or reasonably be seen to impair his or her ability to discharge his or her public duties in a politically impartial fashion, or would cast doubt on the integrity of the office.

To determine the appropriateness of a given activity, public office holders should be guided by the following factors:

- Nature of organization;
- Nature of public office holder's duties;
- Nature of contemplated political activity; and
- Duty of loyalty to Government of Canada.

The guidelines establish clear prohibition for the Chair or the Chief Executive Officer of a Crown Corporation who shall not engage in any political activities other than voting in an election.

Permissible activities for part-time GiC appointees (other than the Chair of a Crown corporation) include:

- Contributing funds, within the law;
- Membership in a political party;
- Seeking nomination (with leave of absence)
- Fundraising (with leave of absence); and
- Campaigning or managing a campaign (with leave of absence).

* Adapted from a presentation by the Director of Appointments, Senior Personal and Public Service Renewal, Office of the Privy Council to the Crown Corporation Corporate Secretaries on April 27, 2010.