Select Special Conflicts of Interest Act Review Committee

Final Report

May 2006

EXECUTIVE SUMMARY OF COMMITTEE RECOMMENDATIONS

The Select Special Committee made the following recommendations for action, including amendments to the *Conflicts of Interest Act* (the Act) where necessary to implement the recommendation.

CONDUCT AND ETHICS

1. The government should introduce legislation to establish a lobbyist registry in Alberta.

2. Section 31(1) of the Act should be amended to extend the cooling-off period for former Ministers to 12 months.

3. Section 31(1)(c) of the Act should be amended to state that former Cabinet Ministers shall not make representations to government during the cooling-off period
   - on their own behalf or on another person's behalf with respect to a government contract or benefit, or
   - regarding a transaction to which the government is a party and in which he or she was previously involved as a Cabinet Minister.

4. Section 31(3) of the Act should be amended to describe the circumstances under which a former Cabinet Minister might seek an exemption to obtain government employment during the cooling-off period as follows:
   a. any contract with or benefit from the Crown if the conditions on which and the manner in which the contract or benefit is awarded, approved, or given are the same for all persons similarly entitled, or if the award, approval, or grant results from an impartially administered process open to a significant class of persons, and

   b. to an activity, contract, or benefit if the Ethics Commissioner has exempted the activity, contract or benefit from the operation of subsection (1) and the former Minister observes and performs any conditions on which the Ethics Commissioner has granted the exemption.

5. The Committee urges the government to introduce legislation to implement a cooling-off period for select senior policy officials, which includes senior Premier's office staff, ministerial senior staff, deputy ministers, assistant deputy ministers, Leaders of the Official Opposition's staff, and chairs of select boards, while taking into consideration appropriate adjustments in compensation to reflect such restrictions in post employment opportunities. The above noted restrictions may be subject to exemptions granted by the Ethics Commissioner or an appropriate official similar to the procedure for exemptions for Ministers.

6. The Act should be amended to provide that no Member should improperly use his or her influence in a manner that would advance his or her own private interest or that would improperly or inappropriately further the private interests of any other person.

7. Section 4 of the Act should be amended to prohibit a Member's sharing of any information not available to the general public to improperly further his or her own private interest or that of any other person.

8. Section 8 of the Act, dealing with contracts with the Crown, should be expanded to apply to direct associates of a Member's spouse or adult interdependent partner. Section 8 should also apply to a subsidiary of a corporation that is directly associated with a Member or the Member's spouse or adult interdependent partner unless such interests are of general application.

9. "Direct associates", as defined in section 1(5)(d) of the Act, should also include partnerships having more than 20 partners.

10. Section 5 of the Act should be changed to read "A Member does not breach this Act if the activity is one in which a Member of the Legislative Assembly normally engages on behalf of Albertans".

11. Section 8, relating to contracts with the Crown, should be amended such that a Member is not in breach of the Act in respect of a contract that is otherwise prohibited by the section if the contract is a trivial or insignificant one.

12. Section 2 of the Act, dealing with conflicts of interest, should be amended so that the prohibition against a Member participating in decisions that advance his or her private interests or the private interests of those directly associated with the Member be extended to prohibit participating where advancement of known private interests of a Member's adult children is involved.

13. The Committee recommends retaining the general prohibition in section 7(1) of the Act whereby a Member breaches the Act if the Member or, to the knowledge of the Member, the Member's spouse, adult interdependent partner, or minor child accepts a gift or other benefit that is connected directly or indirectly with the performance of the Member's office.

    The Committee recommends that the Act be amended to exclude gifts and noncash benefits such as tickets to fundraising or similar events provided by political parties, constituency associations and charitable organizations from the operation of the general prohibition in this section.

    The Committee also recommends that the present $200 limit on fees, gifts, and benefits given from the same source to the Member and Member's spouse or adult interdependent partner and minor children in a calendar year as an incident of protocol or of the social obligations that normally accompany the responsibilities of the Member's office be increased to $400.

14. The Act should be amended to permit air flights on private carriers to be exempt from public disclosure when the flights are for the purposes of fulfilling Member duties to the province. Before accepting such air travel, the Ethics Commissioner shall be consulted by the Member.

15. The Act should be amended to allow Ministers to engage in such employment or in the practice of a profession as required to maintain their professional or occupational qualifications during their time as Ministers notwithstanding section 21(1)(a).

16. The Act should be amended to require Members to disclose to the Ethics Commissioner any involvement in litigation and any maintenance enforcement orders within 30 days of the Member becoming aware of such proceedings.

17. The Act should be amended to require Members to disclose to the Ethics Commissioner any Alberta government program which confers a benefit that has been accessed by the Member, the Member's direct associate, or minor child unless the benefit is of general application.

18. The Act should be amended to change the values exempted from disclosure in the public disclosure statement
    - of any assets, liabilities, or interests from less than $1,000 to having a value less than $10,000
    - of any source of income from less than $1,000 to less than $5,000 per year

19. Section 14(4)(d) of the Act, relating to public disclosure, should be amended to replace the words "things used personally" with "personal property used for transportation, household, educational, recreational, social, or aesthetic purposes".

20. The Act should be amended to prohibit a Minister and the Leader of the Official Opposition from
    - soliciting funds on behalf of any charitable organization of which he or she is a director or officer
    - acting as a director or officer of a nonprofit organization if that group solicits funding from the government

GENERAL AMENDMENTS

21. The Preamble should be expanded to include provisions such as the following:
    - The Assembly as a whole can represent the people of Alberta most effectively if its Members have experience and knowledge in relation to many aspects of life of Alberta and if they can continue to be active in their own communities, whether in business, in the practice of a profession, or otherwise.
    - A Member's duty to represent his or her constituents includes broadly representing his or her constituents' interests in the Assembly and to the Government of Alberta.

22. Section 1(5)(e) should define the term "agent" as a person acting with the express or implied direction or consent of the Member or Minister and who is acting to further the interest of the Member or Minister.

23. The Schedule for the Act, which contains a list of disqualifying offices, should be moved into a Regulation.

24. Criteria for the agencies that should be identified for inclusion in the list of disqualifying offices should be provided as policy guidelines. (See Appendix C.)

25. Section 8(1)(e), which refers to prohibitions concerning a Member or a person directly associated with the Member from entering into "a contract under which the

Alberta Opportunity Company lends money", should be deleted from the Act as the Alberta Opportunity Company no longer exists.

26. Section 8 should be amended to enable the Ethics Commissioner to approve a Member's renegotiation or renewal of an ATB Financial mortgage.

27. The Act should be amended to enable a Member to be compensated for the costs of transferring a mortgage from ATB Financial to another financial institution where required to do so by the Ethics Commissioner.

SANCTIONS AND COMMISSIONER'S POWERS

28. Section 31(5) should be amended to allow a judge to impose one or both of the following penalties on a former Minister
    - a requirement that a former Minister make restitution or compensation to any party who has suffered a loss or to the Crown for any pecuniary gain which the former Minister has realized in any transaction to which the violation relates
    - a fine that can be imposed on a former Minister who contravenes Part 6 of the Act and who at the time of the contravention is not a Member of the Legislative Assembly, and that there be an increase to the amount of the maximum fine from $20,000 to $50,000

29. The Act should be amended to empower the Ethics Commissioner to
    - conduct an investigation into dealings with government by former Ministers up to the end of the former Minister's cooling-off period
    - require a former Minister to comply with an authorized investigation by the Ethics Commissioner

    and give the Ethics Commissioner new powers to
    - provide information to the authorities if he or she believes that there has been criminal activity
    - initiate his or her own investigations under the Act

30. The Act should be amended to provide that no investigation or prosecution of a former Minister may be undertaken under this Act after two years have passed since the former Minister left office.

31. The Act should be amended to include a provision for restitution similar in wording to the Government of British Columbia's *Members' Conflict of Interest Act*, which states:
    a. Despite anything in this Act, if any person, whether or not the person is or was a member, has realized financial gain in any transaction to which a violation of this Act relates, any other person affected by the financial gain, including the government or a government agency, may apply to the [Court] for an order of restitution against the person who has realized the financial gain.

32. The Act should be amended to allow the Ethics Commissioner the authority to conduct independent third-party reviews as requested by regional health authorities.

33. The Act should be amended to require the Ethics Commissioner to retain records of current Members and of former Members for two years after the Member's departure

from the Assembly, after which the records shall be destroyed. A Member's public disclosure statements should be made publicly available by the Clerk's Office during the period of their retention for two years after the Member's departure from the Assembly.

34. The Act should be amended to state that if a Member obtains legal representation during the course of an inquiry, the cost of legal representation will be reimbursed by the Legislative Assembly.

35. The Act should be amended to state that the Ethics Commissioner may suspend an inquiry if (s)he learns of a related ongoing police investigation or criminal charges.

36. The Act should be amended to specify that the Assembly should debate any report of the Ethics Commissioner that recommends sanctions within 15 sitting days from the date the report is tabled in the Legislative Assembly, provided that such debate shall occur prior to the adjournment of that sitting of the Assembly.

RECOMMENDATIONS FOR NO CHANGE

The Committee discussed stakeholder input and considered the following issues that were raised by the Discussion Guide. These 15 recommendations do not call for changes to the existing Act.

37. The Act should retain a Preamble.

38. A definition for the term "trivial" is not required in Section 1(1)(g).

39. There should be no change to the definition of "private interest" as set out in Section 1(g).

40. The provision in the Act regarding blind trusts is adequate and appropriate and should not be changed.

41. The Act should not provide for the establishment of management trusts for private corporations.

42. The current rules restricting the ability of Ministers and Leaders to maintain their involvement in private corporations are appropriate and should not be changed.

43. The Act should not be amended to include in the public disclosure statement the amount or value of financial interests of a Member. The present requirement for identification of the type of financial interests set out in section 14 of the Act is sufficient.

44. The Act should not be amended to change the requirement for a Member to disclose to the Ethics Commissioner all information that is known by the Member regarding financial information about his or her spouse or adult interdependent partner.

45. Employment restrictions described in Part 4 of the Act should not be amended to include any other Members, including Leaders of other opposition parties.

46. The Act should not be amended to subject to cooling-off periods MLAs who
    - chair standing policy committees, or
    - chair or supervise an agency of the Government of Alberta.

47. The Act should not be amended to provide a general allowance for a former Minister to accept employment in further service to the Crown.

48. The Act should not be amended to impose sanctions on a Member after a Member has left office.

49. The Act should not be amended to include a provision concerning the voidability of a contract entered into in violation of the Act.

50. The Act should not be amended to expand on the restrictions in sections 8 and 9, which outline specific rules and situations where a Member cannot contract with the Crown.

51. The Act should not be amended to prohibit activities which give rise to apparent conflicts of interest.

CONTENTS

MANDATE

On March 8, 2005, an all-party committee of 11 Alberta MLAs was established to review the *Conflicts of Interest Act*. The Committee began this first legislatively mandated review of the Act on June 2, 2005. The purpose of the review was

> To ensure that the Act and its supporting policy and administration promotes public confidence in the integrity of elected officials and government.
>
> To fulfill the legislated requirement to conduct a comprehensive review of the *Conflicts of Interest Act* and submit to the Legislative Assembly, within a year after beginning the review, a report that includes any amendments recommended by the committee.

The Committee membership is:

Neil Brown, MLA, Chair
Calgary-Nose Hill (PC)

Shiraz Shariff, MLA, Deputy Chair
Calgary-McCall (PC)

Alana DeLong, MLA
Calgary-Bow (PC)

Mo Elsalhy, MLA
Edmonton-McClung (LIB)
(*Appointed November 2005*)

George Groeneveld, MLA
Highwood (PC)

Thomas Lukaszuk, MLA
Edmonton-Castle Downs (PC)

Ray Martin, MLA
Edmonton-Beverly-Clareview (ND)

Bruce Miller, MLA
Edmonton-Glenora (LIB)

Ted Morton, MLA
Foothills-Rocky View (PC)

Frank Oberle, MLA
Peace River (PC)

Bridget Pastoor, MLA
Lethbridge-East (LIB)
(*Replaced November 2005*)

George Rogers, MLA
Leduc-Beaumont-Devon (PC)

INTRODUCTION

The *Conflicts of Interest Act* was passed in 1991 and was fully in force by the spring of 1993.

At the request of the then Minister of Justice the Act was reviewed in 1995 by a review panel and the result was a report entitled Integrity in Government in Alberta: Towards the Twenty-First Century: Report of the Conflicts of Interest Act Review Panel, known as the Tupper report, 1996. Following the Tupper report, amendments to the Act were made, which included a provision requiring a comprehensive review of the Act every five years.

The authors of the Tupper report stated that a mandatory review would acknowledge the importance of the Act and recognize the need to assess it regularly "in light of changing public expectations, alterations to the role of government and changes in the responsibilities of Members".

This Committee was the result of this first mandated five-year review. In its recommendations the Committee has taken into account the submissions made to it; the Conflict of Interest Review Panel Report on Conflicts of Interests Rules for Cabinet Ministers, Members of the Legislative Assembly and Senior Public Servants, known as the Wachowich report, 1990; the codes of conduct applicable in other Canadian jurisdictions; the Tupper report; and the evolving expectations of the public for the conduct of elected and public officials. The Committee recognizes the paramount need to maintain confidence and trust in elected officials and in their government. Throughout its deliberations the Committee has attempted to balance the need to avoid conflicts of interest and maintain high public expectations of integrity with the necessity of attracting qualified citizens to public service.

These proposals will bring Alberta's legislation concerning conflicts of interest into greater alignment with changing public expectations, contemporary reality, and legislated standards in other Canadian jurisdictions. The Committee believes that these recommendations, when implemented, will enhance public confidence in elected officials and their government and will provide additional guidance to Members and senior policy officials on conduct.

Neil Brown, MLA, Chair
Calgary-Nose Hill (PC)

ACKNOWLEDGEMENTS

The Committee wishes to acknowledge the individuals, organizations and stakeholders who submitted responses to the Discussion Guide as listed in Appendix A. These submissions provided information and insight into the workings of the *Conflicts of Interest Act* as it applies to Members of the Legislative Assembly.

The Committee also wishes to acknowledge the invaluable assistance of the technical and administrative support staff who assisted the Committee:

TECHNICAL SUPPORT TEAM

Alberta Justice and Attorney General
Ms Sarah Dafoe, barrister and solicitor, legislative reform
Mr. Robert Neilson, research assistant

Legislative Assembly Office
Mr. Robert Reynolds, Q.C., Senior Parliamentary Counsel

Office of the Ethics Commissioner
Mr. Donald Hamilton, Ethics Commissioner
Ms Karen South, senior administrator

Personnel Administration Office
Ms Sandra Croll, labour relations consultant

ADMINISTRATIVE SUPPORT TEAM

Legislative Assembly Office
Mrs. Karen Sawchuk, committee clerk
Ms. Rhonda Sorensen, communications coordinator, Office of the Clerk

Writer
Nancy Mackenzie

THE CONSULTATION AND REVIEW PROCESS

In June 2005 the Conflicts of Interest Act Review Committee Discussion Guide was distributed to stakeholders and made available on the Committee's website. Written responses were received from 20 stakeholders, as listed in Appendix A, including the Ethics Commissioner and the Auditor General.

The Committee held initial meetings to discuss terms of reference, the scope of review, and budget and also to receive orientation and discuss the public consultation process.

A communications team developed an advertising strategy to create awareness of the legislative review and to generate input from stakeholders.

A Discussion Guide, giving the background of the legislation and identifying possible issues, was prepared and posted to the website. Discussion Guide questions are found in Appendix B. The Discussion Guide was distributed to 575 known stakeholders, including all municipal governments in the province, ethics commissioners across Canada, consultant lobbyists registered in Alberta, as well as to any individual or group upon request. Three hundred seventy-five copies were downloaded from the website.

The Committee met and discussed issues and suggestions generated by the Discussion Guide and the responses received. The Ethics Commissioner and the senior administrator of the Office of the Ethics Commissioner attended all meetings in a consultative and informational role, and employees of Alberta Justice and the Personnel Administration Office provided additional support to the Committee.

The Committee reviewed analyses of issues and information papers prepared by the Personnel Administration Office, the Office of the Ethics Commissioner, and Alberta Justice (the Ministry responsible for the Act, as set out in the *Government Organization Act*), analyzed and discussed issues, and prepared a draft report, including a list of recommendations, for circulation to Committee members.

The Committee reviewed and then finalized its recommendations, as listed in the next section. Each recommendation is followed by a summary of stakeholder input and factual analysis which influenced the Committee's deliberations.

CONDUCT AND ETHICS

LOBBYIST REGISTRY

Recommendation 1:

The government should introduce legislation to establish a lobbyist registry in Alberta.

The Discussion Guide asked the following questions:

- Should Alberta create a lobbyist registry?
- What benefits would a lobbyist registry provide?
- Who should be required to register?
- What kind of information should be collected from lobbyists?

Lobbying is a legitimate activity. People, organizations and businesses have the right to communicate to decision-makers and provide information and their views on issues that are important to them. Some jurisdictions in Canada have established publicly accessible registries that identify and describe the work of those individuals and organizations that lobby the government. These jurisdictions recognize the importance of transparency, that citizens have the opportunity to know who is lobbying public office-holders and in which context.

Presently the federal government and Ontario, Quebec, Nova Scotia, Newfoundland, and British Columbia have lobbyist legislation. Generally speaking, each legislative scheme sets up a public registry that requires registration by persons who, as part of their regular duties, lobby the government. The federal government has recently taken steps to strengthen the powers of the lobbyist registrar.

There are a number of common principles in the existing lobbyist legislation, and these are discussed below.

The federal legislation, for example, sets out four principles that underlie its lobbyist legislation.

1. Free and open access to government is an important matter of public interest.
2. Lobbying public office-holders is a legitimate activity.
3. It is desirable that public office-holders and the public be able to know who is attempting to influence government.
4. A system for registration of paid lobbyists should not impede free and open access to government.

Lobbyist registries normally do not require public officials to register as lobbyists when they are acting in their official capacities. For example, Members from other provinces, municipal elected officials, members of aboriginal governing bodies, and diplomatic or consular agents acting in their official capacities would not be considered lobbyists.

In 2001 the Alberta Department of Government Services conducted a review of the lobbyist registries that were in existence at that time and recommended against the

establishment of such a registry in Alberta. This decision was based on a number of factors, including problems with enforcement and compliance issues and the need to balance the cost of a registry against the questionable results it would be able to deliver.

The Tupper report recommended that lobbyists be registered and that there should be standards governing their conduct.

> In a democracy, citizens must know which organizations and individuals influence public policy, the techniques they employ, who in government they meet and when, and the extent of their efforts to shape public policy.

The authors of the Tupper report felt that legislation governing lobbyists would enhance the quality and openness of public policy-making in Alberta.

The Office of the Ethics Commissioner made the following submissions to the Committee:

- We support a lobbyist registry in Alberta, as part of an open and accountable system of governance.
- Given the growth of Alberta, lobbying industries will also likely grow.
- Lobbyists must be required to disclose dealings with elected officials and senior public servants.
- The lobbyist registry also should include disclosure of amounts received by lobbyists for successful efforts. The amount of contract, name of client, and any contingency fee paid to lobbyists should be public information.
- The lobbyist registry should not reside within a government department, but should be an independent office reporting directly to the Legislative Assembly, perhaps with one of the existing Legislative Officers. We are able to take on this responsibility.

Of the 10 responses received to questions on a possible lobbyist registry, only one concluded that a registry was unnecessary, citing enforcement and compliance as being too costly to maintain.

The Office of the Ethics Commissioner provided information about the modest costs of adapting existing online registration software from the Ontario lobbyist registry. The Office of the Ethics Commissioner also affirmed the capability of their office to administer and manage a lobbyist registry for Alberta.

The Committee recognized that there is a public expectation that Alberta should have a lobbyist registry. Such a registry would contribute to the Alberta government's objectives of openness and transparency in its transactions.

What Information Does a Registry Contain?

The information required to be entered into the registry depends on the kind of lobbyist involved. Most registries require

- lobbyist name and address
- client name and business address
- name and address of parent corporation and those subsidiaries which directly benefit from the lobbying
- subject matter of lobbying
- name of department or other governmental institution lobbied
- if lobbyist is a former public office holder, information about that prior position

- source and amount of government funding provided to the client
- whether payment is contingent on the success of the lobbying
- communication techniques used, including grassroots lobbying

There is a legitimate concern over whether lobbyists should be allowed to charge fees contingent upon success. There may be greater incentive for unethical practices where compensation is dependent on a successful result. The federal government prohibits contingent fees agreements by lobbyists.

What If the Act Is Breached?

Each statute contains offence provisions, and if convicted, a person or organization may be subject to a fine of up to $25,000. In addition, some jurisdictions increase the maximum fine to a maximum of $100,000 for second or subsequent offences. Any person who violates the federal *Lobbyists Registration Act* may also be subject to up to two years in jail.

COOLING-OFF PERIODS

Recommendation 2:

Section 31(1) of the Act should be amended to extend the cooling-off period for former Ministers to 12 months.

Recommendation 3:

Section 31(1)(c) of the Act should be amended to state that former Cabinet Ministers shall not make representations to government during the cooling-off period:

- **on their own behalf or on another person's behalf with respect to a government contract or benefit, or**
- **regarding a transaction to which the government is a part, and in which he or she was previously involved as a Cabinet Minister.**

Recommendation 4:

Section 31(3) of the Act should be amended to describe the circumstances under which a former Cabinet Minister might seek an exemption to obtain government employment during the cooling-off period as follows:

a) any contract with or benefit from the Crown if the conditions on which and the manner in which the contract or benefit is awarded, approved, or given are the same for all persons similarly entitled, or if the award, approval, or grant results from an impartially administered process open to a significant class of persons, and

b) the Ethics Commissioner has exempted the activity, contract, or benefit from the operation of subsection (1) and the former Minister observes and performs any conditions on which the Ethics Commissioner has granted the exemption.

For six months after ceasing to be a Minister, former Ministers are restricted in their actions and, in particular, are restricted in what employment they may accept. This period is often referred to as a cooling-off period. Section 31(1) outlines the

employment opportunities former Ministers may not accept during the cooling-off period, including soliciting or accepting a contract or benefit from a department of the public service, a person, an entity, or a board with which the former Minister had significant dealings during his last year of service as a Minister.

The Act says that a former Minister has had "significant official dealings" with a department of the public service, provincial agency, person, or entity if the former Minister, while in office, was directly and substantively involved with the department, provincial agency, person, or entity in an important matter.

Information Bulletin 5 issued by the Office of the Ethics Commissioner in January of 1997 sets out matters the Commissioner will consider when reviewing whether there were significant official dealings.

1. Even though a Cabinet Minister may not personally have dealings with an agency, person, or entity, he or she may direct staff within the department to take certain actions with respect to that entity. That direction by the Cabinet Minister will be considered by this office to be a significant official dealing by the Cabinet Minister with respect to that agency, person, or entity.
2. Regular and routine contact between a department and an agency, person or entity will be considered a strong indication of official dealings with respect to that agency, person, or entity.
3. A department's regular input into policy in a specific area in which the entity operates will normally be considered significant official dealings with respect to that agency, person, or entity.
4. The preparation and presentation of matters for Lieutenant Governor in Council approval will be considered significant official dealings with that agency, person, or entity. Those dealings need not be prescribed in law; it is sufficient for the purposes of section 29 that the practice is administratively required.

Departing Ministers often have a good deal of inside information that would not otherwise be publicly available and also may have better access to those individuals who are making the decisions. The cooling-off provision is intended to ensure that former Ministers do not have and are not seen to have an unfair advantage over others in influencing government decision-making.

A cooling-off period helps to avoid the perception that a Minister has used his or her final days in office to obtain the favour of future or would-be employers. Postemployment restrictions, including noncompetition clauses, are common for senior management in the private sector.

The appropriate length of a cooling-off period for former Ministers is a question of judgment and balance. The right of a former Minister to obtain gainful employment after leaving elected office, the desirability of encouraging interchange between the public and private sector, and the need to encourage qualified and successful men and women to public service, all mitigate for shorter cooling-off periods. On the other hand, the reality or perception that former Ministers or policy officials may use inside information or close contacts to improperly benefit themselves or their employers or clients mitigates for longer postemployment restrictions. The Committee notes that 12 months corresponds to the normal budgetary cycle of government and that the impact of restriction on postemployment opportunities for Ministers is reduced by reason of the transition allowance, whereby all Ministers receive three months salary per year of service when they leave office.

The Committee considered feedback from stakeholders regarding the question of whether the cooling-off period of six months for Ministers is an appropriate period of time. The Committee agreed with the majority of respondents, including the Office of the Ethics Commissioner, that the cooling-off period should be extended to 12 months.

In British Columbia and the federal government the cooling-off period is 24 months. The newly elected Conservative Party government has promised to increase the cooling-off period to five years. In Saskatchewan, Manitoba, Ontario, New Brunswick, Newfoundland, and Northwest Territories the cooling-off period is 12 months. In Nova Scotia, Prince Edward Island, Yukon, and Nunavut the cooling-off period is six months. In Nova Scotia cooling-off provisions apply to all Members, not just Ministers.

The Committee considered how legislation in other Canadian jurisdictions dealt with lobbying by former Ministers on behalf of any person or entity to a department of the public service or a provincial agency with which the Minister has had significant dealings during his or her last year. New Brunswick and Nunavut legislation include rules to ensure that there are no improper dealings between the existing Executive Council and a former Minister. British Columbia, Nova Scotia, and Yukon go further by requiring all government employees to ensure that there are no improper dealings with former Ministers.

The Committee agreed that it could strengthen the Act to specify prohibited representations to government made by former Ministers during the cooling-off period.

Seeking Exemptions to the Cooling-off Period

The Discussion Guide asked if a former Cabinet Minister should be able to obtain an exemption from their cooling-off period from the Ethics Commissioner. The Committee agreed that for a former Cabinet Minister to be exempt from the general prohibition provided in the act, (s)he would have to clear both (a) and (b) of section 31(3), and in this way the Act would ensure that the Ethics Commissioner had the final say as to whether or not a former Minister could have any contract with or benefit from the Crown.

Recommendation 5:

The Committee urges the government to introduce legislation to implement a cooling-off period for select senior policy officials, which includes senior Premier's office staff, ministerial senior staff, deputy ministers, assistant deputy ministers, Leaders of the Official Opposition's staff, and chairs of select boards, while taking into consideration appropriate adjustments in compensation to reflect such restrictions in post employment opportunities. The above noted restrictions may be subject to exemptions granted by the Ethics Commissioner or an appropriate official similar to the procedure for exemptions for Ministers.

Disclosure Requirements for Public Servants

The Discussion Guide asked if the disclosure requirements for senior public servants should be put into legislation.

The *Conflicts of Interest Act* does not apply to public servants. However, since 1993 senior officials in the Government of Alberta have been required by government directive to file disclosure statements with the Ethics Commissioner. These disclosure

statements are similar to those that Members file pursuant to the Act; namely, they must include the assets, liabilities, financial interests, and income of the senior officials and their spouses, minor children, and any private corporation controlled by any one or more of them. They are not made public.

Under the Code of Conduct and Ethics for the Public Service of Alberta, a senior official is defined as "an individual appointed pursuant to O.C. 107/2000, as amended from time to time, and whose appointment is made pursuant to the *Public Service Act*". Currently the definition of senior official includes

- deputy ministers
- chairs
- full-time board members of certain agencies, boards, or commissions
- designated staff within the Office of the Premier and Executive Council

Senior public servants are not subject to a cooling-off period.

Legislation Governing Public Servants

Feedback from the Personnel Administration Office included the results of a survey it conducted with federal, provincial, and territorial governments on:

- disclosure of conflicts of interest
- disclosure of personal finances
- postemployment restrictions

Survey participants were asked to provide information on the topics for elected officials, senior officials, and employees.

The Minister of Alberta Human Resources and Employment responded that following the Tupper report, and on the recommendation of the Auditor General, the Personnel Administration Office undertook a thorough review of the Code of Conduct with the intent of strengthening it where appropriate. The Minister's response noted that the changes to the Code of Conduct would

- require a regulatory obligation on all senior officials to act with impartiality and integrity
- encompass the requirement to consider "apparent conflicts of interest"
- leave the requirement for disclosure below the level of senior official to senior official discretion, allowing each decision to be made on a case by case basis
- not require public disclosure by senior officials as it was seen to be an unreasonable invasion of privacy and senior officials are required through the Minister of Justice's direction in 1993 to make a financial disclosure paralleling that of elected officials to the Ethics Commissioner
- not include postemployment cooling-off periods for senior officials
- not include investigations to be conducted by the Ethics Commissioner as the Code of Conduct charges that the Deputy Minister of Executive Council administers the Code of Conduct for senior officials

The Minister of Alberta Human Resources and Employment also noted that before the Code of Conduct was established as a Regulation (March 1998), a draft was forwarded to the then Ethics Commissioner, who reviewed the proposed Code of Conduct and stated that it met the intent of the recommendations in the Tupper report.

The Minster of Alberta Human Resources and Employment concluded that it was his view that the current regulatory framework contains the appropriate mechanisms for dealing with conflicts of interest or apparent conflicts of interest for senior officials. The Minister stated that he did not see a need to amend the *Conflicts of Interest Act* to include senior officials.

During a Committee meeting a representative from the Personnel Administration Office (PAO) provided further context to the submission by the Minister of Alberta Human Resources and Employment and answered questions posed by the Committee. It was noted that definitions provided in the Tupper report for senior policy officials were broad and that it was important to specify the group of nonelected officials the Committee intended to be covered by the proposed new legislation.

The PAO noted that the *Code* of Conduct and Ethics for the Public Service of Alberta (the Code of Conduct) is a strong code that has worked very well. It was noted that every employee that commences with the public service receives a copy of the Code of Conduct and is required to sign an oath under the *Public Service Act.* The PAO is of the definite opinion that the Code of Conduct need not be entrenched in legislation.

Other respondents, including Alberta Children's Services and Alberta Advanced Education, replied that there was no practical need to expand the Act to cover disclosure requirements for senior officials.

The Ethics Commissioner's submission noted that there are currently certain positions that are designated as senior official positions, which do not include any person at the assistant deputy minister level or lower, and that not all designated senior officials are covered by the Code of Conduct. The Office of the Ethics Commissioner also noted that unless specified in a contract, contract employees in ministerial offices may not be covered by the Code of Conduct. The Ethics Commissioner recommended that these additional senior official positions be covered by some form of conflict of interest provisions, which might be in legislation other than the *Conflicts of Interest Act*.

Several other respondents affirmed the need for senior public servant disclosure requirements to be put into legislation, including the Office of the Auditor General, which noted that these disclosure requirements need not necessarily be put into the *Conflicts of Interest Act*.

Further discussion focused on the issue of whether a cooling-off period for senior officials would be appropriate. To attract highly qualified people to work in the public service requires by definition the attraction of the kind of person who fosters working relationships between industry and government. To tell such a person that they cannot return to private industry for a period of time after having worked in the public service may deter the highly qualified person from applying to work in the public sector at all. For this reason the Committee recognized that providing compensation during the cooling-off period might balance the period of transition time during which the person could not use their influence or be employed in the private sector. The Committee agreed that compensation ought to be adjusted according to restrictions being placed on postemployment opportunities.

Cooling-off Periods for Senior Public Servants

The Discussion Guide sought feedback on whether there should be cooling-off periods for senior public servants as well as heads of boards and tribunals.

The Office of the Ethics Commissioner recommended that senior officials should be subject to the same postemployment provisions as Ministers and recommended a one-year period.

The submission of the Office of the Auditor General stated that it is difficult to balance the rights of individuals to seek employment upon the expiration of their term and the need to ensure that public confidence in government is maintained. Further, the solution may be to have an exemption where the Ethics Commissioner finds it appropriate.

The PAO noted that it would be prudent to define "senior officials", and the Committee agreed that the definitions provided in the Tupper report were too broad. The Committee noted that transitional compensation should be tied to the restrictions placed on post employment opportunities. Therefore, it was important to specify the types of positions that would be affected by the new legislation so that the PAO could describe the numbers of public servants who would be affected. A discussion of the numbers of people classified as assistant deputy ministers and those in the Premier's and Ministers' offices resulted in these classifications of people being specified in the recommendation.

SCOPE AND INTERPRETATION OF THE ACT

Recommendation 6:

The Act should be amended to provide that no Member should improperly use his or her influence in a manner that would advance his or her own private interest or that would improperly or inappropriately further the private interests of any other person.

Section 2(1) of the Act reads:

> A Member breaches this Act if the Member takes part in a decision in the course of carrying out the Member's office or powers knowing that the decision might further a private interest of the Member, a person directly associated with the Member or the Member's minor child.

The Committee discussed the need to add to this section of the Act so that a person directly associated with the member shall not "improperly" further the private interest of any other person. For example, a Member could benefit a parent, brother or sister, or a close friend and, such conduct, although it would be seen as clearly improper, would not fall under the Act.

Improper Influence

The Committee noted that the legislative provisions in Ontario, New Brunswick, Prince Edward Island, Nunavut, and Nova Scotia are worded to prevent a Member from acting in a manner that would advance his or her own private interests, or that would inappropriately further the private interests of any other person. The wording used in Ontario describes *"improper advancement of [another] person's private interest"* without defining what "improper" means.

The Committee also reviewed the wording used in the federal *Conflict of interest Code for Members of the House of Commons* and the federal *Conflict of Interest Code for Public Office Holders.* The Committee agreed that the language in these two federal acts incorporated the concept of improper influence and agreed to add this concept to its recommendation for Alberta.

The Committee noted that as part of their duties MLAs attempt to influence decision makers on behalf of their constituents' interests. While section 5 of the Act states that a Member does not breach the Act if the activity is one in which a Member normally engages on behalf of constituents, it was felt that some guidelines ought to be available to address the question of improper influence.

The Committee noted that while the Preamble of the Act addresses the ideas of integrity and impartiality, there should also be provisions in the Act to address these ideas. The Committee noted that it would be difficult to iterate all individual cases in which a Member would breach the Act by improperly or inappropriately benefiting a proscribed group of individuals. Instead, the Committee agreed it would be of greater advantage to focus in general terms on the impropriety of such activity. The Committee intended the Recommendation to provide a guideline. The Committee noted that the Ethics Commissioner would exercise some discretion in deciding whether a Member would be acting so as to improperly further the interests of another person.

Recommendation 7:

Section 4 of the Act should be amended to prohibit a Member's sharing of any information not available to the general public to improperly further his or her own private interest or that of any other person.

Insider Information

Section 4 of the Act presently reads:

> A Member breaches this Act if the Member uses or communicates information not available to the general public that was gained by the Member in the course of carrying out the Member's office or powers to further or seek to further a private interest of the Member, a person directly associated with the Member or the Member's minor child.

The Act prohibits Members from using information that is not available to the general public to further the Member's own private interests or the private interests of those directly associated with the Member.

The Committee felt that it would also be inappropriate for a Member to use such information to improperly advance the private interests of other persons or organizations with whom the Member might be associated, such as siblings or other relatives, business associates, or close friends, et cetera, and therefore recommended expanding the scope of section 4. Confidential information gained by a Member in the course of carrying out the Member's office should only be used for the public good.

Recommendation 8:

Section 8 of the Act, dealing with contracts with the Crown, should be expanded to apply to direct associates of a Member's spouse or adult interdependent partner. Section 8 should also apply to a subsidiary of a corporation that is directly associated with a Member or the Member's spouse or adult interdependent partner unless such interests are of general application.

Recommendation 9:

"Direct associates", as defined in section 1(5)(d) of the Act, should also include partnerships having more than 20 partners.

Direct Associates

Section 8 lists proscribed classes of contracts with the Crown for Members or persons directly associated with Members.

Section 2 of the Act prohibits members from taking part in decisions which might further their own or the private interests of direct associates. The goal of these provisions is to ensure that a Member does not use the powers and benefits associated with his or her public office to improperly advance private interests.

Direct associates are defined in Section 1(5) of the Act as including a Member's spouse, a for-profit corporation in which a member is a director or senior officer, a partnership under 20 partners of which a Member or their corporation is a member, and an agent of a Member with the authority to act for the Member. The Committee noted that references to the term "direct associates" arises throughout the Act and that it would be appropriate to consider the use of the terms in specific instances throughout their review.

The Act does have a number of provisions to prevent a Member from acting in a manner that would advance his or her own private interests or those of "direct associates". (See sections 2, 3, 4, 8, 9, 15 and 16.)

The goal of these provisions is to ensure that the Member does not use the powers of his or her public office to improperly advance the Member's private interests, whether those private interests are held by the Member, the Member's family, or an organization with which the Member has significant financial ties. Members hold positions of power and have the public trust, and the public needs to be assured that Members act in the public interest and are not using their office to pursue private interests.

The Office of the Auditor General expressed concern that partnerships with over 20 members are exempted. The Committee found that there was no clear rationale for the limitation on the number of partners in a partnership which would justify exemption from the rules concerning direct associates.

Recommendation 10:

Section 5 of the Act should be changed to read "A Member does not breach this Act if the activity is one in which a Member of the Legislative Assembly normally engages on behalf of Albertans".

Member Duties to All Albertans

Section 5 states:

> A Member does not breach this Act if the activity is one in which a Member of the Legislative Assembly normally engages on behalf of constituents.

The Committee believes that Members represent all Albertans and not merely those people that reside in their constituency. Members propose, debate and enact legislation for the benefit of all Albertans, not simply their own constituents. Therefore, the Committee proposes to amend the Act to reflect the broader nature of their representative function.

The Committee's attention was drawn to *Beauchesne's Rules and Forms of the House of Commons of Canada* (4th edition. Toronto: Carswell. 1958), which states at paragraph 17, page 14:

> Every member as soon as he is chosen becomes a representative of the whole body of the Commons, without any distinction of the place from whence he is sent to Parliament . . . that every member is equally representative of the whole has been the constant notion and language of Parliament. Every member, though chosen by one particular district, when elected and returned, serves for the whole realm. For the end of his coming thither is not particular, but general, not barely to advantage his constituents, but the commonwealth.
>
> See Blackstone's Commentaries on the Laws of England, Volume I, page 159

Recommendation 11:

Section 8, relating to contracts with the Crown, should be amended such that a Member is not in breach of the Act in respect of a contract that is otherwise prohibited by the section if the contract is a trivial or insignificant one.

The Act sets out a number of different classes of contracts to which a Member or a person directly associated with the Member shall not be a party. The Discussion Guide asked whether the section adequately captured the kinds of contracts that must be avoided.

One change to this section suggested by the Ethics Commissioner was to exempt trivial or insignificant contracts with the Crown. The Committee agreed that trivial contracts could be exempted and that Members would obtain the Commissioner's approval prior to entering into a contract.

Recommendation 12:

Section 2 of the Act, dealing with conflicts of interest, should be amended so that the prohibition against a Member participating in decisions that advance his or her private interests or the private interests of those directly associated with the Member be extended to prohibit participating where advancement of known private interests of a Member's adult children is involved.

Decisions Furthering Private Interests

Section 2 of the Act governs circumstances where there may be a conflict between a Member's public responsibilities and his or her private interests. A number of obligations and

prohibitions governing the actions of Members are provided in the Act. However, the Act does not require a Member to declare a conflict where the known interests of their adult children are concerned. The Committee agreed that this obligation to refrain from participation in decisions that would advance known interests of adult children should be included in the Act.

OBLIGATIONS UNDER THE ACT (PART 2) RESTRICTIONS AND PROHIBITIONS

Recommendation 13:

The Committee recommends retaining the general prohibition in section 7(1) of the Act whereby a Member breaches the Act if the Member or, to the knowledge of the Member, the Member's spouse, adult interdependent partner, or minor child accepts a gift or other benefit that is connected directly or indirectly with the performance of the Member's office.

The Committee recommends that the Act be amended to exclude gifts and noncash benefits such as tickets to fundraising or similar events provided by political parties, constituency associations, and charitable organizations from the operation of the general prohibition in this section.

The Committee also recommends that the present $200 limit on fees, gifts, and benefits given from the same source to the Member and Member's spouse or adult interdependent partner and minor children in a calendar year as an incident of protocol or of the social obligations that normally accompany the responsibilities of the Member's office be increased to $400.

Gifts or Benefits from Persons Other than the Crown

In Alberta a Member is in breach of the Act if the Member, the Member's spouse, adult interdependent partner, or minor child accepts a fee, gift, or other benefit that is directly or indirectly connected with the performance of the Member's office. The goal is to avoid suspicion about the objectivity and impartiality of the Member and to ensure that the integrity of the government and the Assembly is not compromised.

Currently this rule does not apply if the total value of all gifts received from one source in any given calendar year is less than $200 and the gifts were given as a normal incident of protocol or "of the social obligations that normally accompany the responsibilities of the Member's office".

A second exception exists: a Member is not in breach of the Act if he or she applies to the Ethics Commissioner for approval to retain a gift on any conditions the Ethics Commissioner prescribes. This applies only to gifts that were given as a normal incident of protocol or social obligation where the Commissioner is satisfied that there is no reasonable possibility that its retention will create a conflict between a private interest and the Member's public duty.

Each Member must include a list of all gifts approved by the Ethics Commissioner in the Member's annual disclosure statement. The forms used by Alberta's Office of the Ethics Commissioner require each Member to identify the donor, describe the gift and the circumstances of its receipt, and provide an estimated value. Information about the type of gift and the identity of the donor is included in the public disclosure statements prepared by the Ethics Commissioner for each Member.

All Canadian jurisdictions have similar provisions in the legislation governing Members of the Legislative Assembly. The Committee reviewed the provisions from other jurisdictions as well as the comments received from stakeholders regarding gifts to Members.

The Office of the Ethics Commissioner recommended that any fees, gifts, or benefits received from political parties or constituency associations should be excluded from disclosure and suggested that there should be a review of the dollar amount. Committee members discussed the distinction between material objects that have a clear monetary value as opposed to something that is consumable like a meal at a fundraising event. The Committee concurred with the Ethics Commissioner's recommendation to exclude certain types of items: political or constituency events and tickets to charitable fundraising events where Members may attend as a matter of protocol, or as an incident of their duties as Members of the Legislative Assembly.

Assessing the Dollar Value

Stakeholders were divided on the question of whether or not gifts or benefits ought to be accepted at all. Those who agreed that a Member's spouse, adult interdependent partner, and minor child should be allowed to accept gifts as an incident of protocol were of varying opinions as to whether the Act's maximum of $200 is an appropriate limit.

The Office of the Auditor General recommended that it is appropriate to accept gifts as an incident of protocol and suggested that the amount might be increased to an aggregate amount of $2,000 per annum, with the total value in each instance not to exceed a specified amount.

The Committee discussed the advisability of having an aggregate amount as opposed to a per-item amount and decided that a per-item amount was more representative of the limits the Act should impose on Members.

The Ethics Commissioner recommended that since the Act's current noncash gift amount of $200 was set 10 years ago or more, a new limit of $400 per calendar year would be appropriate.

Recommendation 14:

The Act should be amended to permit air flights on private carriers to be exempt from public disclosure when the flights are for the purposes of fulfilling Member duties to the province. Before accepting such air travel, the Ethics Commissioner shall be consulted by the Member.

Air Flights

Members are prevented by section 7(1) of the Act from accepting any gifts or benefits that relate directly or indirectly to the performance of their public duties. Most offers of air travel relate directly or indirectly to a Member's public responsibilities.

The Office of the Ethics Commissioner noted that there are some situations where air flights on private carriers could not be described as "incidents of social obligation or protocol" but should be permissible for other reasons; for example, to gain knowledge about places and events in Alberta that Members might not otherwise be able to obtain (such as flights over a disaster area). The Ethics Commissioner recommended that Members should be able to accept offers of air travel in such cases from private carriers.

The Committee agreed that in circumstances where accepting private air transportation would assist a Member in performing his or her public duties, it ought to be allowed. The Committee felt that in all cases the Ethics Commissioner should be consulted before accepting a flight.

OFFICES AND EMPLOYMENT

Recommendation 15:

The Act should be amended to allow Ministers to engage in such employment or in the practice of a profession as required to maintain their professional or occupational qualifications during their time as Ministers notwithstanding section 21(1)(a).

Section 21(1)(a) states that a Minister breaches the Act if, after 60 days from appointment as a Minister, the Minister engages in employment or in the practice of a profession that creates or appears to create a conflict between a private interest of the Minister and the Minister's public duty.

Stakeholders were asked whether the Act should allow Ministers to maintain their professional or occupational qualifications during their time as Ministers should they need to do so. All of the respondents approved of the current provision to a greater or lesser degree, generally stating that Ministers should be allowed to maintain qualifications provided they don't use their qualifications for personal gain. Most stakeholders as well as the Office of the Auditor General agreed that maintaining professional qualifications would be acceptable, particularly since a member still has a duty to disclose private interests and is required to refrain from discussion or voting on issues in which a private interest may be furthered.

PUBLIC DISCLOSURE STATEMENTS

Disclosure to the Ethics Commissioner

The Act governs circumstances where there may be a conflict between a Member's public responsibilities and his or her private interests. The primary obligation to avoid a conflict of interest is on the Member. However, if a Member is uncertain if a conflict exists, the Member can seek the advice and recommendations of the Ethics Commissioner.

Each Member must submit an annual disclosure statement to the Ethics Commissioner. Direct Associates are listed on a separate form (Direct Associates Return), which must be updated when a change occurs. Returns are often updated as a result of information provided during the annual disclosure process.

The Office of the Ethics Commissioner has developed a number of forms to aid Members in fulfilling their disclosure requirements under the *Conflicts of Interest Act*. On the form used to elicit information regarding a Member's interests in private corporations, a Member is asked to list private corporations controlled by the Member, spouse, or minor children. Members are directed to the definition of "control person" as found in the *Securities Act:*

> 1(l) "control person" means any person or company that holds or is one of a combination of persons or companies that holds
>
> (i) a sufficient number of any of the securities of an issuer so as to affect materially the control of that issuer, or

(ii) more than 20% of the outstanding voting securities of an issuer except where there is evidence showing that the holding of those securities does not affect materially the control of that issuer.

The *Securities Act* goes on to identify when a company is controlled.

> 3 A person or company is considered to control another person or company if the person or company, directly or indirectly, has the power to direct the management and policies of the other person or company by virtue of
>
> (a) the ownership or direction of voting securities of the other person or company,
> (b) a written agreement or trust instrument,
> (c) being the general partner or controlling the general partner of the other person or company, or
> (d) being the trustee of the other person or company.

The Office of the Ethics Commissioner identified a potential loophole: if a Member holds shares in a corporation, it is a direct associate. However, a subsidiary of a direct associate corporation presently may enter into government contracts that are otherwise prohibited. As such, a member may gain a personal benefit through an intermediary of a private corporation that they own shares in or control.

Secondly, the Ethics Commissioner noted that private companies owned or controlled by a Member's spouse, adult interdependent partner, or minor child do not fall within the definition of “directly associated”.

Recommendation 16:

The Act should be amended to require Members to disclose to the Ethics Commissioner any involvement in litigation and any maintenance enforcement orders within 30 days of the Member becoming aware of such proceedings.

Recommendation 17:

The Act should be amended to require Members to disclose to the Ethics Commissioner any Alberta government program which confers a benefit that has been accessed by the Member, the Member’s direct associate or minor child, unless the benefit is of general application.

Currently the disclosure of litigation to the Ethics Commissioner is not required. The Discussion Guide asked whether there was any additional information that a Member should be required to disclose to the Ethics Commissioner. The submission from the Office of the Ethics Commissioner outlined a number of other kinds of information that should be required and asked the Committee to consider requiring disclosure of

- involvement in litigation, bankruptcy, or enforcement orders
- participation in programs such as emergency relief funds or grants that were accessed by a Member or a Member’s direct associates
- nonfinancial information relating to negotiations between a Member or direct associates and the Crown

The Committee agreed to accept the Ethics Commissioner’s recommendations regarding the disclosure of litigation or benefits from government programs, which would only be made to the Commissioner and would not form part of the public disclosure statement.

Recommendation 18:

The Act should be amended to change the values exempted from disclosure in the public disclosure statement

- **of any assets, liabilities or interests from less than $1,000 to having a value less than $10,000**
- **of any source of income from less than $1,000 to less than $5,000 per year**

Stakeholders were asked about the appropriateness of the current monetary limits for what is not included in the public disclosure statement, which are

- assets, liabilities or interests having a value of less than $1,000
- a source of income of less than $1,000 per year

The Office of the Ethics Commissioner indicated that the $1,000 limit should be reviewed and perhaps raised. The Committee noted that the $1,000 limit was introduced in 1992. Amounts required in various jurisdictions were examined, including the limits of $500 in Manitoba; $2,500 in Ontario and New Brunswick; $5,000 in PEI; $10,000 in Newfoundland, Northwest Territories, Nunavut and under the Federal Code; and $15,000 in Nova Scotia.

The Committee noted that the purpose of the limit in the Act is to guide what is disclosed to the Ethics Commissioner so that the Ethics Commissioner can determine whether or not a Member is in a position of conflict. After considerable discussion the Committee agreed to change the monetary limits for assets, liabilities, or interests, and for income.

Recommendation 19:

Section 14(4)(d) of the Act, relating to public disclosure, should be amended to replace the words "things used personally" with "personal property used for transportation, household, educational, recreational, social, or aesthetic purposes".

Section 14(4) presently states:

> The following shall be excluded from a public disclosure statement unless the Ethics Commissioner is of the opinion that disclosure of the asset, liability, financial interest, source of income or information is likely to be material to the determination of whether a Member is or is likely to be in breach of this Act:
>
> (d) things used personally by a Member, the Member's spouse or adult interdependent partner or one of the Member's family;

Of the exemptions to the public disclosure statement described above, the Committee noted that a number of other jurisdictions exempt personal property used for transportation and that these jurisdictions also have a description that exempts personal property used for household, educational, recreational, social, and esthetic purposes. It was agreed that the more descriptive list provided in the recommendation should replace the vague words used in section 14(4)(d) of the Act.

The Committee agreed that other items on the list of exemptions from the public disclosure statement currently required by the Act were sufficient.

SPECIAL RULES FOR EXECUTIVE COUNCIL AND THE LEADER OF HER MAJESTY'S LOYAL OPPOSITION (PART 4)

Recommendation 20:

The Act should be amended to prohibit a Minister and the Leader of the Official Opposition from

- **soliciting funds on behalf of any charitable organization of which he or she is a director or officer**
- **acting as a director or officer of a nonprofit organization if that group solicits funding from the government**

Volunteer Activities

The Discussion Guide outlined that Ministers can hold an office or directorship with social clubs, religious organizations, and political parties and asked if anything else should be added to this list. The Ethics Commissioner noted that the Act does not address volunteer activities, for example charitable fundraising. However, it was the Ethics Commissioner's experience that Ministers who are asked to participate on a board generally seek the Commissioner's approval to do so.

One of the respondents noted that volunteer associations and not-for-profits increasingly depend on government grants and that the presence of an elected official on any board may give that organization an inappropriate advantage. The Committee agreed that measures limiting volunteer activities with respect to charitable organizations or nonprofit organizations seeking government funding would avoid perceptions of favouritism or undue influence.

GENERAL AMENDMENTS

PREAMBLE

Recommendation 21

The Preamble should be expanded to include provisions such as the following:

- **The Assembly as a whole can represent the people of Alberta most effectively if its Members have experience and knowledge in relation to many aspects of life of Alberta and if they can continue to be active in their own communities, whether in business, in the practice of a profession, or otherwise.**
- **A Member's duty to represent his or her constituents includes broadly representing his or her constituents' interests in the Assembly and to the Government of Alberta.**

A preamble is a guide to interpreting the Act and may set out the purposes of the legislation. It does not constitute a substantive part of the legislation, nor does it by itself create legal obligations. A preamble must be measured against other indicators of legislative purpose or meaning: if there is a contradiction between the preamble and a substantive provision, the substantive provision prevails.

Throughout the review process the Committee returned to the Preamble to discuss whether it clearly set out the guiding principles underlying the *Conflicts of Interest Act*. The extent and relevance of the existing principles also were considered throughout the review process.

The Committee discussed the merits of having the fundamental principles expressed in a more positive manner and noted that the Ontario *Members' Integrity Act* and the Nunavut *Integrity Act* acknowledge that Members bring knowledge and expertise to the Assembly and are expected to be active in their communities. The Committee agreed that the wording in the Ontario and Nunavut acts added valuable insight about balancing the responsibility of Members to their citizens and constituents with their obligations under the Act.

INTERPRETATION OF THE ACT

Recommendation 22:

Section 1(5)(e) should define the term "agent" as a person acting with the express or implied direction or consent of the Member or Minister and who is acting to further the interest of the Member or Minister.

Section 1(5) of the Act presently reads:

> (e) For the purposes of this Act, a person is directly associated with a Member if that person is a person or group of persons acting as the agent of the Member and having actual authority in that capacity from the Member.

The term "agent" is included in the class of individuals who are directly associated with a Member. The Committee agreed to the recommendation from the Office of the Ethics Commissioner that the term "agent" be further defined.

DISQUALIFYING OFFICES

Recommendation 23:

The Schedule for the Act, which contains a list of disqualifying offices, should be moved into a Regulation.

Recommendation 24:

Criteria for the agencies that should be identified for inclusion in the list of disqualifying offices should be provided as policy guidelines. (See Appendix C.)

Generally, Members are not prohibited from carrying on a business or profession in addition to serving as a Member of the Legislative Assembly.

A Member breaches the Act if he or she accepts a position with any organization that is listed in the schedule to the Act as a "disqualifying office". If the Member held one of the offices *before* becoming a Member, the Act states that the Member ceases to hold the office upon becoming a Member.

The Schedule of Disqualifying Offices includes judicial offices, officers of the Legislature, and a large number of boards and tribunals. The schedule is intended to prevent Members from being in positions that could potentially give rise to allegations of undue patronage and to avoid an incompatibility between membership in the Legislative Assembly and the holding of another office.

Neither the Act nor the schedule set out criteria for inclusion in the list of disqualifying offices, nor is there a clear policy basis for determining which newly created government-affiliated

agencies, boards, commissions, and tribunals ought to be added to the list of disqualifying offices. The Office of the Auditor General advised that it was not clear why certain organizations are included in the list while others are not.

The Office of the Ethics Commissioner advised that the list of disqualifying offices ought to be periodically updated to reflect name changes and the abolition and amalgamation of agencies, boards and commissions.

The Committee determined that there is a need to be able to update the list on a regular basis without having to go through the time-consuming process of amending the Act.

The Committee did not believe it was possible to specify exact criteria for what should be a disqualifying office but agreed some policy guidelines might be proposed. The Office of the Ethics Commissioner developed criteria for determining inclusion on the list of disqualifying offices, which the Committee reviewed and edited. These criteria were accepted by the Committee and are provided in Appendix C of this report.

CONTRACTS WITH THE CROWN

Recommendation 25:

Section 8(1)(e), which refers to prohibitions concerning a Member or a person directly associated with the Member from entering into "a contract under which the Alberta Opportunity Company lends money", should be deleted from the Act as the Alberta Opportunity Company no longer exists.

Recommendation 26:

Section 8 should be amended to enable the Ethics Commissioner to approve a Member's renegotiation or renewal of an ATB Financial mortgage.

Recommendation 27:

The Act should be amended to enable a Member to be compensated for the costs of transferring a mortgage from ATB Financial to another financial institution where required to do so by the Ethics Commissioner.

The Ethics Commissioner noted that since Members are advised to move existing mortgages to a financial institution other than an Alberta Treasury Branch upon renewal of a mortgage, Members ought to be compensated any costs of transferring the mortgage. The Committee agreed to accept the Ethics Commissioner's recommendations and that the Ethics Commissioner should have discretion to recommend compensation of the Member for costs of transferring a mortgage from an Alberta Treasury Branch.

SANCTIONS AND COMMISSIONER'S POWERS

FORMER CABINET MINISTERS

Recommendation 28:

Section 31(5) should be amended to allow a judge to impose one or both of the following penalties on a former Minister:

- **a requirement that a former Minister make restitution or compensation to any party who has suffered a loss or to the Crown for any pecuniary gain which the former Minister has realized in any transaction to which the violation relates**
- **a fine that can be imposed on a former Minister who contravenes Part 6 of the Act and who at the time of the contravention is not a Member of the Legislative Assembly and that there be an increase to the amount of the maximum fine from $20,000 to $50,000**

Penalties

At present the punishment for breaching this part of the Act is a fine not exceeding $20,000. The Discussion Guide asked if this was an appropriate amount and whether a different type of punishment would be appropriate. The Office of the Ethics Commissioner noted that this fine has never been recommended or imposed and that the current amount is sufficient. Two stakeholders advised raising the amount to $100,000. The Office of the Auditor General advised that to be an effective deterrent a penalty must be commensurate with the economic benefit that the Member may have gained from violating the Act. The Auditor General went on to say that this could be significant; for example, accepting employment, contracts, or other benefits during the cooling-off period. The Office of the Auditor General would support a penalty as high as $200,000 for the most serious infraction.

Another stakeholder raised the point that punishment should include restitution of private benefit to the elected official plus punitive payment prorated to the seniority of the elected official. This stakeholder also noted that the elected official should be able to contemplate the risk of ruin of reputation, property, finance, and freedom.

The Committee considered that fines in the majority of Canadian jurisdictions have a maximum of either $5,000 or $10,000 although Ontario and Saskatchewan offer maximum penalties of $50,000. In Manitoba a judge may require a member to make restitution to the government for any pecuniary gain which the member has realized in any transaction to which the violation relates (section 21(1)(d) and 29). In Nova Scotia a Member may be required to return any benefit improperly obtained. In Newfoundland, Northwest Territories and Nunavut a Member may be ordered to pay compensation or restitution.

THE OFFICE OF THE ETHICS COMMISSIONER (PART 7) INVESTIGATIONS AND REPORTS (PART 5)

Recommendation 29:

The Act should be amended to empower the Ethics Commissioner to

- **conduct an investigation into dealings with government by former Ministers up to the end of the former Minister's cooling-off period**
- **require a former Minister to comply with an authorized investigation by the Ethics Commissioner**

and give the Ethics Commissioner new powers to

- **provide information to the authorities if he or she believes that there has been criminal activity**
- **initiate his or her own investigations under the Act**

The *Conflicts of Interest Act* establishes the Ethics Commissioner as an Officer of the Legislature. The Ethics Commissioner is charged with promoting the understanding by Members of their obligations under the *Conflicts of Interest Act*. The Commissioner engages in one-on-one conversations with each Member, disseminates written information about the obligations under the Act, and provides general advice.

A Member or former Minister can request that the Ethics Commissioner give advice and recommendations on any matter respecting obligations under the Act. The Member or former Minister is entitled to rely on the advice and cannot be prosecuted under the Act if (s)he complied with the advice.

While the Ethics Commissioner has the ability to issue general advice and recommendations, if the advice or recommendations are with respect to the obligations and duties of a specific individual, it is confidential until released by or with the Member's or former Minister's consent.

Any person may request that the Ethics Commissioner investigate any matter respecting an alleged breach of the Act.

Presently the Ethics Commissioner cannot conduct an investigation without a request to do so except where (s)he believes a Member is not following advice the Ethics Commissioner has previously given to that Member.

The Committee noted that a former Minister is subject to the jurisdiction of the courts. In order to initiate this process or to have a way of investigating the conduct of a former Minister, the Ethics Commissioner requires additional powers to investigate if there has been a breach of the Act. The Committee discussed a concern that the Commissioner would not have the authority to compel former Ministers to participate in an investigation as the Assembly would have lost jurisdiction over them. Therefore, the Committee noted that the Act would be strengthened if it *required* a former Minister to comply with an investigation by the Ethics Commissioner.

The Ethics Commissioner may refuse to investigate or may cease to investigate an alleged breach under this Act if (s)he is of the opinion that the request is frivolous or vexatious or was not made in good faith or if there are insufficient grounds to warrant an investigation or the continuation of an investigation. A Member who is found to have filed a frivolous or vexatious request may be found by the Legislative Assembly to be in contempt and ordered to pay costs of the proceeding to the Member against whom the allegation was made.

After concluding an investigation the Ethics Commissioner generates an investigation report, which may include recommendations regarding appropriate sanctions. The Ethics Commissioner may recommend that no sanction be imposed or may recommend a reprimand, penalty, suspension of the Member's right to sit and vote in the Assembly for a period of time, or expulsion of the Member from the Legislative Assembly altogether.

Where a report may adversely affect a Member, the Ethics Commissioner must inform the Member of the particulars and give the Member an opportunity to make representations, orally or in writing before the Commissioner completes his report. It is the practice of the Office of the Ethics Commissioner to provide a draft copy of the report to the Member against whom an allegation has been made regardless of whether the Member will be adversely affected by the report.

Reports of completed investigations are presented to the Legislative Assembly through the Speaker except where the investigation had been originally requested by Executive Council. If the Ethics Commissioner's investigation report has been submitted to the Legislative Assembly, the Assembly must deal with the report within 60 days after it has been tabled. The Assembly can either accept or reject the Ethics Commissioner's findings or substitute its own findings. It may also impose the sanctions recommended by the Ethics Commissioner or may substitute its own sanctions.

Upon completion of an investigation the Ethics Commissioner has the further discretion whether or not to conduct an inquiry. Generally speaking, inquiries are public, but the Ethics Commissioner may decide to hold them in private. At an inquiry the Ethics Commissioner has all the powers of a commissioner under the *Public Inquiries Act*. To date no inquiries have ever been held in Alberta.

Stakeholders were asked whether the Ethics Commissioner should be able to conduct an investigation on his or her own initiative without having to wait for a request to do so. Nine responses were received to this question, unanimously in favour of allowing the Ethics Commissioner to conduct an investigation on his or her own initiative. The following jurisdictions enable their Ethics Commissioner to conduct an investigation on his or her own initiative: Saskatchewan, Nova Scotia, Newfoundland, and Nunavut as well as the Ethics Commissioner under the federal *Conflict of Interest Code for Members of the House of Commons.*

Recommendation 30:

The Act should be amended to provide that no investigation or prosecution of a former Minister may be undertaken under this Act after two years have passed since the former Minister left office.

The Discussion Guide asked if there should be a limitation period after which the Ethics Commissioner would be prevented from investigating. Eight responses were received to this question, seven saying there should be no limitation period as it could allow a Member or former Member to avoid sanction, which could seriously undermine the public's confidence, trust, and respect for the Assembly.

The Committee noted that Prince Edward Island's legislation includes a provision prohibiting the Ethics Commissioner from *considering any matter* if more than two years have elapsed from the alleged contravention. Saskatchewan's legislation prohibits the *prosecution* of a former Member after two years have passed since the date of the alleged offence.

The Committee discussed the relevance of having a limitation period beyond which a Member could not be investigated. The Committee reviewed powers of commissioners across the country and approved of Saskatchewan's provision that the commissioner cannot

start prosecution of a former Member for an alleged offence after two years from the date of the alleged offence.

The Committee discussed the point that if the Act has an investigation provision that extends a certain period after the alleged offence may have occurred, then it would be appropriate to correspondingly extend the period to bring a charge against a former Minister.

The Committee agreed that because of the recommendation that the cooling-off period for former Ministers be extended to 12 months, there should also be a recommendation that would apply to a further time period in which investigations or prosecutions of former Ministers could be conducted. The two-year time period conforms to the general limitation period in the *Limitations Act* of Alberta.

SANCTIONS

Recommendation 31:

The Act should be amended to include a provision for restitution similar in wording to the Government of British Columbia's *Members' Conflict of Interest Act*, which states:

a. Despite anything in this Act, if any person, whether or not the person is or was a member, has realized financial gain in any transaction to which a violation of this Act relates, any other person affected by the financial gain, including the government or a government agency, may apply to the [Court] for an order of restitution against the person who has realized the financial gain.

If the Member breaches the Act, (s)he may be the subject of sanctions by the Legislative Assembly.

The Ethics Commissioner can recommend to the Assembly that

- a Member be reprimanded
- a penalty be imposed on the Member in an amount recommended by the Ethics Commissioner
- a Member's right to sit and vote in the Legislative Assembly be suspended for a stated period or until the fulfillment of a condition
- a Member be expelled from membership of the Legislative Assembly

The Ethics Commissioner may also recommend a lesser sanction or no sanction at all if the Member carries out the Ethics Commissioner's recommendations for the rectification of the breach.

The Assembly may accept or reject the findings recommended by the Ethics Commissioner or impose any other sanction that the Ethics Commissioner could have imposed that the Assembly considers appropriate.

The Discussion Guide asked if the sanctions available to the Ethics Commissioner were adequate. There were eight responses to this question, three of which agreed that the current sanctions are adequate. One thought the sanctions were inadequate but noted that education and awareness should be the first line of defence against unethical behaviour. Three others suggested improvements.

Legislation in Canada diverges with respect to what is done with the Commissioners'

recommendations regarding sanctions. In some jurisdictions the relevant Legislative Assembly must either accept or reject the recommendations of the Ethics Commissioner, and it cannot substitute its own sanctions instead (British Columbia, Ontario, Prince Edward Island, Northwest Territories, Nunavut). New Brunswick takes an approach similar to Alberta's, where the choice of sanction is up to the Assembly and it need not impose the specific sanction recommended by the Ethics Commissioner.

The sanctions available to Alberta's Ethics Commissioner are standard for Commissioners across Canada although some jurisdictions offer additional options. The Committee noted that six Canadian jurisdictions allow the Commissioner to recommend or a judge to order that the Member make restitution. In Manitoba and Northwest Territories restitution can be made to the government for any pecuniary gain improperly realized by the Member. Newfoundland's and Nunavut's legislation allow restitution to go to any person. In Nova Scotia direction can be made to return any gain realized in improperly promoting something such as a bill or resolution and to return any personal benefit improperly obtained by the Member. British Columbia has a provision that if a financial gain is realized, any person affected by it may apply to the Supreme Court for a restitution order.

The Committee discussed whether the Ethics Commissioner might conduct an investigation of a former Minister who was no longer under the jurisdiction of the Legislature and whether it would follow that a court would have the power to seek restitution. The Committee agreed that the wording in the British Columbia *Members' Conflict of Interest Act* expressed their intent.

ADDITIONAL RECOMMENDATIONS

Recommendation 32:

The Act should be amended to allow the Ethics Commissioner the authority to conduct independent, third-party reviews as requested by Regional Health Authorities.

Regional Health Authorities

The Discussion Guide raised the question as to whether the Act should be expanded to apply to other people such as those involved with regional health authorities.

In his 2000-2001 annual report the Auditor General recommended that the Calgary Health Region and Capital Health Authority, as well as all regional health authorities enhance their conflict of interest processes by extending private-interest disclosure requirements to senior management who are in a position to influence contract decisions and by using an independent, third-party review when employees operate private practices or clinics that contract with their employers.

The Office of the Auditor General clarified that it was not suggesting that senior management be bound by the disclosure requirements in the Act. "Rather, the recommendation was that there should be an independent third party review available upon request in RHAs, and the Ethics Commissioner is suited for that task. Physicians are often employed in a management capacity by RHAs. These same physicians often operate their own private practices or work

for private clinics. This could lead to a conflict. Other potential conflict situations also exist where employees of RHAs who are part of the decision-making process are also shareholders in private clinics that contract with their employers."

The Ethics Commissioner agreed that an outside, independent, third-party review of complaints would be beneficial, and offered to take on that role. The Ethics Commissioner also noted that the RHAs each have conflict of interest bylaws that require some measure of disclosure and opined that the internal disclosure requirements are sufficient.

Recommendation 33:

The Act should be amended to require the Ethics Commissioner to retain records of current Members and of former Members for two years after the Member's departure from the Assembly, after which the records shall be destroyed. A Member's public disclosure statements should be made publicly available by the Clerk's Office during the period of their retention for two years after the Member's departure from the Assembly.

Options regarding records management can be found in other Canadian legislation. For example, section 22 of Ontario's *Member's Integrity Act* sets out that the Commissioner shall destroy records relating to a Member or former Member or to a person who belongs to his or her family during the 12-month period that follows the 10th anniversary of the creation of the record. An exception is made to the rule if criminal charges have been laid. The same provision exists in Prince Edward Island. New Brunswick's and Newfoundland's legislation requires the Commissioner to destroy records relating to a former Member and his or her family 12 months after the person ceases to be a Member of the Assembly unless criminal charges have been laid.

The Alberta Office of the Ethics Commissioner recommended that the Act should make it clear that there is no access to a former Member's records of any kind once the Member leaves office. During discussion it was noted that the records that are publicly available are the public disclosure statements that are stored with the Clerk of the Legislative Assembly, not those complete records that are kept by the Office of the Ethics Commissioner. The Office of the Ethics Commissioner also recommended that there could be rules set out regarding records retention. The Committee agreed with this recommendation.

Recommendation 34:

The Act should be amended to state that if a Member obtains legal representation during the course of an inquiry, the cost of legal representation will be reimbursed by the Legislative Assembly.

The Office of the Ethics Commissioner noted in its response to the Discussion Guide that the Act is silent regarding who bears the cost of legal representation if an inquiry is held. In the Northwest Territories the legislation requires that the reasonable costs of a Member be paid.

The Office of the Ethics Commissioner also noted that in the past, during inquiries, some Members had hired legal representatives. Committee members agreed to recommend that the Act allow some provision for reimbursement of costs of legal representation, particularly for cases where as a result of an inquiry a Member is vindicated. It was agreed that all Members should be allowed a proper defence when requests for investigations by the Ethics Commissioner were made against them.

In the Northwest Territories the decision about reimbursing legal representation comes from the Board of Internal Economy, which in Alberta is the equivalent of the Members' Services Committee.

Recommendation 35:

The Act should be amended to state that the Ethics Commissioner may suspend an inquiry if (s)he learns of a related ongoing police investigation or criminal charges.

The Office of the Ethics Commissioner submitted that there should be a provision added to the Act to deal with matters that may involve law enforcement or criminal proceedings. The Ethics Commissioner noted that the Act should enable the commissioner to alert authorities of any contravention of any Act or Criminal Code. The Commissioner recommended that his office should be empowered to suspend an inquiry if a police investigation or criminal charges against a Member already under investigation are brought to the Ethics Commissioner's attention.

The Committee noted that in British Columbia during an investigation being conducted by the Conflict of Interest Commissioner in relation to the former Premier receiving a gift from a contractor, criminal proceedings were brought against the former Premier. The Conflict of Interest Commissioner finished his report before the court case finished, and the court sealed the Commissioner's report until the court proceeding had concluded. The Committee agreed that the Ethics Commissioner should have discretion to suspend an inquiry if there were criminal charges or other police proceedings against a Member under investigation.

Recommendation 36:

The Act should be amended to specify that the Assembly should debate any report of the Ethics Commissioner that recommends sanctions within 15 sitting days from the date the report is tabled in the Legislative Assembly provided that such debate shall occur prior to the adjournment of that sitting of the Assembly.

The Office of the Ethics Commissioner noted that the Act says that the Assembly "shall deal with" the Ethics Commissioner's report within 60 days of tabling. The majority of reports have simply been tabled. The Ethics Commissioner questioned whether the Act should specify that the Assembly must debate the report only if sanctions are recommended.

The Committee discussed the advisability of specifying when the Assembly would have to debate the report and agreed that the report should be debated if it recommended sanctions. The Committee believes that specifying a time period would ensure that the report be addressed within a reasonable time.

RECOMMENDATIONS FOR NO CHANGE

The Committee discussed stakeholder input and considered the following issues that were raised by the Discussion Guide. These 15 recommendations do not call for changes to the existing Act.

FUNDAMENTAL PRINCIPLES

37. The Act should retain a Preamble.

The Committee reviewed the Preamble of the Act and considered stakeholder input about it. The Committee agreed with the general consensus of the stakeholders that the addition of a statement of purpose is unnecessary. Stakeholders were asked whether the restrictions and prohibitions outlined in the Preamble adequately address the principles of impartiality. The Committee noted that the Tupper report recommended that an impartiality clause could be added to the Act to remind members of their duties and obligations. The Committee noted that the Preamble already contained the concepts of integrity and impartiality and that Recommendations 6 and 7 specifically address the concept of impartiality.

SCOPE AND INTERPRETATION OF THE ACT

38. A definition for the term “trivial” is not required in Section 1(1)(g).

Stakeholders identified terms that they felt should be defined in the Act, in particular the use of the phrase “trivial interest”. The Committee drew attention to Ethics Bulletin 1, issued by the Office of the Ethics Commissioner in 1996, which encourages Members who wish to know if a private interest might be viewed as trivial to raise the matter with the Commissioner.

The Committee agreed that terms such as “trivial” are basically dictionary-defined terms and that in instances of uncertainty a Member could ask the Ethics Commissioner for his interpretation.

PRIVATE INTERESTS
DISQUALIFYING OFFICES

39. There should be no change to the definition of private interest as set out in Section 1(g).

Many provisions in the Act are aimed at preventing Members from inappropriately attempting to advance a private interest. If a Member, his or her direct associates, or minor child has a private interest in a matter that comes up in a meeting of Executive Council or the Assembly, the Member must declare the interest and withdraw from the meeting without voting or participating in the discussion.

Members file disclosure statements with the Office of the Ethics Commissioner and, while described generally, the specifics of the private interest are not recorded. Information about private interests that is in the hands of the Ethics Commissioner is confidential.

Under the Act a private interest does not include an interest

- in a matter that is of general application
- in a matter that affects a person as one of a broad class of the public
- in a matter that concerns the remuneration and benefits of a Member

- that is trivial
- of a Member relating to publicly traded securities in the Member's blind trust

As such, a Member may participate in decision-making regarding any of the above items.

The primary obligation to avoid conflicts of interest is on the Member. When a Member is uncertain, he or she may seek the advice of the Ethics Commissioner. Alternatively, the Member may choose to speak to the party Whip, who in turn may approach the Ethics Commissioner for more general advice.

Under the current Act if a Member participates in decisions when he or she should have declared an interest and abstained, the Ethics Commissioner may be asked to conduct an investigation and, after reporting to the Speaker, the Member may be ultimately subject to sanctions by the Legislative Assembly under the Act.

The Office of the Ethics Commissioner and the Office of the Auditor General recommended and the Committee accepted the view that a member should not participate in discussions where the Member has a private interest even in cases where a Member wishes to take a position that would adversely affect the Member's private interest. The Committee was in favour of this view.

BLIND TRUSTS

40. The provision in the Act regarding blind trusts is adequate and appropriate and should not be changed.

41. The Act should not provide for the establishment of management trusts for private corporations.

42. The current rules restricting the ability of Ministers and Leaders to maintain their involvement in private corporations are appropriate and should not be changed.

Ministers and the Leader of the Official Opposition may hold publicly traded securities if the Commissioner is of the opinion that there would be no real or apparent conflict. Presently, the Act provides that Ministers and Leaders have three options regarding holding publicly traded shares or securities: 1) they can establish a blind trust 2) they can conduct a divestment or 3) they can seek the Commissioner's approval.

Once a blind trust has been established and a Minister or Leader has put their publicly traded securities in it, the Minister or Leader is not prohibited from participating in any decisions referring to those securities. With a trust arrangement that is truly blind, a Minister or Leader will not even know if they have an interest in any particular security.

A trust is a blind trust if the Minister or Leader gives sole power over investment decisions to the trustee, thereby precluding the Minister or Leader from having any knowledge of the specific investments in the trust. The Act sets out what kind of investments the trustee can invest trust monies in (publicly traded securities, shares, or units in a mutual fund; futures and forward contracts; exchange contracts or certificates of deposit; deposit receipts or other evidence of indebtedness given by a bank, trust company, credit union, or treasury branch in consideration of a deposit made with the bank, trust company, credit union or treasury branch).

Trustees must be approved by the Ethics Commissioner, who will check to ensure that there is no relationship between the Minister or Leader and the trustee that would affect or would appear to affect the discharge of the trustee's duties.

The Committee reviewed information about how blind trusts are treated in other Canadian jurisdictions, noting that blind trusts are fairly common across the country.

The Committee also discussed the possibility of introducing a recusal process. The recusal process is used when the establishment of blind trusts or management trusts is either inappropriate or inadequate. The federal government uses a recusal process where the federal Ethics Commissioner sets out rules tailored for a Minister's or Leader's specific situation so that there will be no perception of any kind of bias or conflict.

Stakeholders were asked if the rules for blind trusts were appropriate. Six responses were received to this question, five of which agreed that the current rules regarding blind trusts are appropriate.

Management trusts are a variation on blind trusts where assets other than publicly-traded securities are placed in the hands of a manager who is at arm's length from the Minister or Leader. The manager is empowered to exercise all rights and privileges with respect to the assets, again without any input from the Minister or Leader. Management trusts allow a Minister or Leader to distance him or herself from interests in a private corporation so that they can go on conducting their duties without having to close down their business interests during the period of time when that Minister or Leader is in office.

Stakeholders were asked if Ministers or Leaders should be permitted to establish trusts for the management of their private corporations, and if so, should Ministers or Leaders then be allowed to participate in discussions and votes that relate to those specific private corporations? Five responses were received on this question. Three felt it would not be appropriate to allow management trusts. Two thought they should be allowed, including the Ethics Commissioner. The Committee felt that even with the establishment of a management trust there would still be a perception or appearance of a conflict of interest.

In Alberta Ministers and the Leader of the Official Opposition cannot carry on a business that creates or appears to create a conflict between a private interest of the Minister or Leader and his or her public duty. The Minister or Leader of the Official Opposition are required to ensure that their private corporations remain inactive during their time of service in Executive Council.

It is common for Ministers or Leaders to have private corporations. The Act does not specifically deal with the possibility of Ministers or Leaders setting up trusts to manage their private corporations. Ministers or Leaders may arrange to have interests in private corporations managed through a trust arrangement, but such an arrangement is <u>not</u> a blind trust under the Act. The Committee approved that the Act would continue in such situations to treat the Ministers or Leaders as having a private interest in that corporation.

DISCLOSURE AND REPORTING REQUIREMENTS (PART 3)

43. The Act should not be amended to include in the public disclosure statement the amount or value of financial interests of a Member. The present requirement for identification of the type of financial interests set out in section 14 of the Act is sufficient.

44. The Act should not be amended to change the requirement for a Member to disclose to the Ethics Commissioner all information that is known by the Member regarding financial information about his or her spouse or adult interdependent partner.

After reviewing the information provided to him by a Member, the Ethics Commissioner generates a public disclosure statement that summarizes the Member's information without indicating monetary amounts or values. Certain specific interests are not usually included in the public disclosure statement:

- assets, liabilities, or interests having a value of less than $1,000
- a source of income of less than $1,000 per year
- information identifying a home or recreational property occupied by the Member, the Member's spouse or adult interdependent partner, or one of the Member's family
- things used personally by a Member, the Member's spouse or adult interdependent partner, or one of the Member's family
- unpaid taxes except property taxes under the *Municipal Government Act* and taxes under the *School Act*
- support obligations

Stakeholders were asked whether it was appropriate to remove the amount or value of a Member's financial interests from a public disclosure statement.

The Ethics Commissioner recommended that no amendment be made to the current provision, pointing out that the Act already allows some discretion in this area. Specifically, the Commissioner can approve an activity if satisfied it will not create or appear to create a conflict between a private interest of the Minister and the Minister's public duty. (See Recommendation 4.)

Stakeholders were divided on this question. The Committee noted that the categories of interest that are included in each public disclosure statement should provide sufficient information to alert the public to possible problems or conflicts. It also was noted that disclosing actual values was unnecessarily invasive to the Member's privacy and could negatively impact the Member's future business dealings. The Ethics Commissioner maintained that his office takes this matter very seriously and is careful not to allow any inappropriate information to appear on the public disclosure statement. Indeed, both the Office of the Ethics Commissioner and the Office of the Auditor General replied to the question in the Discussion Guide in favour of keeping the Act the way it is.

The Office of the Auditor General noted and the Committee agreed that there is an appropriate balance between privacy and accountability in the current Act and that the Act includes an important safeguard in that the information is excluded from the public disclosure statement "unless the Ethics Commissioner is of the opinion that disclosure of the asset, liability, financial interest, source of income or information is likely to be material to the determination of whether a member is or is likely to be in breach of the Act".

The Committee accepted most of the Ethics Commissioner's recommendations but recommended increasing the limit on assets for public disclosure from $1,000 to $10,000 (Recommendation 18). The Committee also recommended (Recommendation 16) that the Member be required to report any proceedings, maintenance enforcement orders, or litigation to the Commissioner within 30 days of becoming aware of the proceedings, but this recommendation would not affect the public disclosure statements.

The Discussion Guide noted that the current Act requires a Member to ask his or her spouse or adult interdependent partner for their financial information and then disclose to the Ethics Commissioner all information that is known by the Member. Stakeholders were unanimous and the Committee agreed in their approval of this requirement.

SPECIAL RULES FOR EXECUTIVE COUNCIL AND THE LEADER OF HER MAJESTY'S LOYAL OPPOSITION (PART 4)

45. Employment restrictions described in Part 4 of the Act should not be amended to include any other Members, including Leaders of other opposition parties.

46. The Act should not be amended to subject to cooling-off periods MLAs who
    - chair Standing Policy Committees, or
    - chair or supervise an agency of the Government of Alberta.

Employment Restrictions

Neither a Minister nor the Leader of the Official Opposition can engage in employment or carry on a business if to do so creates or appears to create a conflict between their private interests and their public duty. Ministers and the Leader of the Official Opposition also cannot hold offices or directorships if to do so would create or appear to create a conflict. An exception exists for involvement in social clubs, religious organizations, or political parties.

An application can be made to the Ethics Commissioner for exemption from this provision.

Stakeholders were asked whether other Members, for example leaders of other opposition parties, should be subject to the same employment restrictions as Ministers. The Office of the Auditor General advised that unless there was a rationale to exclude them, the restrictions should be extended to all leaders. However, the Office of the Ethics Commissioner advised the Committee to keep in mind that remuneration for the Leader of the Official Opposition is equivalent to a Minister, but other leaders do not receive that same remuneration.

The Office of the Ethics Commissioner suggested that the Speaker should not be subject to the same restrictions as he does not participate in decisions of the Legislative Assembly. Chairs of Standing Policy Committees (SPCs) with financial holdings in industries covered by the mandate of their particular SPC were also noted by the Ethics Commissioner as possible candidates to be subject to the restrictions; however, since the chairs of SPCs are rotated on a regular basis, the Ethics Commissioner was reluctant to support a requirement that chairs divest their interests or establish a blind trust. The Committee noted that SPC chairs do not have access to the same kind of information or decision-making powers of the Ministers and, therefore, did not have the same requirement to be restricted.

Standing Policy Committees (SPCs) are committees chaired by a government Member and include Ministers as well as Members who are not Ministers. There are currently six SPCs in the Alberta government, and each of them examines the pros and cons of particular policy options and makes recommendations that go forward to caucus and the entire Executive Council.

Additional information regarding provisions in other Canadian jurisdictions was considered by the Committee. It was noted that SPC chairs do not have access to insider ministerial information.

FORMER CABINET MINISTERS (PART 6)

47. The Act should not be amended to provide a general allowance for a former Minister to accept employment in further service to the Crown.

The Discussion Guide asked if the list of activities in which former Ministers are restricted from participating is appropriate and whether anything should be added to or removed from this list.

The Ethics Commissioner recommended adding a provision to allow a former Minister to accept employment "in further service to the Crown". Many Canadian jurisdictions contain a provision similar to the one recommended by the Ethics Commissioner, to allow former Ministers to provide further services to the Province if they so choose.

Stakeholders were divided on the question of whether former Ministers should be able to obtain an exemption from their cooling-off period from the Ethics Commissioner and under which circumstances such an exemption would be appropriate.

Commissioner's exemptions are allowed in Saskatchewan, Newfoundland, Northwest Territories, Yukon, and Nunavut. In Manitoba only the Lieutenant Governor in Council can allow a former Minister to enter into a contract with or accept a benefit from the government.

The Committee agreed that Recommendation 4 adequately identified conditions under which a former Minister could obtain an exemption to the cooling-off period.

SANCTIONS

48. The Act should not be amended to impose sanctions on a Member after a Member has left office.

49. The Act should not be amended to include a provision concerning the voidability of a contract entered into in violation of the Act.

50. The Act should not be amended to expand on the restrictions in sections 8 and 9, which outline specific rules and situations where a Member cannot contract with the Crown.

51. The Act should not be amended to prohibit activities which give rise to apparent conflicts of interest.

Investigations and Reports

The Committee agreed that the Act should not be amended to impose sanctions on a Member after a Member has left office. Investigations into breaches of the Act by Members should occur while the Member is a Member of the Legislative Assembly. However, the Committee felt that there should be a recommendation that would apply to former Ministers because there is a cooling-off period that applies to Ministers (Recommendation 4).

Voidability of Contracts

The Discussion Guide noted that the Act does not address what should happen to a contract if it was entered into in violation of the Act.

The Committee decided that it was unnecessary to include a provision concerning the voidability of contracts given that the provisions in the British Columbia and Manitoba Acts

have not to the Committee's knowledge ever been relied upon. It is possible that common law could be relied upon should a situation arise where a party to a contract that was entered into contrary to the Act was to be voided. The Committee felt that the provisions concerning restitution would address the problems that would in theory give rise to the issues surrounding voidability of a contract. (See Recommendations 28 and 31.)

Restrictions Placed on the Activities of Members

The Committee reviewed a concern expressed by some stakeholders that the language of the Act in section 8 could be clarified or simplified. Sections 8 and 9 are lengthy, outlining specific rules and situations where a Member cannot contract with the Crown.

Alberta's approach of providing a specific list of prohibited contracts restricts the discretion of the Ethics Commissioner, but it also protects members from being found guilty of something that wasn't specifically noted in the Act. The Committee concluded that section 8 in its present form is adequate and that the approach of outlining specific offences is preferred to the creation of a general rule.

Stakeholders were asked if the existing restrictions placed on the activities of Members were appropriate. Respondent comments aligned with those of the Office of the Ethics Commissioner, which stated that the restrictions are comparable to those in other Canadian jurisdictions. The Committee agreed that no further restrictions needed to be placed on the activities of Members.

Apparent Conflict of Interest

Stakeholders were asked whether Members should be prohibited from participating in decisions where the Member has an apparent conflict of interest. At present the Act only covers actual conflicts of interest. The Discussion Guide noted that an apparent conflict of interest might be defined as a situation where reasonably well-informed persons could possibly have the perception that the Member could use his or her public office for private gain.

The Tupper report recommended that Alberta's conflicts legislation incorporate the idea of "apparent conflict of interest" and opined that this would raise the standard of conduct expected of Members. The Tupper report recognized that this standard was already in limited use in what is now section 21 of the Act, which prohibits Ministers from engaging in business or professional activity if to do so creates or appears to create a conflict between the private interest of the Minister and the Minister's public duty.

British Columbia is the only Canadian jurisdiction that governs apparent conflicts of interest although Saskatchewan and Yukon both have a provision similar to Alberta's section 21, governing the business and professional activities of Ministers.

Of the seven responses received to this question, five were in favour of including apparent conflicts of interest in the legislation, and two were opposed.

One proponent of the change argued that even when no actual conflict exists, an apparent conflict has the potential to seriously undermine public confidence and trust if there is a public perception that a Member's ability to exercise an official power/duty must have been affected by a private interest. Another proponent maintained that the onus should be on public officials to avoid provoking mistrust with their actions, noting that while there may be

grey areas in administration of this rule, meaningful guidelines and rulings could be developed over time.

Of those who opposed introduction of the new standard, one argued that a clear set of rules would have to be established and enforced so there would be no question as to whether there was a conflict of interest. Further, it was noted that discussion on topics could be held up if Members had to wait for a ruling on potential conflict of interest charges.
The Alberta Ethics Commissioner does not favour inclusion of apparent conflicts of interest. The full response from the Ethics Commissioner follows:

> Support for inclusion of "apparent conflict of interest" is based on a high standard of conduct to be expected by the persons covered by the governing legislation. It is felt that higher standards will result in enhanced public confidence in public officials and that such officials should be evaluated by the strictest standards. Opponents to the concept feel that there is no reasonably well-informed person who can judge the issue and that persons raising allegations of this sort are likely to have a partisan viewpoint and judging a public official according to that standard is not appropriate.
>
> The Office of the Ethics Commissioner for Alberta originally supported inclusion of the concept of "apparent" conflict of interest. Over time, we have been persuaded by arguments against the concept (as expressed by the former Commissioner in Ontario, the Honourable Gregory T. Evans, Q.C., in 2001):
>
> > Proof of a breach or complicity in a breach of the Member's Integrity Act must be based on facts rather than conjecture, suspicion, or affinity based on friendship, common interest or political affiliation. A person's reputation, irrespective of his station in life, is important and if it is to be impugned, there must be evidence to support that challenge.
> >
> > The perception standard of morality which some suggest should be the test applied to politicians would require that a legislator should not engage in conduct which would appear to be improper to a reasonable, non-partisan, fully informed person. The problem with such an "appearance standard" is that there are few, if any, reasonable, non-partisan, fully informed persons.
> >
> > One person's perception of another's conduct is a purely subjective assessment influenced by many factors including the interest of the individual making the assessment. It is not the proper criteria by which the conduct of a legislator should be measured.

The Committee noted that the appearance of conflict of interest is a subjective concern with the potential to lead to a multiplicity of complaints being brought before the Ethics Commissioner that are vexatious and frivolous and could have the opportunity to hurt Members who are, in fact, quite innocent of doing anything other than carrying out their duties.

The Act clearly states what constitutes a breach, and the Committee felt that the Ethics Commissioner should not have to address issues that have only the appearance of conflict of interest.

The Committee noted that a Minister cannot carry on a business or hold an office or engage in employment that creates or appears to create a conflict. Saskatchewan and Yukon both have a similar provision with respect to apparent conflicts for former Ministers, but British Columbia is the only jurisdiction that has the standard of apparent conflicts for Members as well.

APPENDICES

Appendix A: Written Submissions to the Review Committee

1. Office of the Ethics Commissioner
   Mr. Donald M. Hamilton, Ethics Commissioner

2. Office of the Alberta Auditor General
   Mr. Fred J. Dunn, FCA, Auditor General

3. Alberta Advanced Education
   Mr. W.J. Byrne, Deputy Minister

4. Alberta Children's Services
   Ms Molly Turner, Executive Director

5. Alberta Community Development
   Ms Fay Orr, Deputy Minister

6. Alberta Environment
   Mr. Peter Watson, Deputy Minister

7. Agriculture Financial Services Corporation
   Mr. Brad Klak, President and Managing Director

8. Alberta Human Resources and Employment
   Mr. Mike Cardinal, Minister

9. Alberta Infrastructure and Transportation
   Mr. Jay G. Ramotar, Deputy Minister

10. Alberta Liberal Caucus
    Dr. Bruce Miller, MLA, Edmonton-Glenora

11. County of Camrose No. 22
    Mr. Steve Gerlitz, County Administrator

12. Municipal District of Greenview No. 16
    Mr. Tony Yelenik, Reeve

13. Municipal District of Northern Lights No. 22
    Ms Theresa McKelvie, CLGM, Chief Administrative Officer

14. Northern Sunrise County

15. Saddle Hills County
    Mr. Kevin Minor, CLGM, Chief Administrative Officer

16. Strathcona County
    Ms Cathy Olesen, Mayor

17. Parkland Residents Association
    Mr. R.A. Doonanco, Municipal Manager

18. Westwood Consultants, Calgary
    Mr. Alex Opalinski

19. Private Submission
    Mr. Leonard P. Apedaile, PhD

20. Private Submission
    Ms June Roe

Appendix B: Questions from the Discussion Guide

1. Does the Preamble clearly set out the guiding principles underlying the Act?

2. Are there any other principles that should be included? Are any of the existing principles inappropriate? Please explain your answer and make suggestions for improvement.

3. Should the Preamble be moved into the body of the Act?

4. Is the list of parties that are deemed to be directly associated with a Member appropriate? Does it cover all the parties that ought to be covered? Are there any parties that are classified as direct associates that should not be?

5. Are there any other terms in the Act that ought to be defined?

6. Should a Member, the Member's spouse, adult interdependent partner and minor child be allowed to accept fees, gifts or other benefits as long as the value is less than $200 per calendar year? Is $200 an appropriate amount?

7. Do the referenced restrictions and prohibitions adequately address the principles of impartiality, as outlined in the Preamble?

8. Are the exemptions from the list of private interests appropriate?

9. What criteria should be used as the basis for including organizations in the Schedule of disqualifying offices under the Act?

10. The Act sets out a number of different classes of contracts to which a Member or a person directly associated with the Member shall not be a party. Does the section adequately capture the kinds of contracts that must be avoided?

11. In some instances, a Member may wish to take a position that would adversely, rather than beneficially, affect the Member's private interest. Should the Member be able to participate in such discussions?

12. Should the Act allow Cabinet Ministers to maintain their professional or occupational qualifications during their time as Cabinet Ministers, if they need to do so?

13. Are the rules for blind trusts appropriate? If not, please explain why and make recommendations for improvement.

14. Should Members be permitted to establish trusts for the management of their private corporations? Should the creation of a management trust allow the Member to participate in discussions and votes? That is, should a management trust be added to the list of items that are not private interests?

15. At present, a public disclosure statement identifies the type of financial interests a Member has, but does not state the amount or value of them. Is it appropriate to remove the values from a public disclosure statement?

16. Is there any other kind of information that Members should be required to report to the Ethics Commissioner?

17. A Member must ask his or her spouse or adult interdependent partner for their financial information, and then disclose to the Ethics Commissioner all information that is known by the Member. Is this an appropriate requirement?

18. Is the list of items that are exempt from the public disclosure requirement appropriate? Are the monetary limits reasonable? Is there anything else that should be added to the list?

19. Should any other Members be subject to these restrictions? For example, should the restrictions apply to the leaders of other opposition parties?

20. A Cabinet Minister can hold an office or directorship with social clubs, religious organizations and political parties. Is there anything else that should be added to this list?

21. Is the list of activities in which former Cabinet Ministers are restricted from participating appropriate? Should anything be added or removed?

22. Currently, the cooling-off period for former Cabinet Ministers is six months. Is this an appropriate period of time? If not, what should it be, and why?

23. Should former Cabinet Ministers be able to obtain an exemption from their cooling-off period from the Ethics Commissioner? Under what circumstances would an exemption be appropriate?

24. At present, the punishment for breaching this part of the Act is a fine not exceeding $20,000. Is this an appropriate amount? Would a different type of punishment be appropriate?

25. Should the Ethics Commissioner be able to conduct an investigation on his or her own initiative, without having to wait for a request to do so?

26. Should there be a limitation period after which the Ethics Commissioner would be prevented from investigating?

27. Are the sanctions available to the Ethics Commissioner adequate?

28. Nowhere does the Act address what should happen to a contract entered into in violation of the Act. Should such a contract be automatically terminated? What if the other party to the contract entered into that contract in good faith, and would be harmed if the contract was terminated?

29. Are there any other restrictions that should be placed on the activities of Members? Are the existing restrictions appropriate?

30. At present, the Act only covers actual conflicts of interest. Should Members also be prohibited from participating in decisions where the Member has an apparent conflict of interest? That is, where reasonably well informed person could

possibly have the perception that the Member could use his or her public office for private gain?

31. Should MLAs who chair Standing Policy Committees, or who chair or supervise an agency of the Government of Alberta, be subject to cooling-off periods? What criteria should be considered when determining if an agency whose Chair is an MLA should be subject to these additional restrictions?

32. Should the disclosure requirements for senior public servants be put into legislation?

33. Should senior public servants, as well as heads of boards and tribunals, be subject to cooling-off periods?

34. Should the Act be expanded to apply to other people, such as those involved with Regional Health Authorities?

35. Are there any other provincial public figures that ought to be subject to conflict of interest provisions?

36. Should Alberta create a lobbyist registry? What benefits would a lobbyist registry provide? Who should be required to register? What kind of information should be collected from lobbyists?

37. Do you have any additional comments, suggestions or concerns regarding the *Conflicts of Interest Act*?

38. What changes, if any, can be made to the *Conflicts of Interest Act* to improve public perception of elected officials and of the provincial government?

Appendix C: Guidelines for Establishing Disqualifying Offices

HISTORICAL BACKGROUND

In 1983 the Honourable Neil Crawford, Attorney General and Government House Leader, presented a White Paper Respecting the Re-enactment of the *Legislative Assembly Act* (White Paper). That paper contained a section dealing with disqualification and included a discussion of the origins of the disqualification rules. Specifically, with respect to the holding of a disqualifying office the White Paper states at pages 14 and 15:

> Sections 6 and 7 disqualify a Member of the Assembly if he is also a member of the House of Commons or the Senate of Canada. These sections have remained unamended in this form since 1909 . . .
>
> Section 8 deals more generally with disqualification by reason of holding of offices or places of employment from the Crown in right of Canada or of Alberta. . . . section 8 is almost the same as it was in 1909.
>
> Section 8(1), which states the general rule, reads:
>
> > **8**(1) Except as hereinafter particularly provided, a person
> >
> > (a) accepting or holding any office, commission or employment either
> >
> > (i) in the service of the Government of Canada, or
> >
> > (ii) in the service of the Government of Alberta,
> >
> > at the nomination of the Crown or of the Lieutenant Governor and to which is attached a salary, or any fee, allowance or emolument in lieu of salary, from the Crown or from the Government of Alberta, or
> >
> > (b) accepting or holding any office, commission, or employment of profit at the nomination of the Crown, or of the Government, or of any head of a department in the Government of Alberta, whether the profit is or is not payable out of the public funds,
>
> is not eligible to be a member of the Legislative Assembly or to sit or vote in the Legislative Assembly during the time he holds the office, commission or employment.

Exceptions to this general rule are set out in subsections (2), (3) and (4).

From page 18 of the White Paper:

> Sections 8(1) and 9 of the present Act . . . are almost identical to the original sections 9(1) and 10 of the 1909 Act. The latter sections were obviously copied, virtually verbatim, from section s.1(1) and 2 of "An Act further securing the Independence of Parliament," S.C. 1868, c25, the first post-confederation federal statute dealing with the subject of disqualification of members of the House of Commons of Canada.

The White Paper continues to provide the historical context for the disqualification rules, referring to the "obvious influence" of English statutes. The discussion includes a section on "the evolution of the law and practice on disqualification in the United Kingdom." The White Paper refers (at page 23) to a British Bill (the House of Commons (Disqualification) Act, 1957). That Bill proposed that "no Member is to be disqualified by reason of holding an office unless the office is specifically named in the Act." An almost 11-page Schedule listing disqualifying offices was attached to that Act. The principle was stated by an MP at Second Reading as:

> The reason for the Bill is the long standing anxiety of the House to avoid two things. One is undue patronage and the other is incompatibility between membership of the House and the holding of other offices or the doing of other things, an incompatibility which may be an incompatibility of duty or the physical incompatibility of being unable to perform both functions properly. (H.C. Deb. 9 Dec. 1956, p. 1285)

Draft Bill provided with the White Paper

The draft revised *Legislative Assembly Act* identified the disqualifying offices and the White Paper indicates "the twenty offices enumerated in section 8(4)(e) of the present Act" have been listed in the Schedule. It continues with: "It may be that other offices should be added to the Schedule and this can be done as Members . . . give consideration to the Draft Bill."

It also noted that the draft bill contained a reverse disqualification provision; that is, the election of a Member served to automatically terminate certain employment or appointments if the newly elected Member had not previously resigned the position. Note: this concept exists in the present *Conflicts of Interest Act* in section 6(2).

PROPOSED CRITERIA FOR DISQUALIFYING OFFICES/EMPLOYMENT AS PER THE SCHEDULE TO THE *CONFLICTS OF INTEREST ACT*

The Review Committee discussed removing the Schedule from the Act and whether the issue ought to be addressed in regulation. As noted by Parliamentary Counsel, the Act would require regulation-making authority if that step is taken. The Committee also requested that the Ethics Commissioner provide input to the Committee on possible criteria for offices to be identified as disqualifying offices for Members of the Legislative Assembly.

Quasi-judicial Bodies

The Ethics Commissioner recommended that service as the Chair or as a member of quasi-judicial bodies be included on the list.

Service as the chair or as a member of quasi-judicial bodies should be included on the list. *Black's Law Dictionary* defines quasi-judicial as:

> A term applied to the action, discretion, etc. of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature.

Examples of quasi-judicial or administrative tribunals currently contained in the Schedule are

- Alberta Energy and Utilities Board (although currently listed as its two predecessor entities: Alberta Energy Resources Conservation Board and the Public Utilities Board)
- Alberta Human Rights and Citizenship Commission
- Alberta Racing Corporation
- Alberta Securities Commission
- Labour Relations Board
- Law Enforcement Appeal Board
- Natural Resources Conservation Board
- Surface Rights Board
- Workers' Compensation Board

These types of bodies fit the definitions outlined above, and disqualifying Members from serving on these boards would meet the objectives enunciated in the United Kingdom House of Commons (that is, avoiding allegations of undue patronage and incompatibility between the office of Member and that of service to a board). The comments of the UK Member regarding incompatibility correctly note that Members would not have time to serve on these types of boards, but there would also be questions of potential improper influence on matters of policy and how decisions reflect on or affect policy. Further arguments in favour of including quasi-judicial boards in a list of disqualifying offices are the potential appeal of a board's decisions to the courts and the potential apprehension of bias or allegation of conflict of interest should a Crown agency appear before the board.

Other Offices

The Office of the Ethics Commissioner notes that it is not clear why some of the offices are listed in the Schedule. It is equally unclear why some other offices are not listed, for example the Board of Trustees of Northland School Division No. 61, but not other, similar boards of trustees.

Members are currently appointed to chair or serve on a variety of boards or agencies, including the Alberta Alcohol and Drug Abuse Commission and the Premier's Council of the Status of Persons with Disabilities. In some cases, such as certain institutes covered by the Alberta Science and Research Authority Act, boards are specifically mandated to have MLA representation. Examples in that Act include the Agricultural Institute (formerly the Alberta Agricultural Research Institute), the Energy institute, and the Forestry Institute.

The following recommendations are made by the Office of the Ethics Commissioner regarding disqualifying offices for Members.

(a) Continue the exception relating to Ministers as per section 6(3)

(b) Exception: A Member does not breach the Act if the appointment is authorized by an enactment
(c) Maintain existing prohibitions against employment with the Crown in right of Canada and employment with the Crown in right of Alberta as per the current wording in section 6
(d) Judges of the Provincial Court of Alberta
(e) Legislature Officers
(f) Chair or Member of any quasi-judicial Board, Tribunal, or Commission
(g) Appeal boards or panels where the decision is not reviewed by a court but may be subject to review by a Minister
(h) Review boards or appeal mechanisms relating to any self-governing profession

The following items are listed here based on the existing list of offices set out in the Schedule. Direction from the Committee would assist in determining whether service on Boards of these types of entities ought to continue to be disqualifying offices.

(i) Boards relating to any educational institution (K-12 or post-secondary), including Boards of Trustees
(j) Boards of Regional Health Authorities
(k) Boards of Child and Family Services Authorities
(l) Pension Plan Boards
(m) Boards of any financial institutions or institutions that provide loans or grants or Boards that govern any such entities (e.g., Agricultural Financial Services Corporation, ATB Financial, credit unions, Credit Union Deposit Guarantee Corporation, Alberta Municipal Financing Corporation, Alberta Students Finance Board).

Currently the Act prohibits Members from serving on various other Boards or Councils. If a Board or Council is created with the intention that it operate at arm's length from government, it may be helpful for

(i) enabling legislation to specifically state that Members of the Legislative Assembly can or cannot sit on the Board or Council, or
(ii) including in regulation under the *Conflicts of Interest Act* a prohibition against serving on any Board established by enactment where that Board deals with a regulated industry **unless** the enactment establishing that Board or Council specifically authorizes a Member to serve on that Board.

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