

Recommendations from the Ethics Commissioner of Alberta to the Standing Committee on Resource Stewardship on Potential Changes to the Conflicts of Interest Act



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General Recommendations

General Recommendation #1 – Renumber the Act and simplify the language used (high priority)

Recommendation: The Act, and its complex numbering structure resulting from amendments over the years, is difficult for many to understand and interpret. It should be renumbered and the language simplified.

Rationale: Using plainer language, simplifying the numbering and reducing the number of cross references in the Act will make it easier to understand and increase compliance.

General Recommendation #2 – Overall alignment between and consolidation of Acts and Codes (high priority)

Recommendation:

1) *The conflicts of interest, financial, and direct associate reporting, and post-employment provisions for Deputy Ministers and other Designated Office Holders should be removed from the Public Service Act and consolidated into the Conflicts of Interest Act.*

2) *Gift provisions for Ministers, Deputy Ministers and Political Staff should all be aligned and incorporated in the Conflicts of Interest Act rather than in Codes of Conduct*

Present Conflicts of Interest Act Gift Provision for Members:

7(1) A Member breaches this 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.

(2) Subsection (1) does not apply to a non-monetary gift or other non-monetary benefit that is accepted by the Member or the Member's spouse or adult interdependent partner or minor child from the Member's political party or constituency association, a charitable organization or a Canadian government, whether federal, provincial, territorial or municipal

(3) Subsection (1) does not apply to a fee, gift or other benefit that is accepted by the Member or the Member's spouse or adult interdependent partner or minor child as an incident of protocol or of the social obligations that normally accompany the Member's office

(a) if the value of the fee, non-monetary gift or other nonmonetary benefit given to the Member, the Member's spouse or adult interdependent partner or minor children does not exceed \$200,

(b) in the case of tickets and invitations to events, if the total value of all tickets and invitations to events accepted by the Member and the Member's spouse or adult interdependent partner and minor children from the same source in any calendar year does not exceed \$400;

(c) in the case of the invitation of a Member to a conference or meeting in respect of which the Member accepts a waiver of the attendance fee and the payment or reimbursement of reasonable travel expenses incurred for the Member's attendance at the conference or meeting, if the total value of attendance fees waived and travel expenses paid or reimbursed by the same source in any calendar year does not exceed \$400;

(d) in any other case, if the Member applies to the Ethics Commissioner

(i) before or as soon as practicable after the Member receives a fee, gift or benefit, or

(ii) as soon as practicable after the Member has knowledge that the Member's spouse or adult interdependent partner or minor child will receive or has received a fee, gift or benefit,

and either obtains the Ethics Commissioner's approval to retain the fee, gift or benefit on any conditions the Ethics Commissioner determines or, if the approval is refused, takes any steps that the Ethics Commissioner directs.

(4) The Ethics Commissioner may give an approval under subsection (3)(d) only if the Ethics Commissioner is satisfied that there is no reasonable possibility that retention of the fee, gift or other benefit will create a conflict between a private interest and the public duty of the Member.

Present Code of Conduct Gift Provision for Deputy Ministers (from GOA Public Service CofC)

14 (1) *Employees shall not accept fees, gifts or other benefits that are connected directly or indirectly with the performance of their public service duties, from any individual, organization or corporation, other than:*

- (a) the normal exchange of gifts between friends;*
- (b) the normal exchange of hospitality between persons doing business together;*
- (c) tokens exchanged as part of protocol;*
- (d) the normal presentation of gifts to persons participating in public functions.*

Present Code of Conduct Gift Provision for Political Staff (from OC 502/2014)

17(a) *Members of the Premier's and Ministers' staff shall not accept fees, gifts or other benefits that are connected directly or indirectly with the performance of their duties, from any individual, organization or corporation.*

(b) Subsection (a) does not apply to a fee, gift or other benefit that is accepted by members of the Premier's and Ministers' staff as an incident of protocol or of the social obligations that normally accompany employment with the Office of the Premier or the office of a Cabinet Minister.

(c) The total value of the fees, gifts, and benefits given from the same source in any calendar year cannot exceed \$200.

Rationale #1: At the moment, conflict of interest, financial disclosure, gifting provisions, and post-employment requirements and restrictions are covered in two separate Codes of Conduct (the Government of Alberta Public Service Code of Conduct, and the Code of Conduct for Staff in the Premier's and Minister's Offices, Order in Council 502/2014), two pieces of legislation (Conflicts of Interest Act and Public Service Act), and various employment contracts.

Requiring those subjected to the various provisions to sort through these various codes, acts, and contracts creates potential for confusion. If all provisions were addressed in one statute, the Conflicts of Interest Act, the provisions could be better aligned, more easily understood, and more easily administered. The legislation should be written so as to clearly override any contract provisions which are in conflict with the legislation.

Rationale #2: The gift provisions in the Act and in the various Codes of Conduct are not the same. There are significant differences between what may be accepted by Members, Deputy Ministers, and Political Staff. For example, a Minister may be given tickets to a charity event. The Minister is able to accept such a gift under the Act. But, if the Minister has a conflict and is unable to attend and asks the Deputy Minister to attend in his or her stead, the Deputy Minister may not be able to accept the ticket under the Public Service Code.

Problems also occur if a Minister is invited to an event, often to speak, and wishes to have a Chief of Staff, or other staff members, accompany the Minister to assist with stakeholder interactions, engagement, and administrative logistics. Many of these events have ticket values exceeding \$200 and, as a result, necessary staff cannot attend with Ministers as the current Order in Council prohibits acceptance of such tickets.

Proposed Revision for Gifts:

The Act should contain separate, but aligned, sections with respect to gifts to Members, Ministers, Deputy Ministers and Political Staff. If a Minister is offered a ticket or invited to an event, and if the Minister is allowed to accept the offer under the Act, or the Minister receives approval from the Ethics Commissioner to accept the offer, the Minister should be allowed the discretion to invite a Deputy Minister and/or Political Staff to attend with, or for, him or her subject to authorization by the Ethics

Commissioner. Section 7 should remain as the section applicable to Members, a new section should be added in under Part 4.2 for Premier's and Ministers Staff, and a new section in the Act should be added for Deputy Ministers.

Policy Changes

Policy change #1- Expand those whose private interests are included (high priority)

Recommendation: The breadth of the definition of those whose private interests should not be furthered should be expanded to include siblings, parents, parents-in-law, and other relatives as well as friends.

Present Conflicts of Interest Act Provision:

- 1(5)** For the purposes of this Act, a person is directly associated with a Member if that person is
- (a) the Member's spouse or adult interdependent partner,
 - (b) a corporation having share capital and carrying on business or activities for profit or gain and the Member is a director or senior officer of the corporation,
 - (c) a private corporation carrying on business or activities for profit or gain and the Member owns or is the beneficial owner of shares of the corporation,
 - (d) a partnership
 - (i) of which the Member is a partner, or
 - (ii) of which one of the partners is a corporation directly associated with the Member by reason of clause (b) or (c),
- or
- (e) a person or group of persons acting with the express or implied consent of the Member.

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.

Rationale: The current scope of the Act is too narrow. There are too many potential associates of Members not currently captured under the Act whose interests could be improperly served by a Member's decision. Other jurisdictions considerably expand the scope of those whose interests should not be furthered.

Excerpt from Federal Conflicts of Interest Act:

4 For the purposes of this Act, a public office holder is in a conflict of interest when he or she exercises an official power, duty or function that provides an opportunity to further his or her private interests or those of his or her relatives or friends or to improperly further another person's private interests.

7 No public office holder shall, in the exercise of an official power, duty or function, give preferential treatment to any person or organization based on the identity of the person or organization that represents the first-mentioned person or organization.

8 No public office holder shall use information that is obtained in his or her position as a public office holder and that is not available to the public to further or seek to further the public office holder's private interests or those of the public office holder's relatives or friends or to improperly further or to seek to improperly further another person's private interests.

9 No public office holder shall use his or her position as a public office holder to seek to influence a decision of another person so as to further the public office holder's private interests or those of the public office holder's relatives or friends or to improperly further another person's private interests.

Proposed Revision

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, the Member's minor or adult child, parent, parent-in-law, sibling, or a relative or friend of the Member.

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, parent, parent-in-law, sibling, relative or friend, or to improperly further another person's private interest.

Policy change # 2 – Clarify definition of “private interest” (high priority)

Recommendation: The term ‘private interest’ is currently only defined in the negative. It should be more clearly defined.

Present Conflicts of Interest Act Provision:

1(g) “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;

Rationale: The definition of private interest is critical to providing guidance in the interpretation of the Act. As a result, the definition should be as clear as possible. The definition should be revised to include both what is, and what is not, a private interest. Furthermore, there needs to be more clarity on what is “general application” and what is a “broad class of the public”. Below is an example of a potential definition of private interest.

Suggested Revision

A Member is considered to further a person’s private interests, including the private interests of the Member, a person directly associated with the Member, the Member’s minor or adult child, the Member’s parent, in-law, or sibling, or a relative or friend of the Member, when the Member’s actions may result, directly or indirectly, in any of the following:

- a) an increase in, or the preservation of, the value of a person’s assets;
- b) the extinguishment, or reduction in the amount, of the person’s liabilities;
- c) the acquisition of a financial interest by the person;
- d) an increase in the person’s income from:
 - (i) in the case of income from employment, the employer;
 - (ii) in the case of income from a contract, the party with whom the contract is made; and
 - (iii) in the case of income arising from a business or profession, that business or profession;
- e) the person becoming a director or officer in a corporation, association or trade union; or
- f) the person becoming a partner in a partnership.

Subject to the above, “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;

Policy change # 3 - Revise Ministerial, Deputy Minister and political staff post-employment restrictions (high priority)

Recommendation:

- 1) *Reword subsections 23.1 (2) to 23.1(5) and subsections 23.7(2) to (5) of the Conflicts of Interest Act and subsections 25.4(2) to 25.4(5) of the Public Service Act to delete the words “directly acted for” and “direct and significant official dealing” and to simplify the wording.*
- 2) *Extend the cooling off period to two years instead of one for Ministers, but leave it at 12 months for Deputy Ministers and political staff.*

Present Conflicts of Interest Act Provisions:

23.1(1) No former Minister shall, for a period of 12 months from the last day the former Minister held his or her appointment as a Minister, lobby, as defined in the Lobbyists Act, any public office holder as defined in the Lobbyists Act.

(2) No former Minister shall, for a period of 12 months from the last day the former Minister held his or her appointment as a Minister, 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 or Provincial agency involved in the matter.

(3) No former Minister shall, 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.

(4) No former Minister shall, 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, solicit or accept on his or her own behalf a contract or benefit from that department or Provincial agency.

(5) No former Minister shall, for a period of 12 months from the last day the former Minister had a direct and significant official dealing with an individual, organization, board of directors or equivalent body of an organization, accept employment with that individual or organization or an appointment to the board of directors or equivalent body.

23.7(1) No former member of the Premier’s and Ministers’ staff shall, for a period of 12 months from the last day the former member held a position referred to in section 1(1)(c.1), lobby as defined in the Lobbyists Act any public office holder as defined in the Lobbyists Act.

(2) No former member of the Premier’s and Ministers’ staff shall, for a period of 12 months from the last day the former member held a position referred to in section 1(1)(c.1), 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 member, while a member of the Premier’s and Ministers’ staff, directly acted for or advised a department or Provincial agency involved in the matter.

(3) No former member of the Premier’s and Ministers’ staff shall, for a period of 12 months from the last day the former member 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.

(4) No former member of the Premier's and Ministers' staff shall, for a period of 12 months from the last day the former member had a direct and significant official dealing with a department or Provincial agency, solicit or accept on his or her own behalf a contract or benefit from that department or Provincial agency.

(5) No former member of the Premier's and Ministers' staff shall, for a period of 12 months from the last day the former member had a direct and significant official dealing with an individual, organization, board of directors or equivalent body of an organization, accept employment with that individual or organization or an appointment to the board of directors or equivalent body.

(6) Nothing in this section restricts a 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.

Present Public Service Act Provision:

25.4(1) No former designated office holder shall, for a period of 12 months from the last day the former designated office holder held a position referred to in section 25.2, lobby as defined in the Lobbyists Act any public office holder as defined in the Lobbyists Act.

(2) No former designated office holder shall, for a period of 12 months from the last day the former designated office holder held a position referred to in section 25.2, act on a commercial basis or make representations on his or her own behalf or on behalf of any other person in connection with any ongoing matter in connection with which the former designated office holder, while in office, directly acted for or advised a department or a provincial agency involved in the matter.

(3) No former designated office holder shall, for a period of 12 months from the last day the former designated office holder 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.

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

(5) No former designated office holder shall, for a period of 12 months from the last day the former designated office holder had a direct and significant official dealing with an individual, organization, board of directors or equivalent body of an organization, accept employment with that individual or organization or an appointment to the board of directors or equivalent body.

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

(7) Nothing in this section restricts a former designated office holder from accepting employment with a department of the public service or a provincial agency in accordance with Part 1 of this Act.

Rationale #1: These provisions are poorly worded and difficult to interpret. The phrases “*directly acted for or advised*” and “*had a direct and significant official dealing with*” create significant confusion. An excerpt for consideration from the Federal Conflicts of Interest Act with respect to post-employment wording is set out below.

Rationale #2: A one-year cooling off period is too short for Ministers, as they still have considerable contacts and influence in government after that period. A former Minister should not be involved in any way with any Ministry and its staff for two years.

Deputy Ministers' and political staff's post-employment restrictions should remain at one year.

Excerpt from Federal Conflicts of Interest Act:

34 (1) No former public office holder shall act for or on behalf of any person or organization in connection with any specific proceeding, transaction, negotiation or case to which the Crown is a party and with respect to which the former public office holder had acted for, or provided advice to, the Crown.

(2) No former public office holder shall give advice to his or her client, business associate or employer using information that was obtained in his or her capacity as a public office holder and is not available to the public.

35 (3) No former reporting public office holder who was a minister of the Crown or minister of state shall make representations to a current minister of the Crown or minister of state who was a minister of the Crown or a minister of state at the same time as the former reporting public office holder.

Proposed Revision:

A draft revision for the Ministerial provision is presented below. The wording would be similar for Deputy Ministers and Political Staff, with the exception of the duration of the cooling off period, which should be 12 months for those individuals.

23.1(1) No former Minister shall, for a period of 24 months from the last day the former Minister held his or her appointment as a Minister, lobby, as defined in the Lobbyists Act, any public office holder, as defined in the Lobbyists Act.

(2) No former Minister shall, for a period of 24 months from the last day the former Minister held his or her appointment as a Minister, act on a commercial basis or make representations on his or her own behalf or on behalf of any other person on any matter to any Member or any public office holder as defined in section 25.1(1) of the Public Service Act.

(3) No former Minister shall, for a period of 24 months from the last day the Former Minister held his or her appointment as a Minister, make representations with respect to a contract with or benefit from a department or provincial agency.

(4) No former Minister shall, for a period of 24 months from the last day the former Minister was the Minister, solicit or accept on his or her own behalf a contract or benefit from any department or provincial agency.

(5) No former Minister shall, for a period of 24 months from the last day he or she held the position of Minister, accept employment with any organization, or an appointment to the board of directors or equivalent body of any organization, if the former Minister had any dealings or interactions with that individual, organization, board of directors, or equivalent body of that organization during the time that he or she was a member of the Executive Council.

Policy change # 4 – Revise process regarding Returns related to persons directly associated with political staff or with Designated Office Holders (high priority)

Recommendation: The Act should be amended so that Direct Associate Reports of Designated Office Holders and Political Staff are sent to the Minister of Treasury Board and handled in the same way as Members' Direct Associate Reports under section 16 of the Conflicts of Interest Act.

Present Conflicts of Interest Act Provision:

- 23.61(1) Every member of the Premier's and Ministers' staff shall file with the Ethics Commissioner a return relating to persons directly associated with the member, in a form and manner determined by the Ethics Commissioner,
- (a) within 60 days after
 - (i) becoming a member of the Premier's and Ministers' staff, in the case of a person who becomes a member after the coming into force of this section, or
 - (ii) the coming into force of this section, in the case of a person who is a member of the Premier's and Ministers' staff when this section comes into force,
 - (b) within 30 days after the occurrence of any material change in the information contained in a current return, and
 - (c) within 30 days after the day he or she ceases to be a member of the Premier's and Ministers' staff.
- (3) On receipt of a return under this section, the Ethics Commissioner shall provide a copy of the return,
- (a) in the case of a return filed by a person who holds a position in the Premier's office, to the Premier, and
 - (b) in the case of a return filed by a person who holds a position in a Minister's office, to that Minister.

Present Public Service Act Provision:

- 25.31(1) Every designated office holder shall file with the Ethics Commissioner a return relating to persons directly associated with the designated office holder in the form and manner determined by the Ethics Commissioner
- (a) within 60 days after
 - (i) becoming a designated office holder, in the case of a person who becomes a designated office holder after the coming into force of this section, or
 - (ii) the coming into force of this section, in the case of a person who is a designated office holder when this section comes into force,
 - (b) within 30 days after the occurrence of any material change in the information contained in a current return, and
 - (c) within 30 days after the day he or she ceases to be a designated office holder.
- (2) Section 15(1)(a) and (b) and (2) of the Conflicts of Interest Act apply for the purpose of establishing the contents of and additional time requirements for a designated office holder's returns under this section.
- (3) On receipt of a return filed by a designated office holder under this section, the Ethics Commissioner shall provide a copy of the return,
- (a) in the case of a return filed by a deputy minister, to the Deputy Minister of Executive Council,
 - (b) in the case of a return filed by the Deputy Minister of Executive Council, to the Premier,
 - (c) in the case of a return filed by a member or person referred to in section 25.2(b), to the deputy minister to whom the member or person reports, and
 - (d) in the case of a return filed by a designated office holder referred to in section 25.2(c), to the Minister who has responsibility for the relevant provincial agency.

Rationale: These provisions were enacted in December 2014. At the moment, Direct Associates reports are being forwarded to the persons designated in the Act. The individuals receiving these reports are

unsure what to do with the information. It seems that the object of the provision is to ensure that Direct Associates do not receive preferential treatment, contracts, or benefits from the government. If that is the objective, it would be better achieved by sending the information to Alberta Treasury Board and Finance to be handled in the same way as Members' Direct Associate reports are handled.

Proposed Revisions:

23.61(3) On receipt of a return under this section, the Ethics Commissioner shall provide a copy of the return to the President of Treasury Board and Finance who shall then take such necessary action, and publish a similar report, as required under s. 16 of this Act.

Policy change # 5 – Allow the Ethics Commissioner to disclose certain information regarding investigations and advice

Recommendation:

The Ethics Commissioner should be able to publicly confirm or deny that a request for an investigation has been received, and indicate whether or not an investigation is taking place. The Ethics Commissioner should also be able to give a brief summary of the allegations.

In addition, the Ethics Commissioner should be able to publicly state that advice has been given and followed.

The Act should be amended to clarify that no Member may publicly announce that a request for investigation has been submitted until the Ethics Commissioner has confirmed receipt of the complaint.

Present Conflicts of Interest Act Provision:

26(1) *Except as provided in this section, the Ethics Commissioner, any former Ethics Commissioner and a person who is or was employed or engaged by the Office of the Ethics Commissioner shall maintain the confidentiality of all information and allegations that come to their knowledge in the course of the administration of this Act.*

- (2) *Allegations and information to which subsection (1) applies may be*
- (a) disclosed to the individual against whom the allegation was made;*
 - (b) disclosed by a person conducting an investigation to the extent necessary to enable that person to obtain information from another person;*
 - (c) disclosed in a notice or report made by the Ethics Commissioner under this Act;*
 - (d) disclosed to the Minister of Justice and Solicitor General or a law enforcement agency where the Ethics Commissioner believes on reasonable grounds that the disclosure is necessary for the purpose of advising the Minister of Justice and Solicitor General or a law enforcement agency of an alleged offence under this Act or any other enactment of Alberta or an Act of the Parliament of Canada.*

(3) *Despite subsection (1), the Ethics Commissioner may disclose to the public any information contained in a report to the Speaker under section 30.1(9) regarding an administrative penalty.*

Rationale: Under the current wording of the Act, the Ethics Commissioner is unable to confirm that a request for an investigation has been received and is being investigated. This provision has resulted in some awkward situations for persons desiring an investigation, the media, and the person(s) accused of wrongdoing. On October 17, 2014, a letter from this office to a complainant pertaining to an investigation was posted on a public website by the complainant. Yet, this office was unable to even confirm to the media the request had been made, or indicate that an investigation was taking place and the parameters of it. This situation placed this Office in an untenable position.

Some Members suggest they are making requests for investigations but do not actually file the request. This creates potential situations where stories go public and this Office is called for confirmation but we are not able to either confirm or deny that a request has been received.

Currently, the Ethics Commissioner has no discretion to make public an advisory opinion given to someone, even if that person publicly states that advice has been sought and provided. This creates opportunity for persons subject to the Act to claim they have followed the Ethics Commissioner's advice but not disclose the actual advice provided. Granting the Ethics Commissioner the discretion to disclose advice when a Member publicly discloses that advice has been given allows this Office the opportunity to clarify potential misrepresentations or misinformation by persons subject to the Act.

Proposed Revision:

26(5) The Ethics Commissioner does not breach this section by disclosing to the public or to any person

- (a) that a request for an investigation has been received,*
- (b) the identity of the person who made the request,*
- (c) the name of the person who is the subject of a request for an investigation or of an investigation or inquiry,*
- (d) that an investigation or inquiry is being undertaken,*
- (e) the matter(s) to which the request for an investigation, the investigation itself, or the inquiry relates,*
- (f) that a person who has sought the advice of the Ethics Commissioner is following that advice or stating, where the person is not following the advice provided, what that advice was.*

Policy change # 6 – Require Ministerial post-employment approval

Recommendation: Require former Ministers to obtain post employment approval.

Present Conflicts of Interest Act Provision:

No current provision.

Rationale: There are currently limited methods for detecting post-employment violations by Ministers. We have been advised that other jurisdictions have adopted more proactive compliance monitoring methods which require that former Members obtain post-employment advice in all cases, not just in those cases where they feel there may be a conflict. Requiring former Ministers to obtain written approval prior to accepting employment adds to 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.

Proposed Revision:

23.1(6) For a period of twenty four months following their last day of employment as a Minister, former Ministers must, before accepting any employment, obtain the written approval of the Ethics Commissioner.

(7) The Ethics Commissioner may, if in the opinion of the Ethics Commissioner, that it is in the public interest to do so, release any employment advice pertaining to the former Minister if the Ethics Commissioner determines that the former Minister did not provide a full disclosure of all material and relevant facts or has acted in contravention of advice, recommendations, directions, or any conditions of any approval provided.

Policy change # 7 – Provide the Ethics Commissioner with the authority to review and reference privileged documents

Recommendation:

In the course of conducting an investigation, or performing other duties of the Office under the legislation, the Ethics Commissioner should be able to review documents that are otherwise subject to solicitor and client, parliamentary, or legal privilege. The Ethics Commissioner's access to such documents, and potential reference to them in a decision of the Commissioner as part of an investigation proceeding or report, should not waive, or be deemed to waive, the solicitor client or other legal privilege that is attached to the document.

The Ethics Commissioner should not have the right to question the validity of the claim of privilege.

Present Conflicts of Interest Act Provision:

None.

Rationale: During the course of conducting an investigation, it is important and critical that the Ethics Commissioner be able to access any and all documents which may be pertinent to the investigation. An incident where this created an issue was in the Redford Investigation into the choice of counsel for the tobacco litigation where certain documents were, quite properly, withheld from the Ethics Commissioner at the time on the basis of solicitor and client privilege. These documents may have contained pertinent information. Having to render a decision under the Conflicts of Interest Act, without seeing all relevant documents, undermines the public's perception of the validity of the final decision.

The Ethics Commissioner should not be able to question whether privilege has been validly claimed and, while reference may be made to any privileged documents, they should not be published by the Ethics Commissioner in their entirety.

Proposed Revision:

To be drafted by Alberta Justice legal counsel to ensure the section stands up to any potential challenges and to ensure that solicitor and client privilege is maintained with respect to these documents.

Policy change # 8 – Grant the Ethics Commissioner the authority to publicly publish names of those found in breach of the Act

Recommendation: The Ethics Commissioner should be empowered to publicly disclose the names of any and all individuals found in breach of the Conflicts of Interest Act.

Rationale: Currently, the Ethics Commissioner has limited powers to publicly identify those who have breached administrative provisions of the Conflicts of Interest Act, for example political staff who do not provide their disclosure by the deadline.

Section 62 of the Federal Conflicts of Interest Act provides:

62 If an administrative monetary penalty is imposed on a public office holder in respect of a violation, the Commissioner shall make public the nature of the violation, the name of the public office holder who committed it and the amount of the penalty imposed.

Proposed Revision (excerpted from Federal Conflicts of Interest Act):

If an administrative monetary penalty is imposed on a public office holder in respect of a violation, the Commissioner shall make public the nature of the violation, the name of the public office holder who committed it and the amount of the penalty imposed.

Policy change # 9 – Clarify “social obligations” and “protocol” as they pertain to gifts

Recommendation: The phrase “as an incident of protocol or of the social obligations that normally accompany the Member’s office” needs to be clarified with respect to tickets to events and gifts.

Present Conflicts of Interest Act Provision:

7(3) Subsection (1) does not apply to a fee, gift or other benefit that is accepted by the Member or the member’s spouse or adult interdependent partner or minor child as an incident of protocol or of the social obligations that normally accompany the Member’s office.

Rationale: Presently, there is no definition of the terms “protocol” and “social obligation”. This creates significant discussion, and many varied interpretations, among all parties as to what is, and what is not, social obligation and protocol when it pertains to Members being invited to events or being offered gifts. This lack of clarity makes it difficult for Members and the public alike to understand what is allowable, and also adds difficulty for our Office with regard to interpreting and administering the Act.

Proposed Revision:

For the purposes of the Act, “social obligation” means a situation where a Member:

- a) is invited to an event to bring greetings, introduce a speaker or speak; or*
- b) attends an event where attendance of the Member is normally expected.*

For the purposes of the Act, “an incident of protocol” means a situation where:

- a) the Member is invited to an event and the gift is offered to the Member as a gesture of appreciation for participating in or attending the event;*
- b) the Member attends an event, meeting or discussion at which one or more international government representatives are present and an international government representative offers the gift to the Member as a gesture of goodwill between two governments; or*
- c) the Member attends an event, meeting or discussion with a cultural or social group which traditionally offers gifts as part of the event, meeting or discussion and the cultural or social group offers the gift to the Member in accordance with tradition.*

Policy change # 10 – Amend the prohibition restricting Ministers from having rental properties

Recommendation: Section 21 should be amended to enable Ministers to have up to two residential rental properties before their activities would be considered carrying on a business. Any commercial property rentals should still be considered as carrying on a business.

Present Conflicts of Interest Act Provision:

21(1) A Minister breaches this Act if, after the expiration of the relevant period referred to in section 22, the Minister
(a) engages in employment or in the practice of a profession,
(b) carries on a business, or

Rationale: Some Ministers have residential rental properties. Managing a small number of residential properties, while technically constituting running a business, normally would not result in a conflict of interest. Presently, there are unwarranted expenses of transferring residential properties or placing residential properties in blind or management trusts to comply with the Act.

Proposed Revision:

21(2) Subsection (1)(b) does not apply if the Minister is a landlord of not more than, in whole or in part, two residential units.

Policy change # 11 – Replace the term “adult interdependent partner”

Recommendation: The term ‘adult interdependent partner’ should not be used to decide if a partner is a direct associate.

Present Conflicts of Interest Act Provision:

1(5) *For the purposes of this Act, a person is directly associated with a Member if that person is*
(a) the Member’s spouse or adult interdependent partner,

Rationale: The term “adult interdependent partner” is used for two people living together but not married. It takes three years of co-habitation to qualify under the Adult Interdependent Relationships Act as an adult interdependent partner. However, to qualify as “common law partner” for income tax purposes, parties only need to reside together for one year. It is suggested that a person should be considered a “direct associate” for the purposes of Conflicts of Interest Act after one year of co-habitation.

Proposed Revision

1(5) *For the purposes of this Act, a person is directly associated with a Member if that person is*
(a) the Member’s spouse, or an adult who has lived with the Member in a conjugal relationship for more than one year.

Policy change # 12 – Restrict the exemption for mutual funds in the definition of “securities”

Recommendation: The exclusion of mutual funds from the definition of “securities” under the Conflicts of Interest Act should be narrowed to set a minimum threshold with respect to the number of underlying securities.

Present Conflicts of Interest Act Provision:

1(1) (j) “securities” means

- (i) shares of any class or series of shares of a corporation, or
- (ii) bonds, debentures, notes or other evidence of indebtedness or guarantees of a corporation, whether secured or unsecured,

but does not include shares or units in a mutual fund;

Rationale: The Office of the Ethics Commissioner has recently seen a trend by the investment industry to create mutual funds with small numbers of underlying investments. In some cases, there are as few as ten underlying investments in these newer funds and they can be industry-centric. Investors receive reports monthly stating the names of the companies in their fund and how much of each company is held by the investor. This situation could create opportunities for Ministers, Designated Office Holders or political staff members to make decisions which might impact those companies and, in return, the specific mutual fund directly.

Proposed Revision:

1(1) (j) “securities” means

- (i) shares of any class or series of shares of a corporation, or
- (ii) bonds, debentures, notes or other evidence of indebtedness or guarantees of a corporation, whether secured or unsecured,

but does not include shares or units in a mutual fund where there are, at minimum, 30 underlying publicly traded securities comprising the mutual fund.

Policy change # 13 – Remove the blind trust requirement for the Leader of Her Majesty’s loyal opposition

Recommendation: Remove the requirement for the Leader of Her Majesty’s loyal opposition to have a blind trust.

Present Conflicts of Interest Act Provision:

23(1) Sections 20, 21 and 22(2) apply, with the necessary modifications, to the Leader of Her Majesty’s loyal opposition.

Rationale: There do not seem to be any foreseeable circumstances where requiring the Leader of Her Majesty’s loyal opposition to have a blind trust is necessary. This individual is not privy to any government insider information to warrant the cost and inconvenience of having a blind trust.

Policy change # 14 – Make restrictions on holdings apply to Deputy Chief of Staff

Recommendation: The Deputy Chief of Staff in the Office of the Premier should be subject to the same restrictions as the Chief of Staff in the Office of the Premier.

Present Conflicts of Interest Act Provision:

23.5(1) *The Chief of Staff, Office of the Premier, breaches this Part if he or she, after the expiration of the relevant period referred to in subsection (7), owns or has a beneficial interest in publicly-traded securities.*

(2) *Subsection (1) does not apply if*

- (a) *the publicly-traded securities are held in a blind trust approved under subsection (4) or in an investment arrangement approved under subsection (5),*
- (b) *prior to the expiration of the relevant period referred to in subsection (7), the Chief of Staff, Office of the Premier, applies to the Ethics Commissioner for approval to retain ownership of or a beneficial interest in the publicly-traded securities and either obtains the Ethics Commissioner's approval or, if the approval is refused, takes any steps that the Ethics Commissioner directs with respect to the disposition of the ownership or beneficial interest, or*
- (c) *after the expiration of the relevant period referred to in subsection (7), the Chief of Staff, Office of the Premier, acquires ownership of or a beneficial interest in publicly-traded securities with the prior approval of the Ethics Commissioner.*

(3) *The Ethics Commissioner may give an approval*

- (a) *under subsection (2)(b) or (c) if the Ethics Commissioner is of the opinion that the publicly-traded securities are securities of a corporation the interests of which are not likely to be affected by decisions of the Government, or*
- (b) *under subsection (2)(b) if the Ethics Commissioner is of the opinion that the Chief of Staff, Office of the Premier will sustain a financial loss if the publicly-traded securities are disposed of and the public interest does not require disposition of the publicly-traded securities by the Chief of Staff.*

(4) *The Ethics Commissioner may approve the retention of publicly-traded securities to be held in a blind trust if the blind trust will meet the criteria set out in section 20(4).*

(5) *The Ethics Commissioner may approve the retention of publicly-traded securities to be held in an investment arrangement if the investment arrangement will meet the criteria set out in section 20(5).*

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

Rationale: *The Deputy Chief of Staff to the Premier should be subject to the same restrictions with respect to investments in publicly-traded securities and blind trusts as the Chief of Staff to the Premier, as both individuals have access to the same sensitive information.*

Proposed Revision:

23.5(1) *The Chief of Staff, and the Deputy Chief of Staff, Office of the Premier, breaches this Part if he or she, after the expiration of the relevant period referred to in subsection (7), owns or has a beneficial interest in publicly-traded securities.*

Policy change # 15 - Require Assistant Deputy Ministers to provide annual financial disclosure to the Ethics Commissioner

Recommendation: Assistant Deputy Ministers should be required to provide annual financial disclosure to the Ethics Commissioner. However, they should not be restricted in terms of personal investments unless the Ethics Commissioner determines that the individual has private interests or investments that might create a potential for the individual to make or influence government decisions which might affect their personal interests or investments.

Assistant Deputy Ministers should only be required to meet with the Ethics Commissioner where their annual return raises potential questions in terms of conflicts of interest, or if they are randomly selected by the Ethics Commissioner for a meeting.

Present Conflicts of Interest Act Provision:

n/a

Rationale: Assistant Deputy Ministers have significant access to insider government information and significant authority to conduct business, make important decisions, and authorize expenditures on behalf of government. An extra level of external accountability should be created to enhance public confidence in government ministries.

Proposed Revision:

Expand the scope of the Conflicts of Interest Act to require Assistant Deputy Ministers to provide annual disclosure to the Ethics Commissioner with a provision that sets out that the Commissioner may require them to attend a meeting or to provide such other information as the Commissioner deems appropriate.

Administrative Changes

Administrative change # 1 – Clarify the applicability of FOIP Act to OEC records (high priority)

Recommendation: Section 26(4) should be moved to Part 6 or Part 7 of the Act.

Present Conflicts of Interest Act Provision:

26 (4) 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.

Rationale: Section 26(4) is designed to ensure that nobody can make a request for access to records that relate to the functions and duties of the Office of the Ethics Commissioner. This is to provide assurance to all Members, Designated Office Holders, and Political Staff that the information they provide to this Office is entirely protected. This section which protects Members' private information is unfortunately located in the part of the Act dealing with investigations. It could be moved into a new Part 6 or to Part 7 of the Act, which is a general part dealing with the operation of the Office of the Ethics Commissioner.

Proposed Revision:

Move from Part 4 of the Act to Part 6 or Part 7 of the Act.

Administrative change # 2 – Align records retention requirements

Recommendation: There are a number of minor records management inconsistencies in the wording of the Act (ss. 17, 23.63, and 47) which should be aligned.

Present Conflicts of Interest Act Provision:

17 The Office of the Ethics Commissioner

*(a) shall retain each Member's public disclosure statements, supplementary public disclosure statements, amending disclosure statements and returns for a **period of 3 years** after the Member ceases to be a Member, after which the statements and returns may be destroyed...*

*23.63 The Ethics Commissioner shall retain the disclosure statements, amending disclosure statements and returns submitted by a member of the Premier's and Ministers' staff for a **period of 3 years** after the person ceases to be a member of the Premier's and Ministers' staff, after which the statements and returns may be destroyed.*

47(1) On the recommendation of the Ethics Commissioner, the Standing Committee may make an order

- (a) respecting the management of records in the custody or under the control of the Office of the Ethics Commissioner, including their creation, handling, control, organization, retention, maintenance, security, preservation, disposition, alienation and destruction and their transfer to the Provincial Archives of Alberta;*
- (b) establishing or governing the establishment of programs for any matter referred to in clause (a);*
- (c) defining and classifying records;*
- (d) respecting the records or classes of records to which the order or any provision of it applies.*

(2) Notwithstanding subsection (1), the Ethics Commissioner shall retain records

- (a) of a Member that are in the Ethics Commissioner's custody or control for a period **of at least 2 years** after the Member ceases to be a Member,*
- (b) of a former Minister that are in the Ethics Commissioner's custody or control for a period **of at least 2 years** after the period referred to in section 31(1) in respect of the former Minister has expired, and*
- (c) of a former political staff member that are in the Ethics Commissioner's custody or control for a period **of at least 2 years** after the period referred to in section 32.1(1) in respect of the former political staff member has expired.*

(3) The Ethics Commissioner shall destroy the records retained under subsection (2) immediately after the period referred to in subsection (2) unless

- (a) the records are required for the purpose of an investigation or prosecution under this Act, or*
- (b) the Ethics Commissioner has reasonable grounds to believe that the records are required for the purpose of an investigation, inquiry or prosecution under any other enactment of Alberta or under an Act of the Parliament of Canada.*

(4) The Ethics Commissioner shall destroy the records when in the opinion of the Ethics Commissioner the records are no longer required under subsection (3)(a) or (b).

Rationale: There is inconsistency in the Act with respect to the retention period for certain records. Section 17 and 23.63 should mirror s. 47(2)(c). Retaining these records for two years is sufficient.

Currently, section 47(2)(c) refers to sections 31(1) and 32.1(1) which were repealed when Bill 2 was passed. This Office believes that the intention was to refer to sections 23.1 and 23.7, not sections 31(1) and 32.1(1).

Proposed Revision:

17 The Office of the Ethics Commissioner

(a) shall retain each Member's public disclosure statements, supplementary public disclosure statements, amending disclosure statements and returns for a period of 2 years after the Member ceases to be a Member, after which the statements and returns may be destroyed...

23.63 The Ethics Commissioner shall retain the disclosure statements, amending disclosure statements and returns submitted by a member of the Premier's and Ministers' staff for a period of 2 years after the person ceases to be a member of the Premier's and Ministers' staff, after which the statements and returns may be destroyed.

47(1) The Ethics Commissioner may establish a policy and program respecting the management of records in the custody or under the control of the Office of the Ethics Commissioner, including their creation, handling, control, organization, retention, maintenance, security, preservation, disposition, and destruction and,

- (a) establishing or governing the establishment of programs for any matter referred to in this section;*
- (b) defining and classifying records;*
- (c) respecting the records or classes of records to which the order or any provision of it applies.*

(2) Notwithstanding subsection (1), the Ethics Commissioner shall retain records

- (a) of a Member that are in the Ethics Commissioner's custody or control for a period of at least 2 years after the Member ceases to be a Member,*
- (b) of a former Minister that are in the Ethics Commissioner's custody or control for a period of at least 2 years after the period referred to in section 23.1 in respect of the former Minister has expired, and*
- (c) of a former political staff member that are in the Ethics Commissioner's custody or control for a period of at least 2 years after the period referred to in section 23.7 in respect of the former political staff member has expired.*

(3) The Ethics Commissioner shall destroy the records retained under subsection (2) immediately after the period referred to in subsection (2) unless

- (a) the records are required for the purpose of an investigation or prosecution under this Act, or*
- (b) the Ethics Commissioner has reasonable grounds to believe that the records are required for the purpose of an investigation, inquiry or prosecution under any other enactment of Alberta or under an Act of the Parliament of Canada.*

(4) The Ethics Commissioner shall destroy the records when in the opinion of the Ethics Commissioner the records are no longer required under subsection (3)(a) or (b).

Administrative change # 3 – Amend the provision regarding travel on non-commercial aircraft

Recommendation: The word “or” in subsection (b) should be replaced with “and”.

Present Conflicts of Interest Act Provision:

7.1(2) 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.*

Rationale: There is some uncertainty over whether a Member may accept a flight without the approval of the Ethics Commissioner. Some might argue that if the conditions under subsections ‘a’ and ‘b’ are met (to the satisfaction of the Member), the Member may accept the flight and then only needs to report it and any material background information that the Ethics Commissioner requires. Changing “or” to “and” at the end of subsection (b) would clarify that the approval of the Ethics Commissioner always is required.

Proposed Revision:

7.1(2) 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, and*
- (c) the member receives approval from the Ethics Commissioner before accepting the travel.*

Administrative change # 4 – Remove the requirement to submit a final Direct Associates report

Recommendation: Subsection 15(3) should be repealed.

Present Conflicts of Interest Act Provision:

- 15(3) *Where a person ceases to be a Member by reason of dissolution of the Legislature or otherwise,*
- (a) *that person shall, within 30 days after ceasing to be a Member, furnish a return to the Ethics Commissioner showing*
- (i) *the name and address of each person with whom the person became directly associated or with whom that person ceased to be directly associated on or after the date of that person's last return under this section, and*
 - (ii) *the date on which the direct association began or terminated, as the case may be,*

Rationale: It is unusual for a Member to file a return when they cease to be a Member. This 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. These reporting requirements do not seem to have any purpose.

Proposed Revision:

Repeal the subsection.