

2017 Bill 27

Third Session, 29th Legislature, 66 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 27

CONFLICTS OF INTEREST AMENDMENT ACT, 2017

THE PRESIDENT OF TREASURY BOARD, MINISTER OF FINANCE

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 27

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2017

CONFLICTS OF INTEREST AMENDMENT ACT, 2017

(Assented to , 2017)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Conflicts of Interest Act

Amends RSA 2000 cC-23

1(1) The *Conflicts of Interest Act* is amended by this section.

(2) The preamble is amended by striking out “and” after the 5th recital and adding the following after the 5th recital:

WHEREAS the senior officials, members and employees of public agencies are expected to act with integrity and impartiality and must avoid conduct that violates the public trust or creates a conflict of interest or apparent conflict of interest; and

Explanatory Notes

Conflicts of Interest Act

1(1) Amends chapter C-23 of the Revised Statutes of Alberta 2000.

(2) The preamble presently reads:

WHEREAS the ethical conduct of elected officials is expected in democracies;

WHEREAS Members of the Legislative Assembly can serve Albertans most effectively if they come from a spectrum of occupations and continue to participate actively in the community;

WHEREAS Members of the Legislative Assembly are expected to perform their duties of office and arrange their private affairs in a manner that promotes public confidence and trust in the integrity of each Member, that maintains the Assembly's dignity and that justifies the respect in which society holds the Assembly and its Members;

WHEREAS Members of the Legislative Assembly, in reconciling their duties of office and their private interests, are expected to act with integrity and impartiality;

(3) Section 1 is amended

- (a) in subsection (1)(a) by striking out** “under section 20(4) or section 23.5(4)” **and substituting** “under section 20(4), 23.5(4) or 23.93(4)”;
- (b) in subsection (1)(b.1) by striking out** “under section 20(5) or section 23.5(5)” **and substituting** “under section 20(5), 23.5(5) or 23.93(5)”;
- (c) by repealing subsection (1)(l) and substituting the following:**
 - (l) “spouse” means the spouse of a married person but does not include a spouse who is living separate and apart from the person if the person and spouse have separated pursuant to a written separation agreement or if their support obligations and family property have been dealt with by a court order;
- (d) in subsection (5.1) by striking out** “For the purposes of this Act” **and substituting** “For the purposes of this Act, except where the context indicates otherwise in Part 4.3”.

WHEREAS Ministers and their staff must avoid conduct that violates the public trust or creates an appearance of impropriety; and

WHEREAS the adoption of clear and consistent conflict of interest rules, post-employment restrictions and reporting duties will promote these aims;

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

(3) Section 1 presently reads in part:

1(1) In this Act,

- (a) “blind trust” means a blind trust approved under section 20(4) or section 23.5(4), as appropriate;*
- (b.1) “investment arrangement” means an investment arrangement approved under section 20(5) or section 23.5(5), as appropriate;*
- (l) “spouse” means the spouse of a married person who is a Member but does not include a spouse who is living separate and apart from the Member if the Member and spouse have separated pursuant to a written separation agreement or if their support obligations and family property have been dealt with by a court order;*

(5.1) For the purposes of this Act, a corporation is a subsidiary of another corporation if

- (a) securities of the corporation to which are attached more than 50% of the votes that may be cast to elect directors of the corporation are held, otherwise than by way of security only, directly or indirectly, whether through one or more subsidiaries or otherwise, by or for the benefit of the other corporation, and*
- (b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation.*

(4) The following is added after section 23.9:

**Part 4.3
Senior Officials, Members
and Employees of
Public Agencies**

Interpretation and Application

Interpretation

23.92(1) In this Part,

- (a) “chair” means a person appointed to the position of chair of the board of directors, or the highest ranking position on a governing body of the public agency but does not include an employee of a department;
- (b) “chief executive officer” means the highest ranking executive of a public agency who has primary responsibility for overseeing the day-to-day operations of the public agency but does not include an employee of a department;
- (c) “department” means
 - (i) a department of the Government or of the public service of Alberta established under the *Government Organization Act*,
 - (ii) a part of the public service of Alberta that is not part of a department referred to in subclause (i) and that is designated as a department by the Lieutenant Governor in Council for the purposes of the *Public Service Act*, and
 - (iii) any other part of the public service of Alberta, but does not include an Office of the Legislature;
- (d) “designated senior official” means a designated senior official within the meaning of section 23.921(4) and (5);

(4) Adds Part 4.3, Senior Officials and Employees of Public Agencies.

- (e) “former designated senior official” means a designated senior official who has ceased to hold a position referred to in clause (d);
- (f) “member” means
 - (i) in respect of a public agency that is a corporation, a member of the public agency or of its board, council or other governing body, and
 - (ii) in respect of a public agency that is an unincorporated body, a member of the public agency;
- (g) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (h) “Office of the Legislature” means
 - (i) the Legislative Assembly Office,
 - (ii) the Office of the Auditor General,
 - (iii) the Office of the Ombudsman,
 - (iv) the Office of the Chief Electoral Officer,
 - (v) the Office of the Ethics Commissioner,
 - (vi) the Office of the Information and Privacy Commissioner,
 - (vii) the Office of the Child and Youth Advocate, and
 - (viii) the Office of the Public Interest Commissioner;
- (i) “public agency” means a public agency within the meaning of section 23.921(1) and (2);
- (j) “responsible Minister” means, in respect of a public agency,
 - (i) the Minister to whom the public agency reports, or
 - (ii) if the public agency is not otherwise required to report to a Minister, the Minister determined under

section 16 of the *Government Organization Act* as the Minister responsible for the *Alberta Public Agencies Governance Act*;

(k) “senior official” means a senior official within the meaning of section 23.921(3) and (5).

(2) In this Part, a reference to a “code of conduct” includes a bylaw, policy, ethical guideline or any documented guidance, however named, that is intended to govern all or any part of the subject-matter of section 23.922.

(3) In this Part, a reference to a section in another Part of this Act that applies to or in respect of a Member or a Minister as defined in section 1(1)(d) applies, with any necessary modifications, for the purposes of this Part.

Application

23.921(1) Except as set out under this section, this Part applies in respect of the following public agencies:

- (a) a public agency to which the *Alberta Public Agencies Governance Act* applies and the subsidiaries of the public agency;
- (b) Covenant Health and the subsidiaries of Covenant Health;
- (c) regional health authorities and subsidiary health corporations under the *Regional Health Authorities Act*;
- (d) any other body, whether incorporated or not, that is identified by the Lieutenant Governor in Council, by order, as a public agency for the purposes of this Part.

(2) This Part does not apply in respect of

- (a) an Office of the Legislature,
- (b) the Advocate for Persons with Disabilities appointed under the *Advocate for Persons with Disabilities Act*,
- (c) the Health Advocate appointed under the *Alberta Health Act*,

- (d) the Mental Health Patient Advocate appointed under the *Mental Health Act*,
- (e) the medical panels commissioner and medical panels referred to in the *Workers' Compensation Act*,
- (f) the Property Rights Advocate appointed under the *Property Rights Advocate Act*,
- (g) the Public Trustee appointed under the *Public Trustee Act*,
- (h) the corporations referred to in subsection 2.2(4) of the *Funds and Agencies Exemption Regulation* (AR 128/2002), and
- (i) any part or all of any other body, whether incorporated or not, that is identified by the Lieutenant Governor in Council, by order, as an excluded public agency for the purposes of this Part.

(3) The following are senior officials for the purposes of this Part:

- (a) the chair of a public agency;
- (b) the chief executive officer of a public agency;
- (c) a person or class of persons holding a public agency position that is identified by the Lieutenant Governor in Council, by order, as a senior official position for the purposes of this Part.

(4) For the purposes of this Part, the Lieutenant Governor in Council may, by order, designate in accordance with this section,

- (a) the public agencies whose senior officials may be designated under clause (b), and
- (b) the senior official positions of a public agency referred to in clause (a) that have the obligations of a designated senior official for the purposes of this Part.

- (5) The Lieutenant Governor in Council may, by order, exempt
- (a) a public agency, a public agency position or a class of public agency positions from this Part or from an obligation of senior officials set out in this Part, and
 - (b) a designated senior official position or a class of designated senior official positions from this Part or any provision of this Part.

Codes of Conduct

Codes of conduct

23.922(1) Every public agency shall in respect of its members, employees, senior officials and designated senior officials, if any,

- (a) prepare and submit to the Ethics Commissioner within 4 months of the coming into force of this section one or more codes of conduct that meet the requirements set out in subsection (2) and the regulations, and
 - (b) if the Ethics Commissioner is satisfied that a code of conduct meets the requirements set out in subsection (2) and the regulations,
 - (i) make the code of conduct available to the public, and
 - (ii) implement the code of conduct on or before the expiration of the period of notice referred to in subsection (2)(g).
- (2) A code of conduct referred to in subsection (1) must
- (a) require persons subject to the code of conduct to conduct themselves impartially in carrying out their duties,
 - (b) prohibit the persons subject to the code of conduct from acting in self-interest or furthering their private interests by virtue of their position or through the carrying out of their duties and, in the case of a code of conduct respecting senior officials or designated senior officials, include all the subject-matter of section 23.925, and any additional detail regarding the subject-matter of section

23.925 that is appropriate to the particular agency and positions subject to the code of conduct,

- (c) require the persons subject to the code of conduct to appropriately and adequately disclose real and apparent conflicts of interest,
- (d) include restrictions to avoid a conflict of interest or apparent conflict of interest due to the acceptance of gifts by the persons subject to the code of conduct and establish maximum cash values of gifts, including a maximum cash value of gifts within the year from a single source, that may be accepted by the persons subject to the code of conduct,
- (e) include
 - (i) restrictions to avoid a conflict of interest or apparent conflict of interest due to a person's involvement in an appointment, business, undertaking or employment, other than the appointment or employment that is subject to the code of conduct or, in the case of a code of conduct respecting senior officials or designated senior officials, include all the subject-matter of section 23.926, and any additional detail regarding the subject-matter of section 23.926 that is appropriate to the particular agency and positions subject to the code of conduct, and
 - (ii) a process by which concurrent appointments or employment may be reviewed and, if consistent with the restrictions referred to in subclause (i), approved in writing,
- (f) indicate the public agency's process for receiving and investigating complaints alleging a breach of the code of conduct and for responding to a finding that the code of conduct has been breached,
- (g) set out the period of notice, from the date on which the code of conduct is made public until the date on or before which the code of conduct will be implemented, and

- (h) conform to any requirement and include any matter specified in the regulations.

Ethics Commissioner's powers and process re codes

23.923(1) The Ethics Commissioner may, as the Ethics Commissioner considers to be appropriate, request that a chief executive officer, a chair or the responsible Minister provide to the Ethics Commissioner a copy of a code of conduct referred to in section 23.922.

(2) A public agency wishing to amend or replace a code of conduct referred to in section 23.922 shall

- (a) prepare and submit the amendment or the replacement code of conduct to the Ethics Commissioner, setting out the period of notice from the date on which the amendment or replacement is made public until the date on or before which the amendment or the replacement will be implemented, and
- (b) if the Ethics Commissioner is satisfied that the amendment or the replacement code of conduct meets the requirements of this Part and the regulations,
 - (i) make the amended or revised code of conduct available to the public, and
 - (ii) implement the amended or revised code of conduct on or before the expiration of the period of notice referred to in subsection (2)(a).

(3) Following the submission of a code of conduct to the Ethics Commissioner under section 23.922(1)(a) or this section,

- (a) the Ethics Commissioner shall review the code of conduct to determine compliance with this Act and the regulations, and
- (b) the Ethics Commissioner shall provide a report to the responsible Minister and to the chief executive officer or, if no chief executive officer exists, to the chair of the public agency, indicating

- (i) that the Ethics Commissioner is satisfied that the applicable requirements of the Act and regulations have been met, or
- (ii) that the Ethics Commissioner is not satisfied that the applicable requirements of the Act and regulations have been met and setting out the Ethics Commissioner's findings together with the substantive or process recommendations, if any, that the Ethics Commissioner considers to be appropriate.

(4) A report referred to in subsection (3)(b)(ii) may, if the Ethics Commissioner considers appropriate to do so, vary the 4-month deadline for submission of codes of conduct set out in section 23.922(1)(a).

(5) The Ethics Commissioner's initial review of a code or codes of conduct referred to in section 23.922(1) must be complete on or before March 31, 2019 and a public agency whose code or codes have not been published on or before April 30, 2019 is in breach of this Part.

(6) If the Ethics Commissioner receives no response to a request under subsection (1) or determines that no code of conduct has been submitted, published or implemented in respect of any members, employees, senior officials or designated senior officials of a public agency, the Ethics Commissioner shall provide a report to the responsible Minister and to the chief executive officer or, if no chief executive officer exists or responds, to the chair, setting out the Ethics Commissioner's findings together with the substantive or process recommendations, if any, that the Ethics Commissioner considers to be appropriate.

(7) In a report pursuant to subsection (6), the Ethics Commissioner may request a reply, within any reasonable period of time that the Ethics Commissioner specifies, setting out the steps that the public agency has taken or proposes to take in response to the Ethics Commissioner's findings and recommendations, if any.

(8) If the Ethics Commissioner believes that a public agency has failed to comply with a requirement set out in section 23.922 or the regulations, or with a recommendation or

deadline referred to in this section, the Ethics Commissioner's annual report may identify the public agency and set out the Ethics Commissioner's findings and recommendations, if any, under subsection (6).

Existing codes of conduct

23.924 To the extent that it is consistent with this Part, a code of conduct referred to in the terms of employment of an employee, or that otherwise applies to a member, employee, senior official or designated senior official to whom a code referred to in section 23.922(1) will apply when it is implemented, applies until it is replaced in accordance with this Part.

Senior Officials' Statutory Obligations

Decisions furthering private interests

23.925(1) A senior official breaches this Part if he or she takes part in a decision in the course of carrying out his or her office or powers knowing that the decision might further a private interest of the senior official, a person directly associated with the senior official or the senior official's minor or adult child.

(2) A senior official breaches this Part if the senior official uses his or her office or powers to influence or to seek to influence a decision to be made by or on behalf of the Crown or a public agency to further a private interest of the senior official, a person directly associated with the senior official or the senior official's minor child or to improperly further any other person's private interest.

(3) A senior official breaches this Part if he or she uses or communicates information not available to the general public that was gained by the senior official in the course of carrying out his or her office or powers to further or seek to further a private interest of the senior official or any other person's private interest.

(4) A senior official breaches this Part if the senior official fails to appropriately or adequately disclose a real or apparent conflict of interest.

Concurrent employment

23.926(1) If any of the following senior officials is involved in any appointment, business, undertaking or employment, including self-employment, other than the appointment, business, undertaking or employment that is subject to this Act, that senior official breaches this Part:

- (a) a chief executive officer;
- (b) a chair whose position has been designated for the purposes of section 23.921(4)(b);
- (c) a person holding a position identified under section 23.921(3)(c), if that position has been designated for the purposes of section 23.921(4)(b).

(2) A person referred to in subsection (1) may apply to the Ethics Commissioner for approval in writing to engage in an appointment, business, undertaking or employment, including self-employment, other than the appointment or employment that is subject to this Act.

(3) The Ethics Commissioner may provide approval in writing on any conditions that the Ethics Commissioner considers to be appropriate if the Ethics Commissioner is satisfied that the appointment, business, undertaking or employment proposed in an application under subsection (2) will not constitute a real or apparent conflict of interest.

(4) Subsection (1) does not apply if the Ethics Commissioner approves the application referred to in subsection (2) in writing and the person referred to in subsection (1) complies with the conditions, if any, that the Ethics Commissioner has included in the approval.

Designated Senior Officials' Statutory Obligations

Restriction on holdings

23.93(1) A designated senior official breaches this Part if he or she, after the expiration of the relevant period referred to in subsection (7), owns or has a beneficial interest in publicly-traded securities.

- (2)** Subsection (1) does not apply if
- (a) the publicly-traded securities are held in a blind trust approved under subsection (4) or in an investment arrangement approved under subsection (5),
 - (b) prior to the expiration of the relevant period referred to in subsection (7), the designated senior official applies to the Ethics Commissioner for approval to retain ownership of or a beneficial interest in the publicly-traded securities and either obtains the Ethics Commissioner's approval or, if the approval is refused, takes any steps that the Ethics Commissioner directs with respect to the disposition of the ownership or beneficial interest, or
 - (c) after the expiration of the relevant period referred to in subsection (7), the designated senior official acquires ownership of or a beneficial interest in publicly-traded securities with the prior approval of the Ethics Commissioner.
- (3)** The Ethics Commissioner may give an approval
- (a) under subsection (2)(b) or (c) if the Ethics Commissioner is of the opinion that the publicly-traded securities are securities of a corporation the interests of which are not likely to be affected by decisions of the public agency or by decisions of the Government within the scope of advice, advocacy, activity or influence of the public agency, or
 - (b) under subsection (2)(b) if the Ethics Commissioner is of the opinion that the designated senior official will sustain a financial loss if the publicly-traded securities are disposed of and the public interest does not require disposition of the publicly-traded securities.
- (4)** The Ethics Commissioner may approve the retention of publicly-traded securities to be held in a blind trust if the blind trust will meet the criteria set out in section 20(4).
- (5)** The Ethics Commissioner may approve the retention of publicly-traded securities to be held in an investment

arrangement if the investment arrangement will meet the criteria set out in section 20(5).

(6) An approval or direction given by the Ethics Commissioner under this section may be given subject to any conditions determined by the Ethics Commissioner.

(7) For the purposes of subsections (1) and (2),

(a) the relevant period is

- (i) in the case of a person who becomes a designated senior official after the coming into force of this section, 60 days after becoming a designated senior official or any longer period that the Ethics Commissioner directs, or
- (ii) in the case of a person who is a designated senior official when this section comes into force, 60 days after the coming into force of this section or any longer period that the Ethics Commissioner directs,

or

(b) with respect to a designated senior official who acquires ownership of or a beneficial interest in publicly-traded securities by gift or inheritance, the relevant period is 60 days after receiving the gift or inheritance or any longer period that the Ethics Commissioner directs.

(8) For greater certainty, the Ethics Commissioner may, during the Ethics Commissioner's first review of disclosure statements, returns and holdings under this Part, direct that a relevant period set out in subsection (7) be extended for administrative reasons.

Disclosure statements

23.931(1) Every designated senior official shall file with the Ethics Commissioner a disclosure statement in the form and manner determined by the Ethics Commissioner

(a) within 60 days after

- (i) becoming a designated senior official, in the case of a person who becomes a designated senior official after the coming into force of this section, or

- (ii) the coming into force of this section, in the case of a person who is a designated senior official when this section comes into force,

and

- (b) in each subsequent year at the time specified by the Ethics Commissioner.

(2) A designated senior official shall, within 30 days after the occurrence of any material changes to the information contained in a current disclosure statement, file with the Ethics Commissioner an amending disclosure statement in the form provided by the Ethics Commissioner setting out the changes.

(3) Section 12(a) to (d) apply for the purpose of establishing the contents of and additional time requirements for the disclosure statements referred to in subsection (1).

Returns relating to persons directly associated

23.932(1) Every designated senior official shall file with the Ethics Commissioner a return relating to persons directly associated with the designated senior official, in a form and manner determined by the Ethics Commissioner,

- (a) within 60 days after
 - (i) becoming a designated senior official in the case of a person who becomes a designated senior official after the coming into force of this section, or
 - (ii) the coming into force of this section, in the case of a person who is a designated senior official when this section comes into force,
- (b) within 30 days after the occurrence of any material change in the information contained in a current return, and
- (c) within 30 days after the day he or she ceases to be a designated senior official.

(2) Section 15(1)(a) and (b) and (2) apply for the purpose of establishing the contents of a designated senior official's returns

and additional time requirements for a designated senior official's returns under this section.

(3) On receipt of a return under this section, the Ethics Commissioner shall provide a copy of the return

- (a) in the case of a return concerning any designated senior official other than the chief executive officer or chair, to the chief executive officer or, if no chief executive officer exists, to the chair,
- (b) in the case of a return concerning the chief executive officer, to the chair or, if no chair exists, to the responsible Minister, and
- (c) in the case of a return concerning the chair, to the responsible Minister.

Extension of time for administrative reasons

23.933 The Ethics Commissioner may, during the Ethics Commissioner's first receipt and review of disclosure statements and returns under this Part, direct that one or more time periods set out in section 23.931 and 23.932 be extended for administrative reasons.

Failure to file, false or misleading information

23.934(1) A designated senior official breaches this Part if the designated senior official does not file within the time required under this Part, or if the designated senior official knowingly gives false or misleading information in

- (a) a disclosure statement under section 23.931(1),
- (b) an amending disclosure statement under section 23.931(2), or
- (c) a return under section 23.932(1).

(2) If the Ethics Commissioner is of the opinion that a designated senior official has breached the time requirements for filing a disclosure statement, an amending disclosure statement or a return referred to in subsection (1),

- (a) sections 30.1(1) to (8) and 30.2 apply in respect of an administrative penalty, and

- (b) the Ethics Commissioner shall prepare a report setting out the following:
 - (i) the name of the designated senior official required to pay an administrative penalty;
 - (ii) the particulars of the breach;
 - (iii) the amount of the administrative penalty;
 - (iv) whether the administrative penalty was paid or appealed;
 - (v) any other information that the Ethics Commissioner considers appropriate.

(3) The report referred to in subsection (2)(b) must be provided

- (a) in the case of a report concerning any designated senior official other than the chief executive officer or chair, to the chief executive officer or, if no chief executive officer exists, to the chair,
- (b) in the case of a report concerning the chief executive officer, to the chair or, if no chair exists, to the responsible Minister, and
- (c) in the case of a report concerning the chair, to the responsible Minister.

Retention of statements and returns

23.935 The Ethics Commissioner shall retain the disclosure statements, amending disclosure statements and returns submitted by a designated senior official for a period of 2 years after the person ceases to be a designated senior official, after which the statements and returns may be destroyed.

Reimbursement for costs

23.936(1) Designated senior officials are entitled to be reimbursed for

- (a) costs associated with the completion of their disclosure statements, and

(b) costs associated with the establishment and administration of a blind trust or an investment arrangement.

(2) The amount of the reimbursement is subject to the approval of the Ethics Commissioner.

(3) The reimbursement is payable by the public agency.

Post-employment restrictions

23.937(1) No former designated senior official shall, for a period of 12 months from the last day the former designated senior official held a position referred to in section 23.92(1)(d), lobby as defined in the *Lobbyists Act* any public office holder as defined in the *Lobbyists Act*.

(2) No former designated senior official shall, for a period of 12 months from the last day the former designated senior official held a position referred to in section 23.92(1)(d), act on a commercial basis or make representations on his or her own behalf or on behalf of any other person in connection with any ongoing matter in connection with which the former designated senior official, while a designated senior official, directly acted for or advised a department or public agency involved in the matter.

(3) No former designated senior official shall, for a period of 12 months from the last day the former designated senior official had a direct and significant official dealing with a department or public agency, make representations with respect to a contract with or benefit from that department or public agency.

(4) No former designated senior official shall, for a period of 12 months from the last day the former designated senior official had a direct and significant official dealing with a department or public agency, solicit or accept on his or her own behalf a contract or benefit from that department or public agency.

(5) No former designated senior official shall, for a period of 12 months from the last day the former designated senior official had a direct and significant official dealing with an

individual, organization, board of directors or equivalent body of an organization, accept employment with that individual or organization or an appointment to the board of directors or equivalent body.

(6) Nothing in this section restricts a designated senior official or former designated senior official from being appointed to the board of directors or a governing body of another public agency.

(7) Nothing in this section restricts a designated senior official or former designated senior official from accepting employment with a department of the public service or a public agency in accordance with Part 1 of the *Public Service Act*.

Waiver or reduction

23.938(1) A designated senior official or former designated senior official may apply to the Ethics Commissioner for a waiver or reduction of a time period set out in section 23.937, and the Ethics Commissioner may waive or reduce any time period set out in section 23.937 if, in the opinion of the Ethics Commissioner,

- (a) the conditions on which and the manner in which the employment, appointment, contract or benefit is awarded, approved or given are the same for all persons similarly entitled,
- (b) the award, approval, grant or benefit results from an impartially administered process open to a significant class of persons, or
- (c) the activity, contract or benefit will not create a conflict between a private interest of the former designated senior official and the public interest.

(2) The Ethics Commissioner may, under subsection (1), waive or reduce a time period set out in section 23.937 on any conditions that the Ethics Commissioner determines.

Breach and offence

23.939(1) A former designated senior official who contravenes section 23.937 is guilty of an offence and liable to a fine not exceeding \$50 000.

(2) A prosecution of an offence described in subsection (1) shall not be commenced more than 2 years after the date on which the alleged offence occurred.

(3) If a former designated senior official or any other person has realized financial gain in any transaction to which a conviction under subsection (1) relates, any person affected by the financial gain, including the Government or a public agency, may apply to the Court of Queen's Bench for an order of restitution against the former designated senior official or any other person who has realized the financial gain.

Investigations

Investigations under this Part

23.94(1) Sections 24(1) to (3) and (5), 25(1) to (3) and (5) to (10) and 26 apply for the purposes of an investigation respecting an alleged breach of the obligations of a senior official or designated senior official under this Part.

(2) The Ethics Commissioner may, if the Ethics Commissioner is not satisfied that all appropriate mechanisms, including any inter-agency processes, human resource processes or processes under a collective agreement, to address conflict of interest and ethical conduct on the part of involved senior officials or designated senior officials have been used or considered,

- (a) refuse to investigate, cease to investigate or suspend the investigation of an alleged breach, and
- (b) require, by request in writing, one or more reports concerning the status or outcomes of an applicable mechanism or process, from the decision maker or person, at the times and on the other terms and conditions that the Ethics Commissioner considers to be appropriate.

(3) A decision maker or person who receives a request in writing under subsection (2)(b) shall comply with it.

(4) The Ethics Commissioner may, as the Ethics Commissioner considers to be appropriate, resume an investigation that was suspended under subsection (2)(a).

(5) If the Ethics Commissioner refuses to investigate or ceases to investigate an alleged breach, suspends an investigation of an alleged breach or contravention or refuses to reinvestigate an alleged breach or contravention, the Ethics Commissioner shall provide a notice in accordance with subsection (7).

(6) If the Ethics Commissioner is of the opinion that a request made under section 24(1) was frivolous or vexatious or was not made in good faith, the Ethics Commissioner may state that opinion in a notice provided in accordance with subsection (7).

(7) A notice referred to in subsection (5) or (6) must be provided

- (a) to the individual against whom the allegation was made,
- (b) to the responsible Minister, and
- (c) to the chief executive officer or, if no chief executive officer exists, to the chair.

Ethics Commissioner's report

23.95(1) The Ethics Commissioner shall prepare a report regarding the outcome of an investigation under this Part.

(2) A report under this section must be concise and may set out the following:

- (a) the facts relating to the alleged breach found by the Ethics Commissioner;
- (b) the Ethics Commissioner's findings as to whether the individual under investigation has breached this Part and, if so,
 - (i) the nature of the breach, including any contravention of advice, recommendations or directions or conditions of any approval given by the Ethics Commissioner, and
 - (ii) the Ethics Commissioner's recommendations, if any.

(3) The Ethics Commissioner may disclose the report

- (a) to the individual under investigation,
- (b) to the person who made the request under section 24(5),
- (c) to the responsible Minister,
- (d) to the chief executive officer or, if no chief executive officer exists, to the chair, and
- (e) where the Ethics Commissioner believes on reasonable grounds that the disclosure is necessary for the purpose of advising the Minister of Justice and Solicitor General or a law enforcement agency of an alleged offence under this Part or any other enactment of Alberta or an Act of the Parliament of Canada, to the Minister of Justice and Solicitor General or a law enforcement agency.

(4) Where the Ethics Commissioner considers it appropriate in the circumstances, the Ethics Commissioner may recommend that a senior official or designated senior official be reimbursed, in an amount approved by the Ethics Commissioner, for his or her legal expenses incurred in respect of an investigation.

(5) The reimbursement is payable by the public agency.

(6) Sections 27, 28 and 29 do not apply for the purposes of this Part.

Confidentiality — responsible Minister and public agencies

23.96(1) Except as provided in this Part,

- (a) a senior official or designated senior official may collect, use and disclose information that relates to an investigation, notice, return, report, recommendation or other proceeding concerning that individual as the individual considers to be appropriate, and
- (b) a former responsible Minister, former chief executive officer, former chair and any person who was a member or employee of a public agency shall maintain the confidentiality of all information, notices, returns, reports and recommendations that came to their knowledge as the result of this Part, unless the information, notice, return, report or recommendation

- (i) was disclosed in accordance with this Part, or
 - (ii) relates to an investigation or other proceeding concerning that individual.
- (2)** The responsible Minister may make public statements concerning
- (a) an investigation,
 - (b) a notice issued by the Ethics Commissioner under section 23.94,
 - (c) a report issued by the Ethics Commissioner under section 23.95, and
 - (d) the steps that the responsible Minister or public agency has taken or proposes to take in response to the report.
- (3)** Despite section 4(1)(d) of the *Freedom of Information and Protection of Privacy Act*,
- (a) a notice, report or other information collected by the Minister or a public agency under this Part may be disclosed as set out in this section,
 - (b) the *Freedom of Information and Protection of Privacy Act* applies to a notice, report or recommendation provided by the Ethics Commissioner to the Minister or a public agency in accordance with this Part and that is
 - (i) in the custody or under the control of the responsible Minister, or
 - (ii) in the custody or under the control of a public agency that has been identified as a public body for the purposes of section 1(p) of the *Freedom of Information and Protection of Privacy Act*,
 and
 - (c) except as provided in this section,
 - (i) the *Freedom of Information and Protection of Privacy Act* does not apply to a record, including a record that relates to a disclosure statement or return, that is created by or for the Ethics Commissioner and

relates to the exercise of the Ethics Commissioner's functions under this Act or any other enactment and that is in the custody or under the control of the responsible Minister or of a public agency, and

- (ii) a record, including a record that relates to a disclosure statement or return, that is created by or for the Ethics Commissioner and relates to the exercise of the Ethics Commissioner's functions under this Act or any other enactment and that is in the custody or under the control of the responsible Minister or of a public agency shall be maintained confidential.

Transition and Regulations

New appointment, change in position or renewal or extension

23.97(1) If a person begins a position after the coming into force of this Part and

- (a) the person holds a position identified as a senior official position, sections 23.925 and 23.926 apply, or
- (b) the person holds a position designated as a designated senior official position, sections 23.925, 23.926 and 23.93 to 23.939 apply.

(2) If a person's contract, agreement or appointment is extended or renewed after the coming into force of this Part and

- (a) the person holds a position identified as a senior official position, section 23.926 applies, or
- (b) the person holds a position designated as a designated senior official position, sections 23.926 and 23.93 to 23.939 apply.

(3) For greater certainty, section 23.925 applies immediately on the coming into force of this Part to all persons holding a senior official position.

Existing contracts

23.971(1) In this section,

- (a) “official” means a designated senior official or a senior official to whom section 23.926(1) applies;
- (b) “relevant date” means, with respect to an official the date referred to in subsection (2)(a) or (b) that pertains to the official.

(2) If a person

- (a) is an official on the date when this Part comes into force, or
- (b) becomes an official as the result of an order or designation under section 23.921 on the date when this Part becomes applicable,

and continues in the same position under the same contract, agreement or appointment, the code of conduct referred to in the terms of employment of the official in effect immediately before the relevant date remains in effect for the official, even if an element of that code of conduct falls short of or is otherwise inconsistent with a code of conduct implemented in accordance with section 23.922(1) that would otherwise apply to the official, or sections 23.926 and 23.93 to 23.939 as otherwise applicable to the official.

(3) For greater certainty, despite any existing contract, section 23.925 applies to all officials immediately on the coming into force of this Part.

(4) Despite subsection (2), or the implementation of an applicable code of conduct under section 23.922(1), on and after the expiry of 24 months from the relevant date,

- (a) an applicable code of conduct implemented in accordance with section 23.922(1) applies to the official, and
- (b) sections 23.926 and 23.93 to 23.939 apply, according to their terms, to the official.

No constructive dismissal, cause of action, compensation

23.972(1) Neither the enactment nor the application of this Part shall be considered constructive dismissal or breach of contract.

(2) No cause of action or proceeding, either in law or in equity, lies or shall be commenced against the Crown or any of its ministers, agents, appointees or employees or against a public agency or any of its officers, employees or members

- (a) as a direct or indirect result of the enacting, amending or repealing of any provision of this Part, or
- (b) as a direct or indirect result of anything done or omitted to be done in order to comply with this Part.

(3) Without limiting the generality of subsection (2), that subsection applies to an action or proceeding in contract, restitution, tort, trust, fiduciary obligation or otherwise claiming any remedy or relief, including

- (a) specific performance, an injunction or declaratory relief, and
- (b) any form of damages or a claim to be compensated for any losses, including loss of earnings, loss of revenue or loss of profit.

(4) Despite any other Act or law, no person is entitled to be compensated for any loss or damages, including loss of expected earnings or denial or reduction of compensation that would otherwise have been payable to any person, arising from the enactment or application of this Act or anything done in accordance with this Act.

Regulations

23.98 The Lieutenant Governor in Council may make regulations

- (a) defining any term or phrase used but not defined in this Part;

- (b) further clarifying the definition of “department” under section 23.92(1)(c)(ii) or (iii) for the purposes of this Part;
- (c) respecting the requirements and matters that must be included in a code of conduct or a class of codes of conduct for the purposes of section 23.922(2)(h);
- (d) respecting any transitional matter relating to this Part and to remedy any confusion, difficulty, inconsistency or impossibility resulting from the implementation of this Part.

(5) Section 46(1) is amended by repealing clauses (a) and (b) and substituting the following:

- (a) the names of Members who, in the opinion of the Ethics Commissioner,
 - (i) have not filed disclosure statements or returns within the time provided by section 11 or 15, as the case may be, or
 - (ii) have not made the full disclosure required by section 12,
- (b) generally on the affairs of the Office of the Ethics Commissioner, and
- (c) on the Ethics Commissioner’s activities under Part 4.3, including
 - (i) the failure of a public agency to comply with the requirements respecting codes of conduct for the purposes of section 23.923(8),
 - (ii) the number of investigations commenced under section 23.94 and the number of reports issued under section 23.95, and
 - (iii) any other information that the Ethics Commissioner considers to be appropriate or that the Minister requests.

(1.1) For the purposes of subsection (1)(c), nothing in this Act authorizes the Ethics Commissioner, in an annual report, to publicly identify a member, employee, senior official or

(5) Section 46(1) presently reads:

46(1) The Ethics Commissioner shall, at any times that the Ethics Commissioner considers appropriate, and at least annually, report in writing to the Speaker of the Legislative Assembly

(a) the names of Members who, in the opinion of the Ethics Commissioner,

(i) have not filed disclosure statements or returns within the time provided by section 11 or 15, as the case may be, or

(ii) have not made the full disclosure required by section 12,

and

(b) generally on the affairs of the Office of the Ethics Commissioner.

designated senior official of a public agency or any third party involved in an investigation under Part 4.3.

**Alberta Public Agencies
Governance Act**

Amends SA 2009 cA-31.5

2(1) The *Alberta Public Agencies Governance Act* is amended by this section.

(2) Section 11 is repealed.

**Freedom of Information and
Protection of Privacy Act**

Amends RSA 2000 cF-25

3(1) The *Freedom of Information and Protection of Privacy Act* is amended by this section.

Alberta Public Agencies Governance Act

2(1) Amends chapter A-31.5 of the Statutes of Alberta, 2009.

(2) Section 11 presently reads:

11(1) Every public agency shall implement

- (a) a code of conduct governing the conduct of its members, and*
- (b) a code of conduct governing the conduct of its employees, if any.*

(2) A code of conduct referred to in subsection (1) must include provisions

- (a) requiring members or employees to conduct themselves impartially in carrying out their duties,*
- (b) prohibiting members or employees from acting in self-interest or furthering their private interests by virtue of their position or through the carrying out of their duties,*
- (c) requiring members or employees to disclose real and apparent conflicts of interest, and*
- (d) respecting any other matters specified in the regulations.*

(3) A public agency shall make its codes of conduct available to the public.

Freedom of Information and Protection of Privacy Act

3(1) Amends chapter F-25 of the Revised Statutes of Alberta 2000.

(2) The following is added after section 4(1)(e):

- (e.1) information that is collected by or for or is in the custody or under the control of the Ethics Commissioner and relates to the disclosure statements of designated senior officials that have been deposited with the Ethics Commissioner under Part 4.3 of the *Conflicts of Interest Act*;

Lobbyists Act

Amends SA 2007 cL-20.5

4(1) The *Lobbyists Act* is amended by this section.

(2) Section 1 is amended

(2) Section 4(1) presently reads in part:

4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:

- (a) information in a court file, a record of a judge of the Court of Appeal of Alberta, the Court of Queen's Bench of Alberta or The Provincial Court of Alberta, a record of a master of the Court of Queen's Bench of Alberta, a record of a justice of the peace other than a non-presiding justice of the peace under the Justice of the Peace Act, a judicial administration record or a record relating to support services provided to the judges of any of the courts referred to in this clause;*
- (b) a personal note, communication or draft decision created by or for a person who is acting in a judicial or quasi-judicial capacity including any authority designated by the Lieutenant Governor in Council to which the Administrative Procedures Act applies;*
- (c) a quality assurance record within the meaning of section 9 of the Alberta Evidence Act;*
- (d) a record that is created by or for or is in the custody or under the control of an officer of the Legislature and relates to the exercise of that officer's functions under an Act of Alberta;*
- (e) information that is collected by or for or is in the custody or under the control of the Ethics Commissioner and relates to the disclosure statements of deputy ministers and other senior officers that have been deposited with the Ethics Commissioner;*

Lobbyists Act

4(1) Amends chapter L-20.5 of the Statutes of Alberta, 2007.

(2) Section 1 is amended by adding 2 definitions and presently reads in part:

(a) by adding the following after subsection (1)(j):

(j.1) “public agency” means a public agency within the meaning of Part 4.3 of the *Conflicts of Interest Act*;

(b) in subsection (1)(k)(iii) by adding “or a public agency” after “prescribed Provincial entity”;

(c) by adding the following after subsection (2)(d):

(d.1) a designated senior official as defined in Part 4.3 of the *Conflicts of Interest Act*;

(3) Schedule 1 is amended by repealing section 1(3) and substituting the following:

(3) For the purpose of section 2 of this Schedule, “former public office holder” means

- (a) a former member of the Executive Council,
- (b) a former member of the Premier’s and Ministers’ staff as defined in the *Conflicts of Interest Act*,
- (c) any individual who formerly occupied a prescribed position with a prescribed Provincial entity,
- (d) a former designated office holder as defined in Part 2 of the *Public Service Act*,
- (e) a former designated senior official within the meaning of Part 4.3 of the *Conflicts of Interest Act*, and
- (f) any individual who
 - (i) formerly occupied a senior executive position in a department, whether by the title of chief executive officer or some other title, or
 - (ii) formerly occupied the position of assistant deputy minister or occupied a position of comparable rank in a department.

1(1) In this Act,

(k) “public office holder” means

- (i) a Member of the Legislative Assembly and any individual on a Member’s staff,*
- (ii) an employee of a department,*
- (ii.1) an individual appointed to a board, committee or council established under section 7 of the Government Organization Act, and*
- (iii) an employee, officer, director or member, as the case may be, of a prescribed Provincial entity;*

(3) Schedule 1 presently reads in part:

(3) For the purpose of section 2(1) of this Schedule, “former public office holder” means

- (a) a former member of the Executive Council,*
- (b) a former member of the Premier’s and Ministers’ staff as defined in the Conflicts of Interest Act,*
- (c) any individual who formerly occupied a prescribed position with a prescribed Provincial entity,*
- (d) a former designated office holder as defined in Part 2 of the Public Service Act, and*
- (e) any individual who*
 - (i) formerly occupied a senior executive position in a department, whether by the title of chief executive officer or some other title, or*
 - (ii) formerly occupied the position of assistant deputy minister or occupied a position of comparable rank in a department.*

(4) Schedule 2 is amended by adding the following after section 1(2)(c):

- (c.1) a former designated senior official within the meaning of Part 4.3 of the *Conflicts of Interest Act*,

Public Service Act

Amends RSA 2000 cP-42

5(1) The *Public Service Act* is amended by this section.

(2) Section 25.1(5) is repealed.

(3) Section 25.2(c) is repealed.

(4) Section 25.24(3) is repealed.

(4) Schedule 2 presently reads in part:

(2) For the purpose of section 2(k) of this Schedule, “former public office holder” means

- (a) a former member of the Executive Council,*
- (b) a former member of the Premier’s and Ministers’ staff as defined in the Conflicts of Interest Act,*
- (c) a former designated office holder as defined in Part 2 of the Public Service Act,*

Public Service Act

5(1) Amends chapter P-42 of the Revised Statutes of Alberta 2000.

(2) Section 25.1(5) presently reads:

(5) This Part applies to a provincial agency designated under section 25.2(c) for the purposes of this Part notwithstanding that this Act may not otherwise apply to the agency.

(3) Section 25.2(c) presently reads:

25.2 The following persons are designated office holders:

- (c) in respect of a provincial agency designated by the Lieutenant Governor in Council for the purposes of this Part,*
 - (i) a person appointed to the position of chief executive officer or a senior executive position designated by the Lieutenant Governor in Council for the purposes of this Part, and*
 - (ii) a person appointed to the position of chair of the board of directors, or the highest ranking position on a governing body designated by the Lieutenant Governor in Council for the purposes of this Part.*

(4) Section 25.24(3) presently reads:

(5) Section 25.31(3)(d) is repealed.

(6) Section 25.32(4) is amended

- (a) by adding “and” at the end of clause (b);**
- (b) by striking out “and” at the end of clause (c);**
- (c) by repealing clause (d).**

(7) Section 25.4(6) is repealed.

(8) Section 25.42(1) is amended by adding “and may be subject to disciplinary action pursuant to section 25” after “breaches this Part”.

(3) This section does not apply to a designated office holder referred to in section 25.2(c).

(5) Section 25.31(3)(d) presently reads:

(3) On receipt of a return filed by a designated office holder under this section, the Ethics Commissioner shall provide a copy of the return,

(d) in the case of a return filed by a designated office holder referred to in section 25.2(c), to the Minister who has responsibility for the relevant provincial agency.

(6) Section 25.32(4) presently reads:

(4) The report referred to in subsection (3) must be provided

(a) in the case of a breach by a deputy minister, to the Deputy Minister of Executive Council,

(b) in the case of a breach by the Deputy Minister of Executive Council, to the Premier,

(c) in the case of a breach by a member or person referred to in section 25.2(b), to the deputy minister to whom the member or person reports, and

(d) in the case of a breach by a designated office holder referred to in section 25.2(c), to the Minister who has responsibility for the relevant provincial agency.

(7) Section 25.4(6) presently reads:

(6) Nothing in this section restricts a former designated office holder referred to in section 25.2(c)(ii) from being appointed to the board of directors or a governing body of another provincial agency.

(8) Section 25.42(1) presently reads:

25.42(1) A former designated office holder who contravenes section 25.4 and who at the time of the contravention is a member of the public service breaches this Part.

(9) Section 25.52(4) is amended

- (a) in clause (e) by adding “and” after “to whom the member or person reports,”;**
- (b) by repealing clause (f).**

(10) Section 25.54(6) is amended

- (a) by repealing clause (f);**
- (b) in clause (g) by striking out “clauses (c) to (f)” and substituting “clauses (c) to (e)”.**

(9) Section 25.52(4) presently reads:

(4) A notice referred to in subsection (2) or a report referred to in subsection (3) must be provided

- (a) to the individual against whom the allegation was made,*
- (b) to the person who made the request under section 25.51,*
- (c) in the case of a notice or report relating to a deputy minister, to the Deputy Minister of Executive Council,*
- (d) in the case of a notice or report relating to the Deputy Minister of Executive Council, to the Premier,*
- (e) in the case of a notice or report relating to a member or person referred to in section 25.2(b), to the deputy minister to whom the member or person reports,*
- (f) in the case of a notice or report relating to a designated office holder referred to in section 25.2(c), to the Minister who has responsibility for the relevant provincial agency, and*
- (g) in the case of a former designated office holder, to an individual referred to in clauses (c) to (f), as the Ethics Commissioner considers appropriate.*

(10) Section 25.54(6) presently reads:

(6) The report referred to in subsection (1) may be disclosed

- (a) to the individual against whom an allegation was made,*
- (b) to the Deputy Minister of Executive Council,*
- (c) in the case of a report relating to a deputy minister, to the Minister to whom the deputy minister reports,*
- (d) in the case of a report relating to the Deputy Minister of Executive Council, to the Premier,*
- (e) in the case of a report relating to a member or person referred to in section 25.2(b), to the deputy minister to whom the member or person reports,*

(11) Section 25.6(3) is repealed and the following is substituted:

(3) Until replaced by a code of conduct and ethics referred to in subsection (1), the following codes of conduct and ethics and any applicable supplementary code of conduct and ethics referred to in section 23 apply, to the extent that they are consistent with this Part, to

- (a) a person appointed to the position of deputy minister under section 4 of the *Government Organization Act*, and
- (b) a member of the public service or a person employed by the Crown pursuant to a contract of employment holding a position designated by the Lieutenant Governor in Council for the purposes of this Part.

- (f) *in the case of a report relating to a designated office holder referred to in section 25.2(c), to the Minister who has responsibility for the relevant provincial agency,*
- (g) *in the case of a former designated office holder, to an individual referred to in clauses (c) to (f), as the Ethics Commissioner considers appropriate, and*
- (h) *where the Ethics Commissioner believes on reasonable grounds that the disclosure is necessary for the purpose of advising the Minister of Justice and Solicitor General or a law enforcement agency of an alleged offence under this Part or any other enactment of Alberta or an Act of the Parliament of Canada, to the Minister of Justice and Solicitor General or a law enforcement agency.*

(11) Section 25.6(3) presently reads:

(3) The following codes of conduct apply until replaced by a code of conduct and ethics referred to in subsection (1):

- (a) *to the extent that they are consistent with this Part, the code of conduct and ethics and any applicable supplementary code of conduct and ethics referred to in section 23 apply to*
 - (i) *a person appointed to the position of deputy minister under section 4 of the Government Organization Act, and*
 - (ii) *a member of the public service or a person employed by the Crown pursuant to a contract of employment holding a position designated by the Lieutenant Governor in Council for the purposes of this Part;*
- (b) *to the extent that it is consistent with this Part, the relevant code of conduct referred to in section 11 of the Alberta Public Agencies Governance Act applies to*
 - (i) *a person appointed to the position of chief executive officer or a senior executive designated under section 25.2(c)(i) for the purposes of this Part, and*
 - (ii) *a person appointed to the position of chair of a board of directors, or the highest ranking position on a governing body, designated under section 25.2(c)(ii) for the purposes of this Part.*

Coming into Force

6 Sections 2 and 5 come into force on Proclamation.

Coming into Force

6 Coming into force.

