

February 28, 2018

Standing Committee on Resource Stewardship
c/o Committee Clerk
3rd Floor, 9820 – 107 Street
Edmonton, AB
T5K 1E7

Re: Review of the *Conflicts of Interest Act*

Member Loyola and Members of the Committee,

Thank you for inviting the Board of Governors of Grant MacEwan University (“MacEwan”) to provide a written submission with respect to the *Conflicts of Interest Act* (the “*Act*”). As you will appreciate, with the recent substantial amendment to the *Act*, and in particular the addition of Part 4.3 regarding Senior Officials, Members, and Employees of Public Agencies, MacEwan is actively engaging with the *Act* and is busy analyzing the impacts on our institution and our leaders. However, without any lived experience under the *Act* our feedback is limited to theoretical difficulties and anticipated challenges.

At this time, MacEwan has two primary concerns with the *Act*. The first stems from an apparent disconnect between the purpose of the *Act* and the scope of information that is required to be disclosed under the *Act*, and the second from a functional limitation in the mechanism provided by the *Act*.

With respect to the first issue, the Preamble to the *Act* contains two statements that relate to public agencies:

WHEREAS senior officials, members and employees of public agencies are expected to act with integrity and impartiality and must avoid conduct that violates the public trust or creates a conflict of interest or apparent conflict of interest; and

WHEREAS the adoption of clear and consistent conflict of interest rules, post-employment restrictions and reporting duties will promote these aims;

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You will get no argument relating to the laudable nature of these goals, nor the importance of the outcomes they support. However, no connection is apparent between the vast swathes of personal information collected by the Ethics Commissioner in disclosure statements, and the ability for a Designated Senior Official to act with integrity and impartiality.

We do not raise issue with disclosure of publicly-traded securities, sources of income, or a list of directly associated persons, as these all understandably could relate to potential conflicts of interest. However, if the wording of the legislation and information gleaned from a review of the disclosure form on the Ethics Commissioner's website is to be interpreted in a way that information on bank accounts (including institution and balance), life insurance policies, household and personal property, and vehicles is also being collected, this would create a significant concern for the privacy and confidentiality rights of Designated Senior Officials. Further, this concern is exacerbated if this information is also required from the employee of the public agency and their spouse and minor children. We wonder why the Committee is recommending the collection of private information about assets that are typical for Albertans that do not obviously relate to conflict of interest. For instance, how will requiring a Designated Senior Official to provide information on their car, life insurance or disclose which bank they use improve a Designated Senior Official's ability to make sound ethical judgements? Further, we wonder why the Committee is interested in such information from their spouse and minor children, given their lack of responsibility for decision making in the public agency.

We would argue that such a significant infringement on an individual's reasonable privacy expectations, as those expectations are informed by both the *Personal Information Protection Act (PIPA)* and the *Freedom of Information and Protection of Privacy Act (FOIP)*, would require a significant benefit to be justified. The extent of information currently being required to be provided to the Ethics Commissioner does not produce such a benefit. Further, we would cite the principle that greater intrusions require greater justification regarding the serious and intrusive nature of requiring this information from a Designated Official's spouse and minor children if such is the case.

While these types of disclosures may be more typical in instances of "cash businesses" dealing in marketable securities or the gaming industry, we remind the Committee that MacEwan is a public agency with established policies including fair practice for procurement and conflict of interest and that is already closely aligned with Government policy. Therefore, we would ask that if disclosure statements are required solely for the identification of potential conflicts, greater consideration should be given to regulating the scope of information collected by the Ethics Commissioner, including the elimination of the

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collection of irrelevant asset classes and, in particular, with respect to family of a Designated Senior Official. This is achieved, and can be enhanced if necessary, through either policy direction or existing legislation that has granted delegated authority of governing boards in the *Post-secondary Learning Act* and through expectations set out in the *Alberta Public Agencies Governance Act*. If this cannot be done, there needs to be a greater explanation for all Albertans as to the purpose of collecting this type of personal financial information.

The functional limitation within the *Act* relates to an inability to seek advice and recommendations from the Ethics Commissioner. Both sections addressing advice and recommendations, both binding and general, permit the Ethics Commissioner to give advice to Members, former Members, political staff members, or former political staff members, but do not include any mention of individuals connected with public agencies. This is a significant oversight in our opinion. Although senior officials, members, and employees of public agencies need to be capable of making independent, sound ethical judgements, the Ethics Commissioner's expertise on ethics or conflicts of interest issues is invaluable. As such, consideration should be given to extending the class of individuals who are permitted access to the Ethics Commissioner's advice and recommendations. This is particularly salient for those who may be impacted that are related to the Designated Official who are not employed by the public agency.

MacEwan would like to reflect that the impact of this legislation on the post-secondary sector will likely be chilling, especially related to the attraction and retention of the best qualified applicants to senior positions, particularly when considering the intrusive nature of the financial disclosures and the 12-month cooling off period for subsequent employment. This has significant implications not only for employees of public agencies who may have legitimate and important contributions to make outside of their institutions, but for boards as well. Given that membership on the boards of post-secondary institutions are volunteer roles, and at MacEwan University there is no compensation provided to public board members in exchange for their significant Contributions of time and effort, this will no doubt impede recruitment and impact overall governance at post-secondary institutions. Further, this is arguably contrary to one of the aims the *Post-secondary Learning Act* which seeks to achieve in its Preamble:

“WHEREAS the Government of Alberta is committed to ensuring that Albertans have the opportunity to enhance their social, cultural and economic well-being through participation in an accessible, responsive and flexible post-secondary system;”

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Finally, we would argue, the 12-month cooling off period for subsequent employment, coupled with the financial disclosure elements, will also disproportionately affect women in the post-secondary sector, who already are under-represented in this field and who are more likely than their male counterparts to have younger children and spouses who have developed careers. Again, ensuring that boards have adequate policy as per their legislative authority to address these potential conflicts of interest is the more appropriate remedy.

MacEwan appreciates the opportunity to provide its input as part of the review process. We hope that as we interface with the *Act*, in what is sure to be a learning experience, that we can remain engaged with the Standing Committee on resource stewardship and make your review of the *Act* as meaningful and productive as possible. We have provided further feedback with respect to our concerns on a number of specific provisions in the attached Appendix 1.

Sincerely,



Ione Challborn
Chair, Board of Governors

APPENDIX 1

The following feedback is provided more specifically on a number of provisions and the university would propose modification or exemption of certain sections in relation to the post-secondary sector.

Code of Conduct

- Provision 23.922 (d) Establishing a gift limit

While the university understands the spirit of this provision, it is concerned with the requirement of an annual gift limit amount. Given the nature of a post-secondary institution's interactions with respect to donors, the business community and in acceptance of a gift in the case on an important cultural or international tradition. Post-secondary institutions dedicate a significant amount of time building relationships and participating in activities outside the university for the betterment of our students. For example, we rely significantly on fund-raising capital development and for scholarships, awards and bursaries. There is significant engagement with business and industry to build experiential opportunities for our students.

It is suggested that limitations on gifts be subject to a set of guidelines that foster appropriate, reasonable and transparent behaviour rather than a dollar limit. For example:

- Employees must not accept or grant any gift which is intended to or precepted to be in exchange for a favor or advantage to a third party carrying business with the university. This would include a donor or contractual relationship.
 - Acceptable situations of gift acceptance would be established. For example, networking events or gifts exchanged as part of protocol, cultural practice or international protocol; gifts to the university-wide community such as a sculpture or art; gifts that are considered the normal exchange of hospitality and in participating at a conference or symposium; payment of travel and related expenses when it is reasonable and customary in an academic or professional circumstance.
 - Any payment or monies received in the course of participating in a conference or symposium must be disclosed and evaluated.
- Provision 23.922 (e) and 23.926 (1) Concurrent employment or appointment to other offices.

There are many situations where concurrent employment may occur in the post-secondary sector. While it is agreed that in the case of senior officials, approval and documentation in instances of employment outside the university should be required by the board of governors, for other employees and board members this may be best managed with guidelines in the code of conduct rather than approval in writing for the granting of exceptions. Rationale as follows:

- Board Chair and public members at MacEwan University are volunteer roles with no compensation and are fully employed elsewhere and follow board by-laws with respect to conflicts of interest guidelines. Representative members on the board of governors are employed by the institution and nominated on the board in accordance with the Post-secondary Learning Act.
 - Faculty are engaged in the development of intellectual property that may be perceived as concurrent employment and do so in accordance with provisions already outlined in the faculty collective agreement and based on an agreement with the Board of Governors.
 - Senior administrators of public post-secondary institutions are often engaged with industry, community, national and international boards. It is the nature of the business and part of the contribution the sector can give to the external community.
 - Given the structure of their working arrangements, sessional faculty of the university are often employed by multiple post-secondary institutions.
- Provisions 23.925 (1-4); 23.931 Designated Senior Officials (DSO): Special Obligations and Disclosure Statements and Returns

As noted in the letter to the standing committee, we remain significantly concerned with these provisions. The university has mechanisms in place to ensure ethical, transparent and fair transactions on many fronts, including procurement policies, codes of conduct, board and internal audit, audit committees of the board and policy and quarterly public disclosures that would catch irregularities. The Board of Governors of the university has delegated authority in the *Post-secondary Learning Act* to address these aspects.

- Maintaining Confidentiality of Disclosure Documentation

The Ethics Commissioner has noted that disclosure records will be held in the Office of the Commissioner for two years. There are significant concerns with the protection of privacy of the records. Confidentiality breaches that have occurred in the past with respect to executive financial records would lead to a conclusion that maintaining records in the Office of the Ethics Commissioner is not deemed to be a sufficient measure given the nature of the information requested.

- Provision 23.937: Post-Employment Restrictions:

Given the nature of employment at post-secondary institutions, the post-secondary sector requires an exemption or modified provisions. Senior administrators at the university in the case of the president and provost also have appointments to faculty positions and are expected to return to faculty positions upon completion of their terms. This is a common practice in the post-secondary sector and acknowledges and respects the academic achievements and professional knowledge of achieved by those individuals. It is difficult to understand the rationale to support post-employment restrictions of a post-secondary

institution President, given the accountabilities and authorities attached to their role and the geographic and financial barriers this would impose upon an individual's ability to find subsequent employment.

- Provision 23.94: Investigations of Non-Compliance

The Ethics Commissioner has noted that there will be no guidelines around investigations. Rather it will be based on complaints of non-compliance coming forward to the Commissioner. Without clearer provisions, senior officials are put at significant risk for potential unsubstantiated, frivolous or vexatious complaints. This appears to be a relatively subjective way to address allegations of non-compliance and investigations given there may be serious consequences to senior officials deemed not to be compliant.

Additionally, during an investigation, a number of individuals, including the Minister of a public agency will have access to personal disclosure records. This is contrary to protections granted under applicable privacy legislation.