

Directors' Political Activities Policy

VIA Rail Canada Inc.

IN BRIEF:

- **This policy applies to:** *All present Directors of VIA Rail Canada Inc. (hereinafter "VIA Rail").*
- **Under the authority of:** *Corporate Secretariat*
- **Summary:** *This policy is intended to provide guidance for Directors in the evaluation of the appropriateness of their involvement in political activities while holding a position of influence within the Corporation, in accordance with the Privy Council Office Guidelines.*
- **In place since:** *2011/03/25*
- **Revised on:** *2019/05/28*

COMMITMENT

The Privy Council Office provides Guidelines for the Political Activities of Public Office Holders (the "**PCO Guidelines**"). In accordance with the PCO Guidelines, a VIA Rail Director (a "**Director**") may participate in federal political activities as long as these activities do not provide reasonable grounds for the public to perceive them as incompatible with his/her fiduciary duty as a Director, or otherwise see them as impairing his/her ability to act as a Director in a politically impartial fashion, or do not cast doubt on the integrity or impartiality of his/her directorship (whether during an election campaign or not).

Clearly, the PCO Guidelines wording leaves room for interpretation. Moreover, their interpretation is subjective in nature and highly dependent on the factual context of the political activities contemplated.

GOAL AND OBJECTIVES

This policy is provided strictly to assist Directors in evaluating the appropriateness of their political activities, if any. Inquiries about the PCO Guidelines and their interpretation in the context of a specific activity should be addressed to the Privy Council Office.

However, if there is a doubt as to the conformity of a political activity to be undertaken by a Director, it is recommended to refrain from such activity.

At any time, a Director may request a leave of absence to undertake any and all political activities.

SCOPE / APPLICATION

THE PCO GUIDELINES

The Privy Council Office has issued a document entitled "*Open and Accountable Government - 2015*"¹. Its Annex A entitled "*Ethical and Political Activity Guidelines for Public Office Holders*" ("**PCO Guidelines**") states the following:

"Public office holders must also ensure that their political activities are consistent with the obligation to discharge their public duties in a non-partisan manner, so as to ensure that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced. (...)

A public office holder 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 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 or impartiality of the office. (...)

Every public office holder is under the obligation to consider these Guidelines before embarking on any political activity and, where there is any doubt, shall refrain from the activity in question."

The definition of "Public office holders" notably includes Governor-in-Council appointees such as the Chairperson of the Board of Directors, the President & Chief Executive Officer and the members of the Board of Directors of VIA Rail.

GUIDING PRINCIPLES

The PCO Guidelines offer various guiding factors to be considered when evaluating the appropriateness of a political activity. They are as follows:

1. The nature of the organization, including whether it is quasi-judicial in character, in which case a much more stringent standard is required. VIA Rail is a commercial corporation expected to act as most Canadian businesses, albeit government-owned and providing a public service, thus the applicable standard should be less stringent;
2. The nature of the Director's duties, including:

¹ Document available at the following address: [https://pm.gc.ca/eng/news/2015/11/27/open-and-accountable-government#Ethical and Political Guidelines](https://pm.gc.ca/eng/news/2015/11/27/open-and-accountable-government#Ethical%20and%20Political%20Guidelines)

- the level of authority within the organization and the level of influence over others. The Chairperson of the Board of Directors and the President & Chief Executive Officer hold both formal and informal authority over VIA Rail's business. Thus, they are held to a higher standard of conduct. It is not the case for other Directors. Accordingly, for Directors other than the Chairperson of the Board of Directors and the President and Chief Executive Officer, the standard may be less stringent;
 - the degree and type of discretion vested in the Director. VIA Rail Directors are subject to the same fiduciary duties towards the Corporation as any directors under the *Canadian Business Corporations Act*, subject to formal directives from the Governor-in-Council, given to VIA Rail, on the recommendation of the Minister, pursuant to the *Financial Administration Act*. Accordingly, this factor may be less stringent;
 - the type and level of involvement in the development of policy. VIA Rail Directors develop corporate strategy which may, from time to time, lead to the formulation of public policy recommendations to the Government of Canada;
 - the relationship with or connection between the public duties and the contemplated political activity. This factor may be most stringent in situations involving matters of transportation policy or candidates with authority on VIA Rail matters;
 - whether the duties are full-time or part-time. VIA Rail Directors are part-time;
 - the visibility and profile of the director's duties. The visibility and profile of VIA Rail Directors' duties are limited, if any, except for the Chairperson of the Board of Directors and the President & Chief Executive Officer. Thus it may be a less stringent factor for Directors; and
 - the impact of the director's duties on the public. The impact of VIA Rail Directors' duties is mostly on the Corporation's affairs and indirectly, and in a more limited fashion, on the public. Thus, this factor may be less stringent on VIA Rail Directors;
3. The nature of the contemplated political activity, including its profile or visibility and its active or passive character. This factor can only be determined on a case-by-case basis; and
 4. The duty of loyalty to the Government of Canada. VIA Rail Directors are subject to the same fiduciary duties towards the Corporation as any directors under the *Canadian Business Corporations Act*, subject to directives of the Governor in Council,

given to VIA Rail, on the recommendation of the Minister, pursuant to the *Financial Administration Act*.

ELECTION CAMPAIGN OR NOT

The PCO Guidelines make no distinction between political activities contemplated during an election campaign or outside of the writ period.

Note: VIA Rail President & Chief Executive Officer is subject to the provisions of the *Public Service Employment Act* dealing with political activities. Accordingly, he/she must limit his/her political activities solely to voting.

CONSEQUENCES OF NON-COMPLIANCE

As far as consequences for non-compliance are concerned, compliance with the PCO Guidelines is a term and condition of appointment and, before appointment; a director certifies that he/she will comply with the PCO Guidelines.

EXAMPLES

In light of the above, here are examples of political activities that may be found to be compliant with the PCO Guidelines:

1. Contribute money to political parties or candidates within the legal limits;
2. Have a membership in a political party;
3. Personally display campaign material or attend partisan or social events sponsored by one particular political party, a Minister, a Member of Parliament or a Senator. ***HOWEVER, a Director cannot express partisan views in a public setting, discuss the affairs of VIA Rail or, attend political activities that promote or support the candidacy of the Ministers of Transport or other politicians involved in the affairs of VIA Rail;*** and
4. ***Unless he/she takes a prior leave of absence,*** Directors may NOT seek nomination to run as a candidate or be a candidate in the election, conduct fundraising activities for political purposes and manage a political campaign or campaign personally on behalf of a candidate.

WHERE TO SEEK CLARIFICATION

Should the Directors wish to discuss this policy, please contact the Chairperson of the Board of Directors or the Corporate Secretary.