The Alberta Conflicts of Interest Act: A Critical Overview

The Alberta Conflicts of Interest Act (the Act) sets the standards for ethical conduct for Members of the Legislative Assembly (MLAs), including Ministers, in Alberta. It is designed to foster public confidence in the integrity of government officials by providing guidelines to prevent and resolve conflicts between their private interests and public responsibilities. However, the Act may inadvertently create disadvantages for the government and individual Ministers. This document outlines the potential challenges and limitations imposed by the Act on government operations and the duties of Ministers.

The Act imposes several restrictions and requirements on MLAs and Ministers, which can slow down governmental processes and decision-making. For instance:

**1. Reduced Talent Pool (Sections 8-10)**

The stringent rules against conflicts of interest may deter highly qualified individuals from seeking office. Professionals with extensive business interests or those involved in various sectors may find it too restrictive or burdensome to disengage from their private interests to comply with the Act. This could potentially lead to a reduced talent pool for governmental and ministerial positions.

**2. Impact on Decision-Making (Section 2)**

The Act's broad definition of conflict of interest may lead to an overly cautious approach to decision-making. Ministers may avoid pursuing certain policies or initiatives that *could **inadvertently** benefit any of their declared interests, even if those policies are in the public interest*. This cautious approach can stifle innovation and robust policy development.

The Alberta Conflicts of Interest Act is a legislative framework designed to prevent conflicts between the private interests and public duties of Members of the Legislative Assembly (MLAs), which includes Ministers. Its principal aim is to foster integrity and public confidence in government decision-making. However, the structures of this Act, and its implementation, can inadvertently create obstacles for Ministers tasked with the responsibility of making decisions that *are in the best interest of the public*. These obstacles not only impact the efficacy of their roles but also the broader functioning of government.

One of the fundamental ways in which the Act can negatively impact Ministers is through its stringent restrictions on private interests. The Act necessitates that Ministers should not have any pecuniary interests that are in conflict with their public duties. While this is crucial for maintaining the integrity of the office, it can also lead to overcautious behavior*. Ministers, wary of even the perception of a conflict, may avoid certain policy initiatives or decisions that could be indirectly linked to their private interests, **even if such decisions are beneficial to the public**. This overly cautious approach can result in a paralysis of decision-making where bold and swift action might be required*.

The Act's broad definition of conflict of interest, which encompasses any matter that could potentially affect a Minister's private interests, *can lead to situations where Ministers over cautiously recuse themselves from important discussions and decisions*. This avoidance, while compliant with the Act, can

deprive the decision-making process of valuable insights and expertise that the Minister might otherwise offer. This can be particularly detrimental in specialized portfolios where the Minister's background and professional experience are directly related to their ministerial responsibilities.

Moreover, the compliance with the Act entails a comprehensive disclosure of financial interests, which is both time-consuming and a potential deterrent to skilled professionals considering public service. The disclosure requirements, while intended to prevent conflicts of interest, can also act as a discouraging factor for those with successful careers outside of politics who might bring a wealth of knowledge and experience to government.

The Act may also have a chilling effect on robust debate and policy development within the government. *Ministers might steer clear of policy areas where they have significant knowledge due to prior professional engagements, leading to suboptimal policy outcomes*. The fear of being accused of a conflict can deter Ministers from engaging fully in policy areas where their contributions could be most valuable.

Additionally, the Act's provisions can lead to the *perception* of impropriety even when none exists. The public scrutiny that follows any disclosed interest can spawn unfounded allegations and suspicion, potentially undermining a Minister's credibility and the trust in governmental processes. The constant vigilance required to ensure compliance can be exhausting and divert a Minister's attention away from their primary task of governance.

Lastly, the Act's post-employment restrictions can also negatively influence decision-making. Knowing that certain career paths may be closed off after leaving office could lead Ministers to make decisions that are less about the public good and more about safeguarding future professional opportunities. This conflict between long-term career considerations and immediate public service responsibilities can compromise the quality of decision-making.

In summary, while the Alberta Conflicts of Interest Act serves an essential function in maintaining the ethical conduct of Ministers, its provisions can also lead to unintended consequences that hamper decision-making. The constraints placed on Ministers can result in overcaution, loss of valuable expertise in the policymaking process, deterrence of potential public servants, undue public suspicion, and a conflict between personal career goals and public service. Balancing the need for ethical governance with the practical realities of decision-making is a nuanced challenge that requires continual reassessment to ensure that the Act supports, rather than hinders, effective governance.

**3. More Specifics on WHAT constitutes a Conflict of Interest, and what does not**

The Alberta Conflicts of Interest Act plays a crucial role in maintaining transparency and integrity in government decision-making. However, there is room for improvement in the Act's definition of conflicts of interest to provide more clarity and specificity. One approach to enhancing the effectiveness of the Act could involve changing the definition of what constitutes a conflict of interest, By ***clearly outlining*** specific scenarios or relationships that qualify as conflicts, the Act can reduce ambiguity and ensure that public officials are held accountable for their actions.

Moreover, establishing clear exceptions as to how conflicts of interest affect different groups or subgroups can help address unique circumstances that may arise in governmental decision-making processes. These

exceptions could provide guidance on how conflicts should be managed within specific contexts, such as when dealing with issues that impact groups of people, or a group of particular individuals, or even vulnerable populations. By tailoring the Act to consider the diverse needs and interests of various groups, policymakers can ensure that decision-making remains fair and equitable for all Albertans. For Instance, if a Minister was a business owner previous to his role as Minister, and his Ministry position gave him power to make decisions over things that effect a group or groups of professionals from his business life, There should be a demonstrable way to authenticate that the decision is effecting a population 'large enough' so as to not be perceived as a benefit to the Ministers related party. I propose the question, what is 'large enough'? Is it 5x the ministers related party size? Is it 10x? is it related to the size of the professional group? What if that group is 100 people? What if it is 1000? ***What is the measure that the decision must impact in order for it to be a non-conflict***? This is not properly contemplated in the Act. How can we effectively mitigate this latent consequence of interpretation?

In conclusion, by refining the definition of conflicts of interest and incorporating clear instruction for different groups or subgroups, the Alberta Conflicts of Interest Act can strengthen its effectiveness and promote greater accountability in government operations. Clarity and specificity in the Act are essential to upholding public trust and ensuring that elected officials act in the best interests of the people they serve.

## Disadvantages to Ministers and the GoA

### The Act's Implications for Ministers

The Alberta Conflicts of Interest Act also presents specific disadvantages to Ministers who are required to navigate its provisions while fulfilling their duties:

### 1. Personal and Professional Sacrifices (Section 23)

Ministers are often required to make significant personal and professional sacrifices to avoid conflicts of interest. This includes divesting from business ventures, resigning from board positions, or placing assets in a blind trust. These requirements can lead to financial loss or a diminished professional network, which may be viewed as a high price for public service.

### 2. Perception of Impropriety (Section 2)

The Alberta Conflicts of Interest Act, designed to prevent actual conflicts between private interests and public duties of Ministers, can ironically amplify the perception of impropriety, undermining their efficacy and public trust. We must *make changes to the detail of what specifically constitutes a conflict* for the reasons mentioned above. The rigorous disclosure requirements meant to enhance transparency often subject Ministers to heightened scrutiny and speculative allegations, making every disclosed interest a potential source of controversy. This environment is unnecessary, and endures to the consequence of 'paralysis to progress', which fosters a cautious culture where *Ministers might shun involvement in policy*

*areas linked to their expertise, solely to avoid suspicion, depriving the government of valuable insights*. Moreover, political adversaries may exploit the Act's provisions to cast aspersions on a Minister's decisions, regardless of adherence to the law, using the perception of conflict as a strategic tool to erode credibility. Consequently, the Act's framework, while safeguarding ethics, may *inadvertently cultivate a political landscape riddled with suspicion, hindering open, informed, and effective governance.*

Even when Ministers comply with the Act, the mere perception of a conflict of interest can be damaging to their reputation and effectiveness. Public scrutiny of Ministers' past and present associations can lead to allegations of impropriety, which may erode public confidence and hinder their ability to govern effectively.

**Conclusion:**

The Alberta Conflicts of Interest Act is a critical tool for ensuring ethical behavior among government officials. However, its provisions can lead to significant disadvantages for the government and Ministers, including administrative burdens, a reduced talent pool for public service, overly cautious decision-making, personal and professional sacrifices, vulnerability to perceptions of impropriety, and restrictive post-employment conditions. These disadvantages suggest a need for ongoing review and refinement of the Act to strike an appropriate balance between preventing conflicts of interest and enabling effective governance.

**References**

Alberta Conflicts of Interest Act, RSA 2000, c C-23.

Thank you for your consideration on this very important matter,

Patrick Malkin on behalf of the Honorable Todd Loewen