

Standing Committee on Resource Stewardship

Review of the *Conflicts of Interest Act*

Twenty-Ninth Legislature
Fourth Session
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STANDING COMMITTEE ON RESOURCE STEWARDSHIP

August 2018

**To the Honourable Robert E. Wanner
Speaker of the Legislative Assembly
of the Province of Alberta**

On November 16, 2017, pursuant to Government Motion 32, the Standing Committee on Resource Stewardship was deemed the special committee of the Assembly for the purpose of conducting a comprehensive review of the *Conflicts of Interest Act* pursuant to section 48 of that Act. I have the honour of submitting, on behalf of the Standing Committee on Resource Stewardship, the Committee's final report on the Review of the *Conflicts of Interest Act*.

Sincerely,

(original signed by)

Rod Loyola, MLA
Chair, Standing Committee
on Resource Stewardship

c. Robert H. Reynolds, QC
Clerk of the Legislative Assembly

TABLE OF CONTENTS

MEMBERS OF THE STANDING COMMITTEE ON RESOURCE STEWARDSHIP	3
1.0 EXECUTIVE SUMMARY	5
2.0 COMMITTEE MANDATE	7
3.0 INTRODUCTION	8
4.0 ACKNOWLEDGEMENTS	9
5.0 CONSULTATION AND REVIEW PROCESS	10
6.0 COMMITTEE RECOMMENDATIONS	11
6.1 Employment Restrictions	11
6.2 Post-Employment Restrictions	12
6.3 Receipt of Gifts	14
6.4 Travel on Non-Commercial Aircraft	15
6.5 Definition of “private interest”	15
6.6 Prohibition on Furthering Private Interests	16
6.7 Direct Associate Returns	17
6.8 Numbering, Organization, and Minor Inconsistencies	17
6.9 Consolidation of Conflicts of Interest Provisions	18
APPENDICES	19
APPENDIX A: WRITTEN SUBMISSIONS TO THE COMMITTEE	19
APPENDIX B: ORAL PRESENTATIONS TO THE COMMITTEE	21

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29th Legislature**

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1.0 EXECUTIVE SUMMARY

During its deliberations on June 18, 2018, the Standing Committee on Resource Stewardship made the following resolutions pertaining to the *Conflicts of Interest Act*, S.A. 2000, c. C-23 (the "Act").

Employment Restrictions

1. That section 6(2) of the Act be amended to limit the restriction on Members being Crown employees to only those Members who are appointed to Executive Council.

Post-Employment Restrictions

2. That the Act be amended to extend the cooling-off period for former Ministers from 12 months to 24 months.
3. That the Act be amended to require former Ministers to obtain written approval from the Ethics Commissioner prior to accepting employment during the cooling-off period.
4. That the Act be amended regarding the post-employment restrictions for former Ministers and former political staff to remove the words "directly acted for" and "direct and significant official dealing" wherever they appear and to simplify the wording of the provisions.
5. That the Act be amended to require the following: that all former members of the Premier's and Ministers' staff applying for public service employment compete for those positions and that all former members of the Premier's and Ministers' staff applying for designated office holder roles compete as external candidates.

Receipt of Gifts

6. That the Act be amended to clarify the meaning of social obligation and protocol for the purposes of section 7 as set out on page 20 of the December 12, 2017, submission from the Office of the Ethics Commissioner.

Travel on Non-Commercial Aircraft

7. That the Act be amended in section 7.1(2) to change the word "or" at the end of paragraph (b) to "and" in order to clarify that the approval of the Ethics Commissioner to accept an offer of travel under section 7.1 is always required.

Definition of "private interest"

8. That the Act be amended to clarify what is and what is not a private interest and to clarify the meaning of general application and broad class of the public.

Prohibition on Furthering Private Interests

9. That sections 2 and 3 of the Act be amended to expand the definition of those whose private interests should not be furthered to include siblings, parents and parents-in-law.

Direct Associate Returns

10. That section 15(3) of the Act be amended to remove the requirement of a person who ceases to be a Member to file a final direct associate return.

Numbering, Organization, and Minor Inconsistencies

11. That the Act be amended by replacing its complex numbering structure with ordinary sequential numbering.
12. That the Act be amended by moving section 26(4), which deals with investigations, to Part 6 or 7, which deal with the operation of the Office of the Ethics Commissioner.
13. That the Act be amended to align minor records management inconsistencies in the wording of sections 17, 23.63 and 47.

In addition, the Committee made the following resolution regarding the *Public Service Act*, R.S.A. 2000, c. P-42 and the *Conflicts of Interest Act*.

Consolidation of Conflicts of Interest Provisions

14. That the provisions in Part 2 of the *Public Service Act* pertaining to Deputy Ministers and other designated office holders be consolidated into the *Conflicts of Interest Act*.

2.0 COMMITTEE MANDATE

On November 16, 2017, the Legislative Assembly passed Government Motion 32, which deemed the Standing Committee on Resource Stewardship the special committee for the purpose of conducting a comprehensive review of the *Conflicts of Interest Act*.

The scope of the Committee's review with respect to the *Conflicts of Interest Act* is mandated by section 48 of that Act:

By December 1, 2012 and every 5 years after that, a special committee established by the Legislative Assembly must begin a comprehensive review of this Act and must submit to the Legislative Assembly, within one year after beginning the review, a report that includes any amendments recommended by the committee.

The Committee began its review of the Act on November 29, 2017.

3.0 INTRODUCTION

The *Conflicts of Interest Act* governs the ethical conduct of Members of the Legislative Assembly, senior officials of public agencies, and current and former Ministers, members of the Premier's and Ministers' staff, and designated senior officials of public agencies. The Act is administered by the Ethics Commissioner.

The *Conflicts of Interest Act* was given Royal Assent in 1991 and was fully in force by spring 1993. In 1995 a review panel chaired by Professor Allan Tupper was established and given the mandate to review the suitability and effectiveness of the Act. The panel's report, *Integrity in Government in Alberta: Towards the Twenty First Century*, often referred to as the Tupper report, was released in January 1996 and made a number of recommendations for amendments. The Act was amended in 1998 in response to these recommendations, one of which was the requirement that a special committee of the Legislative Assembly review the Act every five years and report any recommendations to the Assembly within one year of commencing its review. This mandatory periodic review was described in the Tupper report as a means of ensuring the Act's continued relevance and applicability "in light of changing public expectations, alterations to the role of government, and changes in the responsibilities of Members."

Since the Act was amended in 1998 to require a mandatory review of the Act every five years, the Act has been reviewed two times, in 2005-06 and again in 2012-13, resulting in a number of recommendations. In addition, in 2015 the Select Special Ethics and Accountability Committee, which was tasked with examining several statutes, including the *Conflicts of Interest Act*, began a review of the Act.

This report is the result of the third mandatory five-year review of the Act. The review was conducted by the Standing Committee on Resource Stewardship and commenced in November 2017. It contains the 14 recommendations that the Committee agreed to during its deliberations. For a complete record of the Committee's deliberations, please consult the transcripts of the Committee's meetings, which are posted online at assembly.ab.ca.

4.0 ACKNOWLEDGEMENTS

The Committee wishes to acknowledge the useful contributions of the individuals and organizations who provided written submissions and/or appeared before the Committee.

The Committee also wishes to acknowledge the valuable assistance of the technical support staff and Legislative Assembly Office support staff.

Technical Support Staff

Office of the Ethics Commissioner

Hon. Marguerite Trussler, QC, Ethics Commissioner
Ms Lara Draper, Lobbyist Registrar and General Counsel
Mr. Kent Ziegler, Chief Administrative Officer

Ministry of Justice and Solicitor General

Ms Corinne Carlson, Barrister and Solicitor, Legislative Reform

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5.0 CONSULTATION AND REVIEW PROCESS

The Committee's review of the *Conflicts of Interest Act* involved a series of meetings that were open to the public, streamed live on the Legislative Assembly website, and, recently, also broadcast on Assembly TV. These meetings took place on November 29, 2017, and January 25, March 13, May 4, and June 18, 2018.

As part of the review process the Committee received a technical briefing on the *Conflicts of Interest Act* from Hon. Marguerite Trussler, Q.C., Ethics Commissioner and Corinne Carlson, Barrister and Solicitor, Legislative Reform, Ministry of Justice and Solicitor General, on January 25, 2018.

Government Motion 32 authorizes the Committee to "take into consideration any material prepared for, or submissions provided to, the [2015-16] Select Special Ethics and Accountability Committee [pertaining to its review of the *Conflicts of Interest Act*]." The Committee agreed to consider these documents, which included, among others, a summary of written submissions from identified stakeholders and members of the public. In addition, the Committee agreed to invite new or updated written submissions from identified stakeholders and advertise for new submissions from members of the public through an online submission form on its website, which was promoted using social media platforms. Stakeholders included ethics, conflicts of interest, and integrity commissioners, advocacy groups and ethics associations, research institutes, academics, Members of the Legislative Assembly of Alberta, senior public servants, public agencies whose senior officials are subject to obligations under the Act, two former Canadian senators, and the Alberta Association of Former MLAs.

During the 2015-16 review of the Act, 14 written submissions were received from stakeholders. During the current review 22 stakeholders made submissions. Four of those submitters (the Ministry of Justice and Solicitor General and the Public Service Commissioner, the Ethics Commissioner, Alberta Health Services, and the Alberta Electric System Operator) also made submissions during the 2015-16 review. The current submissions from the Ministry of Justice and Solicitor General/Public Service Commissioner and the Ethics Commissioner were intended to replace the submissions they each made during the 2015-16 review, and therefore only their current submissions were considered by the Committee. However, the current submissions from Alberta Health Services and the Alberta Electric System Operator address different issues from those addressed in their 2015-16 submissions, and therefore both were considered by the Committee. In addition, during the 2015-16 review, 18 submissions were received from members of the public; however, no submissions from members of the public were received as part of the current review.

On May 4, 2018, the Committee heard oral presentations from the Ethics Commissioner; the Assistant Deputy Minister, Legal Services, Ministry of Justice and Solicitor General; the Deputy Minister, Public Service Commission; and from representatives of ATB Financial and MacEwan University. Appendices A and B contain a list of the individuals and organizations that provided written submissions and oral presentations to the Committee.

The Committee met on June 18, 2018, to deliberate on the issues and proposals arising from the written submissions and oral presentations. Representatives from the Office of the Ethics Commissioner and the Ministry of Justice and Solicitor General attended the meeting and supported the Committee by providing technical expertise.

This report is the result of the Committee's deliberations and contains its recommendations in relation to the Act.

6.0 COMMITTEE RECOMMENDATIONS

6.1 Employment Restrictions

Under section 6(2) of the Act, if a person is, immediately before becoming a Member, an employee of the Crown or the holder of a disqualifying office as set out in the Schedule to the Act, that person, on becoming a Member, ceases to be a Crown employee or holder of such an office. The definition of “Crown” in section 1(1)(a.1) of the Act includes a Provincial agency. The definition of “Provincial agency” in section 1(1)(h) of the Act was amended in December 2014 to include, among other entities, a regional health authority. Consequently, Alberta Health Services employees are now employees of the Crown for the purposes of the Act.

In their 2015-16 written submissions Rick Fraser, Member for Calgary-South East, Alberta Health Services (AHS) and the Health Sciences Association of Alberta (HSAA) raised objections to the automatic termination of employment of a Crown employee upon election as a Member. Mr. Fraser argued that the ability to run for office should be available to “any and all citizens,” including public servants, and that “removing this onerous burden” for those who are employed in the public service “would have a positive impact on democracy ... by levelling the playing field for all potential candidates, regardless of their professional backgrounds.” The HSAA added that this requirement creates an “unfair expectation” for public servants, exceeds what is required of private sector employees who are elected as Members, and “is an inequality that needs to be addressed.” With respect to AHS employees now being considered Crown employees under the Act, Mr. Fraser contended that front-line AHS employees are considered to be SUCH (schools, universities, colleges, hospitals) sector organization employees, who are distinct from Crown employees, and that this distinction needs to be clarified in legislation.

The AHS submission noted that prior to the legislative amendment that added regional health authorities to the definition of Provincial agency, effectively making AHS employees Crown employees for the purposes of the *Conflicts of Interest Act*, AHS managed conflicts of interest with employees who were elected Members by granting a leave of absence to those employees. AHS indicated that it “would not oppose an amendment” to the Act that would allow AHS to resume this protocol rather than AHS employees who are elected as Members having to terminate their employment. According to AHS “an appropriate balance” needs to be struck “between respecting the rights of individuals while ensuring the duties of public office are clear and promote public trust.”

The Committee discussed the requirement in section 6(2) that the employment of a Crown employee is terminated upon that person’s election as a Member, noting that this provision may restrict a person’s ability to run in a provincial election simply “based on where they’ve been working.” According to the Committee, if a Crown employee is considering seeking office, knowing that their position will be terminated if they are elected and that they therefore would not have a position to return to once they are no longer a Member, is “a significant barrier for some.” Therefore, the Committee felt that modifying this requirement so that it only applied to those Members who are appointed members of Executive Council would partially remove that potential barrier to Crown employees who may wish to seek office while recognizing that “there is a distinction between private members of the Assembly and members of Executive Council.” According to the Committee a Member who has been appointed to “Executive Council has a little bit more influence than ... a private member does.”

Based on these rationales the Committee recommends:

- 1. That section 6(2) of the Act be amended to limit the restriction on Members being Crown employees to only those Members who are appointed to Executive Council.**

6.2 Post-Employment Restrictions

The Committee made four recommendations regarding the post-employment restrictions in the Act, which are set out below.

Section 23.1 of the Act provides that a former Minister shall not, for 12 months after ceasing to hold an appointment as a Minister,

- lobby any public office holder (as defined in the *Lobbyists Act*),
- act on a commercial basis or make representations on his or her own behalf or on behalf of any other person in connection with any ongoing matter in connection with which the former Minister, while in office, directly acted for or advised a department of the public service or a Provincial agency involved in the matter.

In addition, a former Minister shall not, for a period of 12 months from the last day the former Minister had a direct and significant official dealing with:

- a department or Provincial agency
 - make representations with respect to a contract with or benefit from that department or Provincial agency,
 - solicit or accept on his or her own behalf a contract or benefit from that department or Provincial agency;
- an individual, organization, board of directors or equivalent body of an organization
 - accept employment with that individual or organization or an appointment to the board of directors or equivalent body.

The Ethics Commissioner argued that the current 12-month period is “too short for Ministers, as they still have considerable contacts and influence in government after that period.” She suggested that “a former Minister should not be involved in any way with any Ministry and its staff for two years.” However, she felt that the restrictions for former political staff members and former designated office holders should remain at one year.

The Committee considered the Ethics Commissioner’s suggestion and the effect it might have on former Ministers wishing to return to positions they had taken a leave of absence from or to former occupations. The Ethics Commissioner confirmed that she would have no objection to former Ministers returning to such positions or occupations. She noted that a former Minister returning to a position from which he or she had taken a leave of absence would not be an issue as the former Minister would not be obtaining that position due to interactions the former Minister may have had with that employer during his or her time as a Minister.

The Committee agreed with the Ethics Commissioner’s suggestion to extend the post-employment restriction, noting that the cooling-off periods for former Ministers in Canadian jurisdictions selected for cross-jurisdictional review range from six months to two years. The Committee felt that extending the cooling-off period would provide former “ministers more opportunity to be away from what they were doing” and to “break some ties with their contacts,” which would help former Ministers to “avoid any conflict of interest.”

Therefore, the Committee recommends:

- 2. That the Act be amended to extend the cooling-off period for former Ministers from 12 months to 24 months.**

The Ethics Commissioner suggested that a provision should be added to the Act to require former Ministers to obtain written approval from the Ethics Commissioner prior to accepting employment during the cooling-off period. The Ethics Commissioner indicated that currently there are “limited methods” to determine if former Ministers are violating the post-employment restrictions in section 23.1 of the Act. She noted that “other jurisdictions have adopted more proactive compliance monitoring methods which require that former [Ministers] obtain post-employment advice in all cases, not just in those cases where they feel there may be a conflict.” The Ethics Commissioner believes that adding this provision would bolster “the public trust that former Ministers have not unduly used their positions while in office to further their private interests once they are no longer in office.” In addition, she argued that requiring former Ministers to obtain the approval of her office prior to accepting employment would protect those individuals from future reprisals with respect to accepting that employment because it would have been approved by the Ethics Commissioner.

The Committee was supportive of the concerns raised by the Ethics Commissioner regarding establishing an approval process for the acceptance of employment by former Ministers during the cooling-off period and agreed with her suggestion to amend the Act to address these concerns.

The Committee therefore recommends:

3. That the Act be amended to require former Ministers to obtain written approval from the Ethics Commissioner prior to accepting employment during the cooling-off period.

The Ethics Commissioner raised an issue regarding the provisions in sections 23.1 and 23.7 of the Act that set out post-employment restrictions for former Ministers and former members of the Premier’s and Ministers’ staff, respectively. She argued that “these provisions are poorly worded and difficult to interpret,” suggesting that the phrases “directly acted for” and “had a direct and significant official dealing with” tend to “create significant confusion.” Therefore, she suggested that the post-employment restrictions applicable to former ministers and former members of the Premier’s and Ministers’ staff be reworded to remove reference to “directly acted for” and “direct and significant official dealing” and that the provisions be simplified to make them easier to interpret.

Similar wording exists in section 25.4 of the *Public Service Act* regarding post-employment restrictions applicable to designated office holders (which include deputy ministers). However, the Ethics Commissioner and the Ministry of Justice and Solicitor General agreed that “changes to post-employment restrictions should consider the fundamental differences between the roles of deputy ministers – who are impartial public servants – and ministers and political staff.” Therefore, the Ethics Commissioner’s suggestion to re-word sections 23.1 and 23.7 does not extend to section 25.4 of the *Public Service Act*.

The Committee expressed support for the Ethics Commissioner’s suggestion to amend the Act to re-word sections 23.1 and 23.7 and obtained confirmation from the Ministry of Justice and Solicitor General that it had no concerns with the intent of the proposal.

On this basis, the Committee recommends:

4. That the Act be amended regarding the post-employment restrictions for former Ministers and former political staff to remove the words "directly acted for" and "direct and significant official dealing" wherever they appear and to simplify the wording of the provisions.

Sections 23.7(1) to (5) of the Act outline the post-employment restrictions applicable to former members of the Premier's and Ministers' staff. Section 23.7(6) provides that these post-employment restrictions do not restrict "a member or former member of the Premier's and Ministers' staff from accepting employment with a department of the public service or a Provincial agency in accordance with Part 1 of the *Public Service Act*." The rules with respect to recruitment, selection, and appointment to positions in the public service are contained in Part 1 of the *Public Service Act*, specifically in sections 15 to 19. According to section 16 of that Act, positions are filled by in-service promotion, departmental competitions, limited competitions, or open competitions. In certain circumstances the Public Service Commissioner may exempt an appointment from competition (i.e., make a direct appointment).

In its 2015-16 submission the Institute of Public Administration of Canada – Calgary (IPAC) raised some concerns regarding the process by which former members of the Premier's and Ministers' staff may be appointed to public service positions. IPAC suggested that section 23.7(6) of the Act should be amended to require that all former members of the Premier's and Ministers' staff applying for public service positions compete for those positions, and that former members of the Premier's and Ministers' staff who are applying for designated office holder roles compete as external candidates. According to IPAC implementing these proposed amendments would "help to avoid" a public perception that appointments to public service roles are sometimes political "and uphold the integrity and meritocracy of public administration."

The Committee considered IPAC's suggestion, clarifying that the intent was that a former political staff member would not be able to be directly appointed to a position and that if a former political staff member was applying for a designated office holder position the individual would be required "to go through the normal application process" as an external candidate. The Committee agreed with IPAC that there "should be a competitive process" for former political staff members applying for public service positions.

The Committee therefore recommends:

- 5. That the Act be amended to require the following: that all former members of the Premier's and Ministers' staff applying for public service employment compete for those positions and that all former members of the Premier's and Ministers' staff applying for designated office holder roles compete as external candidates.**

6.3 Receipt of Gifts

Pursuant to section 7(1) of the Act, a Member breaches the Act "if the Member or, to the knowledge of the Member, the Member's spouse or adult interdependent partner or minor child accepts from a person other than the Crown a fee, gift or other benefit that is connected, directly or indirectly, with the performance of the Member's office." However, under section 7(2), a Member does not breach the Act if the fee, gift, or benefit is received "as an incident of protocol or of the social obligations that normally accompany the Member's Office" as long as certain conditions are met (e.g., the value is not above a certain amount).

The Ethics Commissioner expressed some concerns regarding section 7(2) suggesting that it is difficult to interpret the meaning of "social obligation" or "protocol," which, she indicated to the Committee, is evident in the "inconsistency" of interpretation of these terms among "different Ethics Commissioners." She therefore suggested that creating definitions for these terms would provide the Ethics Commissioner with "some guidance." At the request of the Committee the Ethics Commissioner drew the Committee's attention to her written submission, which contains proposed wording for definitions of both terms.

The Committee considered the Ethics Commissioner's suggestion to define "social obligation" and "protocol." The Committee agreed that the terms should be clearly defined so there is no confusion as to the circumstances in which a Member may accept a fee, gift, or other benefit and that the proposed wording of definitions of these terms suggested in the Ethics Commissioner's submission was satisfactory.

On this basis, the Committee recommends:

- 6. That the Act be amended to clarify the meaning of social obligation and protocol for the purposes of section 7 as set out on page 20 of the December 12, 2017, submission from the Office of the Ethics Commissioner.**

6.4 Travel on Non-Commercial Aircraft

Section 7.1(2) of the Act contains a provision regarding the circumstances under which travel on a non-commercial aircraft by a Member may be accepted:

A Member breaches this Act if the Member accepts an offer of travel on a non-commercial chartered or private aircraft that is connected, directly or indirectly, with the performance of the Member's office, unless

- (a) the travel is required for the performance of the Member's office,
- (b) there are exceptional circumstances warranting the acceptance of the travel, or
- (c) the member receives approval from the Ethics Commissioner before accepting the travel.

The Committee heard from the Ethics Commissioner that, based on the way section 7.1(2) is written, "there is some uncertainty over whether a Member may accept a flight without the approval of the Ethics Commissioner." According to the Ethics Commissioner, "some might argue that" if a Member is satisfied that he or she has met the conditions set out in paragraphs (a) and (b), that Member may believe that he or she "may accept the flight and then only needs to report" the travel to the Ethics Commissioner as required by section 7.1(4) of the Act. To remove that uncertainty, she suggested that the word "or" at the end of paragraph (b) be changed to "and" in order to "clarify that the approval of the Ethics Commissioner always is required."

The Committee expressed general support for the importance of being transparent and "very clear on when and how Members are allowed to" accept this type of travel. However, in considering the Ethics Commissioner's suggestion, the Committee sought clarity on the practical application of requiring a Member to obtain prior approval for travel on a non-commercial aircraft during an emergency situation such as a wildfire or a significant flood event. The Ethics Commissioner assured the Committee that she is available to provide advice to Members with respect to the provisions of the Act both during and outside of office hours and that her contact information is readily accessible to all Members.

Based on this information, the Committee recommends:

- 7. That the Act be amended in section 7.1(2) to change the word "or" at the end of paragraph (b) to "and" in order to clarify that the approval of the Ethics Commissioner to accept an offer of travel under section 7.1 is always required.**

6.5 Definition of "private interest"

The term "private interest" is defined in section 1(1)(g) of the Act in terms of what is not a private interest:

"private interest" does not include the following:

- (i) an interest in a matter
 - (A) that is of general application,
 - (B) that affects an individual as one of a broad class of the public, or
 - (C) that concerns the remuneration and benefits of an individual;
- (ii) an interest that is trivial;
- (iii) an interest of an individual relating to publicly-traded securities held in that individual's blind trust or in an investment arrangement.

The Committee heard from the Ethics Commissioner that the definition of “private interest” should be “more clearly defined.” Specifically, she suggested that the definition of private interest be amended to more clearly identify what is and what is not considered a private interest. In addition, the Ethics Commissioner argued that the definition requires “more clarity on what is ‘general application’ and what is a ‘broad class of the public.’”

In considering this suggestion, the Committee noted that of the conflicts of interest legislation in other Canadian jurisdictions only the codes of conduct that are applicable to Members of Parliament and to Senators contain definitions of “private interest” that include both what is and what is not a private interest. The Committee agreed that the definition in Alberta’s legislation should be amended to include what a private interest is along with what is not considered a private interest. The Committee also concurred in the suggestion by the Ethics Commissioner that the definition be re-worded to clarify the meaning of “general application” and “broad class of the public” in the definition of “private interest.”

Therefore, the Committee recommends:

- 8. That the Act be amended to clarify what is and what is not a private interest and to clarify the meaning of general application and broad class of the public.**

6.6 Prohibition on Furthering Private Interests

Pursuant to sections 2(1) and 3 of the Act a Member is prohibited from furthering the Member’s private interest or the private interest of the Member’s direct associate or minor or adult child:

2(1) 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 or adult child.

3 A Member breaches this Act if the Member uses the Member’s office or powers to influence or to seek to influence a decision to be made by or on behalf of the Crown to further a private interest of the Member, a person directly associated with the Member or the Member’s minor child or to improperly further another person’s private interest.

The Ethics Commissioner argued that the current scope of the Act in this area is too narrow, meaning “too many potential associates of Members ... whose interests could be improperly served by a Member’s decision” are “not currently captured under the Act.” The Ethics Commissioner therefore suggested in her written submission that the scope of whose private interest should not be furthered should be expanded to include a sibling, parent, mother-in-law, father-in-law, relative, and friend. The submission from the Ministry of Justice and Solicitor General and the Public Service Commissioner agreed that the scope of whose private interests should not be furthered should be expanded but suggested that consideration should be given to whether the addition of a Member’s friends “is practical or enforceable.”

The Committee considered the suggestion by the Ethics Commissioner to expand the scope of whose private interest should not be furthered as set out in sections 2(1) and 3 and the response to that suggestion by the Ministry of Justice and Solicitor General and the Public Service Commissioner. Ultimately, the Committee decided to partially expand the list but not to extend it to include a relative or friend of a Member.

On this basis, the Committee recommends:

- 9. That sections 2 and 3 of the Act be amended to expand the definition of those whose private interests should not be furthered to include siblings, parents and parents-in-law.**

6.7 Direct Associate Returns

Under section 15(3) of the Act, “a person who ceases to be a Member by reason of dissolution of the Legislature or otherwise” is required to file a direct associate return with the Ethics Commissioner within 30 days of ceasing to be a Member.

The Committee heard from the Ethics Commissioner that this provision should be removed from the Act because it does not appear “to have any purpose.” She noted that “it is unusual for a Member” to submit such a return upon ceasing to be a Member and that her office “has no practical ability to contact former Members or to compel former Members to provide the required return as they are no longer subject to the Act once they cease to be a Member.”

The Committee considered the Ethics Commissioner’s suggestion and agreed that removing the requirement for a direct associate return upon the Member ceasing to be a Member is sensible.

Therefore, the Committee recommends:

- 10. That section 15(3) of the Act be amended to remove the requirement of a person who ceases to be a Member to file a final direct associate return.**

6.8 Numbering, Organization, and Minor Inconsistencies

The Ethics Commissioner commented in her written submission to the Committee that “the Act, and its complex numbering structure resulting from amendments over the years, is difficult for many to understand and interpret.” She suggested that the Act “be renumbered and the language simplified.” The submission from the Ministry of Justice and Solicitor General and the Public Service Commissioner offered support in principle for the Ethics Commissioner’s suggestion, noting that the most ideal option would be to repeal and replace the Act “with new numbering, re-structured sections and plainer language.” However, their submission cautioned that such a “large re-write project could take significant time and resources.”

The Committee considered the Ethics Commissioner’s suggestion, agreeing that when significant changes are made to legislation on an ongoing basis it can sometimes create “a bit of a mess.” The Committee acknowledged that renumbering the Act may be “labour intensive” but felt that in order to ensure the Act is clearly written it would be beneficial to have that work done.

On this basis, the Committee recommends:

- 11. That the Act be amended by replacing its complex numbering structure with ordinary sequential numbering.**

Section 26(4) of the Act reads as follows:

The *Freedom of Information and Protection of Privacy Act* does not apply to a record that is created by or for or is in the custody or under the control of the Ethics Commissioner and relates to the exercise of the Ethics Commissioner’s functions under this Act or any other enactment.

The Committee heard from the Ethics Commissioner that the purpose of section 26(4) is to make sure that a request for access to records cannot be made regarding “the functions and duties of the Office of the Ethics Commissioner.” The provision is intended to “provide assurance to all Members, Designated Office Holders, and Political Staff that the information they provide to [the Ethics Commissioner’s] Office is entirely protected.” According to the Ethics Commissioner section 26(4) is “located in the part of the Act dealing with investigations” and would be better placed in the part that deals with Office of the Ethics Commissioner operations (currently Part 7).

The Committee agreed that it would make sense to move section 26(4) to the part of the Act that addresses operations of the Office of the Ethics Commissioner.

Therefore, the Committee recommends:

12. That the Act be amended by moving section 26(4), which deals with investigations, to Part 6 or 7, which deal with the operation of the Office of the Ethics Commissioner.

In her written submission, the Ethics Commissioner noted that there are some minor inconsistencies regarding records management timeframes (i.e., how long records must be retained) in sections 17, 23.63, and 47 of the Act. She therefore requested that the wording in these provisions be aligned.

The Committee felt that it was important that the Act be consistent and therefore agreed with the Ethics Commissioner's suggestion.

The Committee therefore recommends:

13. That the Act be amended to align minor records management inconsistencies in the wording of sections 17, 23.63 and 47.

6.9 Consolidation of Conflicts of Interest Provisions

Currently, the conflicts of interest provisions for Members, political staff members, and senior officials of public agencies are contained in the *Conflicts of Interest Act* while the conflicts of interest provisions for designated office holders are contained in Part 2 of the *Public Service Act*. The Ethics Commissioner oversees the relevant conflicts of interest provisions in both statutes.

The Ethics Commissioner requested that the conflicts of interest provisions related to designated office holders that are contained in Part 2 of the *Public Service Act* be consolidated within the *Conflicts of Interest Act*. She contended that if all provisions were contained under one Act, they could be "better aligned, more easily understood, and more easily administered." In her oral submission to the Committee, the Ethics Commissioner argued that members of "the public and other interested parties should be able to find all the rules relating to conflict of interest in one place." According to the Ethics Commissioner, it is "not a matter of whether someone's an MLA, a political staff member, a deputy minister, or a designated senior official; it's about conflict of interest and who has restrictions." She acknowledged that the restrictions for each group do not need to be the same "but [that] they should be found in one place, namely the *Conflicts of Interest Act*."

In considering the Ethics Commissioner's suggestion, the Committee agreed that moving the conflicts of interest provisions applicable to designated office holders from the *Public Service Act* to the *Conflicts of Interest Act* would make "it easier for the public to access" those provisions. The Committee felt that making this change would make the conflicts of interest provisions applicable to Members, political staff members, senior officials of public agencies, and designated office holders "better aligned, more easily understood, and more easily administered."

On that basis, the Committee recommends:

14. That the provisions in Part 2 of the *Public Service Act* pertaining to Deputy Ministers and other designated office holders be consolidated into the *Conflicts of Interest Act*.

APPENDICES

APPENDIX A: WRITTEN SUBMISSIONS TO THE COMMITTEE

LIST OF WRITTEN SUBMISSIONS (2018 Review)

Name/Position	Organization
Hon. Marguerite Trussler, Q.C., Ethics Commissioner of Alberta	Office of the Ethics Commissioner of Alberta
Stuart N. McKellar, General Counsel, Senior Vice-President, Corporate Operations and Corporate Secretary	ATB Financial
Denise Henning, Ph.D., President and Chief Executive Officer	Medicine Hat College
Alan Skoreyko, Chair, Board of Governors	NorQuest College
Lorne Dustow, Chair	Metis Settlements Appeal Tribunal
Dr. Trent Keough, President and Chief Executive Officer Randolph Benson, Chair, Board of Governors	Portage College
Dr. Verna Yiu, President and Chief Executive Officer	Alberta Health Services
J'Amey Bevan, Chair	Alberta Apprenticeship and Industry Training Board
Douglass M. Tadman, Q.C., Chief Appeals Commissioner and Chief Executive Officer	Appeals Commission for Alberta Workers' Compensation
Dave Collyer, Chair, Board of Governors	Bow Valley College
Philip Bryden, Q.C., Deputy Minister of Justice and Deputy Solicitor General (jointly with Lana Lougheed, Public Service Commissioner)	Ministry of Justice and Deputy Solicitor General/Public Service Commission
Laura Jo Gunter, President and Chief Executive Officer	Bow Valley College
Kristin Ailsby, Board Chair	Lethbridge College
Judy Fairburn, Board Chair	Alberta Innovates
Larry D. Kram, Vice-President, Law, General Counsel and Corporate Secretary	Alberta Electric System Operator
Paul Haggis, Chair, Board of Directors	Alberta Enterprise Corporation
[no name identified]	Alberta Investment Management Corporation
Oryssia Lennie, Chair	Alberta Research and Innovation Advisory Committee
Willie Grieve, Q.C., Chair	Alberta Utilities Commission
Jamie Pytel, Chair	Out-of-Country Health Services Appeal Panel
Ione Challborn, Chair	MacEwan University Board of Governors
Alain Maisonneuve, President and Chief Executive Officer	Alberta Gaming and Liquor Commission

LIST OF WRITTEN SUBMISSIONS (2015-2016 Review)

Name/Position	Organization
Larry Elford	Private Citizen
Brad Jones	Private Citizen
Catherine Schnell	Private Citizen
Michael Zuk	Private Citizen
Charlene Engler	Private Citizen
Isaac Levy	Private Citizen
Velvet Martin	Private Citizen
Jayson Cowan	Private Citizen
Les Aberle	Private Citizen
Wendy McCleary	Private Citizen
Elisabeth Ballerman, President	Health Sciences Association of Alberta
Eoin Murray	Private Citizen
Philip Wright	Private Citizen
Jamie MacVicar	Private Citizen
Hon. Marguerite Trussler, Q.C., Ethics Commissioner of Alberta	Office of the Ethics Commissioner
Jeannette Jamieson	Private Citizen
Leonard Sorochan	Private Citizen
Jeannette Hall	Private Citizen
Antonietta Fiacco and Bev Grimolfson	Private Citizen
Heather MacIntosh, Vice Chair	Institute of Public Administration of Canada - Calgary
Lorne Taylor, Chair	Alberta Environmental Monitoring, Evaluation and Reporting Agency
Mike d'Alquen, Acting Chair	Municipal Government Board
Dr. Verna Yiu, Interim President and Chief Executive Officer	Alberta Health Services
Tracy Edwards, Interim President and Chief Executive Officer	Keyano College
Ruth Schwab	Schwab & Schwab Lawyers and Notaries
Kara Claypool, Vice President, Finance and Corporate Administration	Travel Alberta
Jim Ellis, Chief Executive Officer	Alberta Energy Regulator
Rick Fraser, Hon. Member for Calgary-South East	Legislative Assembly of Alberta
Larry D. Kram, General Counsel and Corporate Secretary	Alberta Electric System Operator
Philip Bryden, Deputy Minister of Justice and Deputy Solicitor General	Ministry of Justice and Deputy Solicitor General (on behalf of the Government of Alberta)
Karen Adams, President and Chief Executive Officer	Alberta Pensions Services Corporation
Dr. David Shugarman, Professor Emeritus	York University

APPENDIX B: ORAL PRESENTATIONS TO THE COMMITTEE

LIST OF ORAL PRESENTATIONS (2018 Review)

Name/Position	Organization
Hon. Marguerite Trussler, Q.C., Ethics Commissioner of Alberta	Office of the Ethics Commissioner
Frank Bosscha, Assistant Deputy Minister, Legal Services	Ministry of Justice and Deputy Solicitor General
Lana Loughheed, Deputy Minister	Public Service Commission
Stuart McKellar, General Counsel, Senior Vice-President, Corporate Operations and Corporate Secretary	ATB Financial
Ione Challborn, Chair of the Board of Governors Marcie Chisholm, Associate Vice-President, Human Resources Michelle Plouffe, General Counsel and Vice-President, Governance, Diversity, and Inclusion	MacEwan University

LIST OF ORAL PRESENTATIONS (2015-2016 Review)

Name/Position	Organization
Hon. Marguerite Trussler, Q.C., Ethics Commissioner of Alberta	Office of the Ethics Commissioner
Philip Bryden, Deputy Minister of Justice and Deputy Solicitor General	Ministry of Justice and Deputy Solicitor General (on behalf of the Government of Alberta)
Rick Fraser, Hon. Member for Calgary-South East	Legislative Assembly of Alberta