

Conflict of Interest Legislative Review April 2024

Any review of legislation requires specific goals and objectives to measure its success or areas of improvement. While Canadian legislation generally lags in objective measures, the judicial system has often provided cautionary guidelines.

This enactment, like all conflict-of-interest rules, is based on the moral principle, long embodied in our jurisprudence, that no man can serve two masters. It recognizes the fact that the judgment of even the most well-meaning men and women may be impaired when their personal financial interests are affected.....economic self-interest ...may conflict with their public duty. The public's confidence...demands no less.

Conflict of interest legislation does not necessarily have as its primary purpose the improvement of the ethical standards...Conflict of interest legislation is largely intended to assist...by providing an objective standard against which they may gauge their actions and satisfy themselves and the public that they are acting appropriately...¹

In its 2000 review, the Australia Ethics Commission included some goals that could assist in any assessment of *Conflict of Interest* Legislation.

- Foster trust
- Promote the functioning of parliament.
- Respect the operation and status of parliament as an institution.
- Be capable of being honoured, and in fact, actually work.
- Refocus public attention from the conduct...and place it on policy and deliberation.
- Avoid litigation about powers of the code and interpretation.
- Improve parliament's position as the creator of law and as a check on the executive.
- Be open yet allow for the protection of privacy.
- Allow for knowledge and acceptance of the code by parliamentarians and citizens.
- Have stable, fair, public enforcement mechanisms.
- Fit within an existing culture of discipline mechanisms.
- Be and be seen to be impartially administered²

While Alberta's *Conflict of Interest* legislation's primary focus is the political and senior levels of government, members of the Alberta Union of Provincial Employees who work for the government of Alberta are also expected to adhere to the legislation. Stringent policies and procedures provide strict guidelines of adherence for government workers. However, when the Premier of the province and senior officials consistently violate the legislation, that impacts the ability of government workers to do their jobs effectively.

¹ Manitoba Law Reform Commission (2000). The Legislative Assembly and Conflict of Interest. Manitoba Law Reform Commission. 2000 CanLII Docs 183. Accessed: March 6, 2024. Website: <https://canlii.ca/t/2fh1>

² Ibid.

Tumultuous Historical Legacy

The *Conflict of Interest* Legislation in Alberta has been shaped by the historical legacies of political disputes and individual resistance to enact transparent and accountable legislation. This legacy has permeated the Federal, Provincial, and local issues to make tangible and effective changes. Any adjustments have generally taken five to ten years to enact, and some amendments have been regressive.

In a cross-country review of *Conflict of Interest* legislation, the same issues consistently arise with the Federal government and each of the Provinces that appear in Alberta. While Alberta was one of the last provinces to institute *Conflict of Interest* Legislation, the Province could have done more to incorporate some of the adjustments that were made in the mid-1990s both Federally and Provincially with Kathleen Ganley's private member's bill. However, lack of political will allowed the private member's bill to die on the Legislative floor.

A quick review of how *Conflict of Interest* legislation developed across the country, with an emphasis on the Federal and Provincial developments, will raise some of the issues that continue to persist in Canada and Alberta. Canada's inability to provide the core roots of impartiality, integrity, respect, and accountability has left Ethics Commissioners without power and has resulted in *Conflict of Interest* legislation that is both ineffective and creates an atmosphere of distrust.

House of Commons History

In the early years of Canada's House of Commons, procedurally inherited from Britain, there were guidelines and codes that outlined the separation of the personal from business interests. It is reported as early as December 20, 1867, in *Standing Order 21*, that "no member is entitled to vote upon any questions in which he or she has a direct pecuniary interest and the vote of any Member so interested will be disallowed."³ At issue was how "pecuniary interest" was defined.

Politicians continued to resist and debate the inclusion of family members and specific types of gifts through the mid-1900s. Government corruption, specifically through bribery and coercion, plagued the House of Commons. Federal examples of an extradition case in Montreal, directorships in businesses, lack of assets or gifts reported (such as a flight to Korea in 1986), relationships with influence, and blind trusts were and still are common contentious points.

The chronology of history also refers to a 1969 report by University of Alberta professor, Jeremy Williams who proposed five cardinal rules that could set ethical prohibitions for government employees and politicians.

- buying or selling an interest in property to/for/from the Crown.
- deriving a profit or advantage from dealings with property of the Crown.
- entering competition with the Crown.
- using insider information; and
- being influenced by financial or other inducements.⁴

³ Office of the Conflict of Interest and Ethics Commissioner (Modified January 12, 2022). Chronology: Conflict of Interest Rules for Federal Legislators. Accessed: March 6, 2024. Website: <https://ciec-ccie.parl.gc.ca/en/About-APropos/Pages/Chronology-Chronologie.aspx>

⁴ Ibid.

Federal guidelines on *Conflict of Interest* were codified in December of 1973 at the same time Newfoundland passed legislation. Numerous attempts were made over the next decade to pass Federal *Conflict of Interest* legislation to replace the guidelines. The Government of Canada eventually passed federal legislation in 1985. The *Conflicts of Interest and Post-Employment Code for Public Office Holders* was often referred to as the "Prime Minister's Code."⁵ This legislation passed due to the significant criticism surrounding the lack of personal and political separation and transparency within the Department of Industry. Almost two decades of debate and failed bills had to take place before Federal *Bill C-4* was passed in March of 2004 that required the Office of the Ethics Commissioner to be an independent body and codified all Conflict of Interest underneath the review of the Ethics Commissioner.

Provincial Legislation

While federal debates took place, the Provinces worked on their own legislation. The Provincial legislation began in 1973 with Newfoundland with Nunavut last in 1999.

Original	Amend	Province
1973	1995	Newfoundland
1978	1999	New Brunswick
1979	n/a	Saskatchewan
1982	1996	Quebec
1986	1994 and 1999	Prince Edward Island
1987	1991 and 1992	Nova Scotia
1988	1994	Ontario
1990	n/a	British Columbia
1991	1996 and 1999	Northwest Territories
1995	n/a	Yukon
1999	n/a	Nunavut

Newfoundland was the first province to introduce *Conflict of Interest* legislation in 1973. The Legislation originally applied to all civil servants but was later modified to eliminate them. Other provinces incorporate civil servants to varying degrees with Quebec only including cabinet members with Nova Scotia and Alberta being inclusive of anyone within public service.

Manitoba began their journey in the 1970s but were not able to get legislation passed until 1983. New Brunswick and Saskatchewan were within a year of each other and made modifications to their Legislation in the mid-1990s. The four Provinces of Quebec, Prince Edward Island, Nova Scotia, and Ontario passed legislation in the 1980s. While Prince Edward Island used the 1994 Ontario *Integrity Act* as their model, they still adjusted their legislation in 1999.

⁵ Thibodeau, Maxime-Olivier and Alexandra Savoie (August 19, 2013). Conflict of Interest at the Federal Level: Legislative Framework. Library of Parliament. Accessed: March 6, 2024. Website: https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201092E

The last four provinces of British Columbia, Northwest Territories, Yukon, and Nunavut passed Conflict of Interest legislation in the 1990s. It is worth noting that the Yukon also passed a Code of Conduct in 1981 and a Ministerial Gift Policy in 1994 to supplement their legislation. A Legislative member was forced to resign in the Northwest Territories because of their legislation.

Alberta

In 1993, the *Conflict of Interest* Legislation was proclaimed law with the first Ethics Commissioner appointed. The Act applies to Members of the Legislative Assembly, Designated Office Holders, Designated Senior Officials, political staff, lobbyists, as well as everyone employed with the Government, Alberta Health Services, Boards and Agencies. In 2004, the legislation was amended to create a separate office of an Ethics Commissioner to provide third party oversight on conflicts of interest.

Two reviews have been completed since the implementation of the legislation that have made slight alterations, but there are still areas that need to be changed, many of which have already been mentioned. Of note are the 2018 recommendations to make specific restrictions on employment, clarify gifts, and expand definitions.

Recommendations

- **Clarify and expand the meaning of “private interest” in contrast to the “public interest.”**
- **Clarify the meaning of social obligation and protocol.**
- **Expand the range of influence beyond immediate family (siblings, parents, and parents-in-laws).**
- **Extend the “cooling off period” for former Ministers from 12 months to 24 months.⁶**

Each of the above items create gray areas that require interpretation depending upon what position is held (Premier, Senior Official, or public employee). No changes were made in 2018 that substantially altered or incorporated any of the recommendations made. Member of the Legislative Assembly, Kathleen Ganley, proposed a private members *Bill 202* to incorporate some of the 2018 recommendations and to address the political interference in cases brought before the Ethics Commissioner with no success.

Many critics of *Conflict of Interest* legislation indicate that there are on-going recommendations that need to be made to Alberta’s current legislation.

Recommendations

- **Clarify language and definitions to reduce the legal ambiguity.**
- **Expand beyond just the financial considerations of conflict and consider all types of situations including social and political pressure.**
- **Expand the range of disclosure beyond immediate family.**
- **Increase fines (currently up to \$50,000) and penalties for individuals who have been found guilty of violating the legislation.**

⁶ Standing Committee on Resource Stewardship (August 2018). Review of the Conflicts of Interest Act. Twenty-Ninth Legislature, Fourth Session. Legislative Assembly of Alberta.

- **Provide complete independence for the Ethics Commissioner to properly investigate issues.**
- **Provide ethics and conflict of interest education to all levels of government.**

In November of 2023, the *Justice Statutes Amendment Act* was introduced that made regressive changes to Alberta's *Conflict of Interest* Legislation. One significant change prevents the Ethics Commissioner from holding investigations during elections. Many political critics have cited the incident where the Premier was found guilty of breaching the Act in her interactions with her Minister of Justice and the Attorney General over criminal charges for a Calgary minister, Artur Pawloski within 12 days of the provincial election. The other major change that was introduced with the Bill was the elimination of gift limits from the legislation and its movement into regulations.

Final Comments

Transparency and behaviour of all politicians, management and government workers assist in earning the public trust of the tax paying population. As the Province's health care goes through reorganization and doctors have flagged that individuals are benefiting from these decisions, strengthening the legislation would be the first step in providing more public confidence support for the government of Alberta. While most of the legislation focuses on politicians and senior levels of the government, Alberta Union of Provincial Employee members are impacted by the lack of trust in the government. Given that every Alberta Premier in the last two decades has been investigated by the Ethics Commissioner, Alberta Union of Provincial Employee government members question the sincerity and willingness of the government to support its employees. As a taxpayer and voting public, Union members urge the Government to take more proactive measures to strengthen Alberta's *Conflict of Interest* legislation through the recommendations made in this brief.