INTEGRITY IN GOVERNMENT IN ALBERTA: TOWARDS THE TWENTY FIRST CENTURY

REPORT OF THE CONFLICTS OF INTEREST ACT REVIEW PANEL

PATRICIA NEWMAN
FRANCIS M. SAVILLE, QC
ALLAN TUPPER (CHAIR)

EDMONTON, ALBERTA
JANUARY 1996

Please attach this sheet to your copy of the *Conflicts of Interest Act* Review Panel Report entitled "Integrity in Government in Alberta: Towards the Twenty First Century." The report was released in Edmonton on January 16, 1996. The Panel members were: Patricia Newman, Francis Saville, Q.C., and Allan Tupper (Chair).

ERRATUM

Conflicts of Interest Act Review Panel Report, page 48:

The last sentence should read "It does not have the force and significance of law."

Allan Tupper, Chair
Conflicts of Interest Act Review Panel

***Conflicts of Interest Act* Review Panel**

Membership: **Allan Tupper, Ph.D., Chair**
Francis Saville, Q.C.
Patricia Newman

11 January 1996

Mr. Robert Clark
Ethics Commissioner
Province of Alberta
#410, 9925 109 St.
EDMONTON, Alberta
T5K 2J8

Dear Mr. Clark:

Please find attached the unanimous Report of the Conflicts of Interest Act Review Panel. The report recommends important changes to the conflicts of interest system in Alberta. When implemented, the Panel believes Alberta will have a conflicts of interest system that is second to none in Canada.

We will be available to discuss the Report with you at any convenient time.

Sincerely,

Patricia Newman

Francis M. Saville, QC

Allan Tupper (Chair)

c/o 410, 9925 - 109 Street, Edmonton, Alberta T5K 2J8 Phone: (403) 422-2273 Fax: (403) 422-2261

TABLE OF CONTENTS

SUPPLEMENTARY MATERIAL

REPORT OF THE CONFLICTS OF INTEREST ACT REVIEW PANEL

SUMMARY*

(*Readers are reminded that the precise recommendations and detailed explanations for them are contained in the Report)

The Conflicts of Interest Review Panel is a committee of three Albertans who, at the request of the Ethics Commissioner, Mr. Robert Clark, reviewed the **Conflicts of Interest Act** and related matters. The Panel was announced on 29 November 1995.

The Panel's recommendations are based on several principles. The most important of these are:

- The vast majority of public office holders in Alberta are persons of integrity.
- A public office, whether elected or appointed, is a position of **public trust** that must never be used for personal gain.
- Public officials in Alberta should face higher standards of conduct than at present.
- Government ethics are always controversial. Citizens differ about the standards to be applied. The Panel does not pretend to have all the answers.
- Public office holders must understand **as a basic condition** of holding public office that their conduct will be carefully scrutinized and evaluated by tough standards. They and their families will have less privacy.

- Conflicts of interest rules must not be so complex that they deter persons from seeking public office.
- Effective conflicts of interest systems outline clear standards and apply these standards to the appropriate public office holders. They are not based on long lists of prohibited actions.

Major changes are required if Alberta is to have a conflicts of interest system that meets public expectations, stands the test of time and provides the province with guidelines that are second to none in Canada. The Panel recommends the following major changes:

- the **Conflicts of Interest Act** and other relevant rules and regulations should be replaced by a new law - **the Integrity in Government and Politics Act.** The new Act would have three dimensions - one for Members of the Legislative Assembly, one for important appointed officials and one that establishes a lobbyist registration process.
- Basic principles in the **Conflicts of Interest Act** should be retained in the **Integrity in Government and Politics Act.** These principles are: a system of public disclosure, an independent Commissioner to interpret the Act and a clear set of obligations under which public office-holders operate.
- Two new principles will be found in the **Integrity in Government and Politics Act**. First, public office holders will have to avoid conflicts of interest **and** "apparent" conflicts of interest. This is a higher standard than is presently applied. Second, public office holders will be obliged to act impartially in the performance of their duties. An "impartiality clause"

will permit investigation of conduct that may be unethical even though it does not involve financial conflicts of interest.

- The **Integrity in Government and Politics Act** will apply to appointed officials. For the first time, influential civil servants will work under a conflicts of interest system established by provincial law. More officials than at present will be covered. The Panel recommends a unique system for determining which officials will be covered by the **Integrity in Government and Politics Act.**
- The **Integrity in Government and Politics Act** should establish a lobbyist registration process. Such a system will make government in Alberta more transparent and accountable.

These are major changes. They are necessary changes if Albertans are to have a conflicts of interest system in which they have full confidence.

Other Proposals for Elected Officials

- Members of the Legislative Assembly who chair Standing Policy Committees and who supervise important provincial government agencies wield power. Under the **Integrity in Government and Politics Act,** they will work under the restrictions imposed on Ministers **and** the post-employment guidelines for former Ministers.
- The Leader of the Official Opposition should be subject to the same restrictions as Members of the Executive Council and former Ministers.

- The section in the **Conflicts of Interest Act** that deals with Members' contracts with government is too complex. It must be clarified.
- Ministers are presently prohibited from owning "publicly-traded securities". We recommend that they be prohibited from owning a broader range of financial instruments.
- Members must face a clear obligation to find out the financial status and interests of their spouses, minor children and associates. The present section is weak. If public disclosure is to be meaningful, Members must find out the facts.
- When Members withdraw from their legislative duties because of conflicts of interest, the circumstances of such withdrawals should be part of the public record.
- The present 6 month "cooling off" period should be extended to 12 months.
- The present section on the receipt of gifts and benefits by Members is adequate. It is similar to that used by other governments. The onus is on Members to get advice from the Ethics Commissioner about the definition of gifts and benefits and the circumstances under which they can be accepted.
- Income, gifts and benefits from a political party are subject to the **Act**.

- The disclosure forms used by the Ethics Commissioner should be regularly reviewed. They should make clear to Members their obligations under the **Act**.
- Consideration should be given to separating the Office of the Ethics Commissioner and the Office of the Access to Information and Privacy Commissioner.
- The educational activities of the Office of the Ethics Commissioner should be expanded. The Commissioner should meet with each caucus twice a year. Candidates for elected office should know their obligations under the **Act**.
- Members' unpaid taxes should be publicly disclosed.
- The **Integrity in Government and Politics Act** must be much more "reader friendly" than the present Act.
- The **Integrity in Government and Politics Act** should be reviewed every 5 years by a committee of the Legislative Assembly.

Appointed Officials

- The Code of Conduct and Ethics for the Public Service, the rules that apply to most provincial civil servants, must be updated.
- In addition to the obligations imposed by the Code, a group of appointed officials, called "policy officials", will be placed under a section of the **Integrity in Government and Politics Act.** They will face tough guidelines. "Policy officials" means those presently designated as "senior officials",

assistant deputy ministers, executive assistants, senior staff in the Office of the Leader of the Official Opposition and a further group, who in the view of their Minister and the Premier, wield enough policy or administrative influence to warrant inclusion.

- The financial disclosures of "senior officials" and their spouses and associates should be made available to the general public.
- "Policy officials" should be subject to a one year "cooling off period". They would be prohibited from undertaking certain lobbying and from taking employment with organizations with which they worked closely in the final year of their employment.

The Registration of Lobbyists

Lobbyists in Alberta politics should be required to register their activities and to work under standards contained in the **Integrity in Government and Politics Act**. Government would be more transparent and accountable as a result. The Government of Canada's recently updated **Lobbyist Registration Act** is a useful model for Alberta.

A Final Consideration

The **Integrity in Government and Politics Act** will apply to many elected and appointed officials. But many persons will still fall outside its scope. For example, new government organizations like the regional health authorities, the Alberta Science and Research Authority and the Alberta Economic Development Authority involve Albertans who are not public office holders. Some of them are volunteers who give generously of their

time to serve the public interest. But by the same token, they may be influential in decision-making and may have access to important information. The Government of Alberta also provides extensive funding to school boards, universities and colleges and other organizations. Many of these organizations operate at an "arm's length" from the Government. They also receive substantial public funds and are instruments of policy. Influential persons in the "quasi-public" sector noted above should work under conflicts of interest rules that are fair to the Albertans involved and that promote the integrity of public institutions. As soon as possible, the Government should issue a detailed policy statement that covers these organizations and the people that serve in them.

REPORT OF THE CONFLICTS OF INTEREST ACT REVIEW PANEL

Background

The Conflicts of Interest Act Review Panel was established after Premier Klein requested of Mr. Robert Clark, the Ethics Commissioner, that he ask a group of Albertans to review the Act. Premier Klein's particular concern was that the issue of higher standards of ethical conduct for public officials be addressed in a forthright manner. Mr. Clark agreed to the request. He selected the Panel and established its terms of reference. On November 29, 1995, the Panel was announced and began its deliberations.

The Panel's terms of reference are:

1. To assess the adequacy and effectiveness of parts 2, 3, and 4 of the present *Conflicts of Interest Act* , Chapter C-22.1 of the 1991 Statutes of Alberta.
2. To consider specifically what are appropriate standards regarding financial dealings for Members of the Legislative Assembly, senior officials, and their respective spouses, and to recommend higher standards where the Review Panel deems them to be appropriate. In considering appropriate standards, the Review Panel may consider conflict of interest legislation or codes in other Canadian jurisdictions.
3. To assess the appropriateness, adequacy, and effectiveness of the conflicts of interest guidelines for senior officials as set out in the memorandum

from the Honourable Richard Fowler, Minister of Justice and Attorney General, dated February 3, 1993.

4. To make recommendations with respect to proposed amendments to the *Conflicts of Interest Act*, proposed regulations or legislation for senior officials, and practices or any other related matter employed by the Office of the Ethics Commissioner.
5. The Review Panel is to report to the Ethics Commissioner by December 18, 1995, and the report will be presented to the Minister of Justice and Attorney General. The report will be released publicly.

The Panel reviewed the suitability and effectiveness of the **Conflicts of Interest Act** for the future. Our broad terms of reference allowed us to pursue all relevant questions. We asked hard questions - is the present conflicts of interest system effective as Alberta moves toward a new century? What changes are required in light of controversy about the Act, several years experience with it and changes to the role of government in Alberta in an era of downsizing, contracting out and budget cuts? How can the integrity of government be enhanced without impeding its proper functioning?

In preparing its report, the Panel studied a selection of the literature on government ethics. We carefully reviewed Alberta's law and regulations. We examined the situation in several other jurisdictions notably British Columbia, Ontario and Canada. These jurisdictions hold lessons for Alberta. Ontario and British Columbia have substantially revised their conflicts of

interest legislation in recent years. As we write in early 1996, Parliament is examining the standards of conduct for its Members through the vehicle of a joint committee of the Senate and House of Commons. In 1995, Parliament substantially amended the **Lobbyist Registration Act**.

The Panel interviewed senior officials in the Government of Alberta, the Ethics Commissioners of Alberta, British Columbia and the Government of Canada, staff in the office of the Ethics Commissioner and the Premier of Alberta, Hon. Ralph Klein. We thank these busy people for assisting our work and in many cases for rearranging their schedules to meet with us. (A list of these meetings is appended to this report). Much of our work involved deliberation and debate among the Panel Members. Our report is a unanimous one.

The Liberal Party of Alberta, the Official Opposition in the Legislative Assembly of Alberta, was invited to meet with us. Mr. Grant Mitchell, its leader, originally accepted our invitation but after caucus deliberations decided not to participate in our work.

We did not conduct public hearings. But with our report in hand, further debate will occur in the Legislative Assembly, in the media and, we hope, in conversations throughout Alberta. We opted for a broad approach to the topic. We have recommended **major** changes to the way public business is done in Alberta. We believe we have recommended a conflicts of interest system for Alberta that will meet public expectations and stand the test of time.

Our timetable precluded a report with detailed solutions to every issue and precisely worded solutions in every instance. But in every case, we provide a clear definition of problems as we saw them and a solution. To the Panel's mind, concrete action can occur **provided the political will exists.** We see no major problems in translating our recommendations into good legislation.

Introduction

The ethical conduct of public officials, both elected and appointed, is a fundamental concern in democracies. Over the past decade, debate has occurred in provincial, municipal and national politics about proper standards of public conduct and the best ways to attain these standards. Albertans share these concerns as strongly as other Canadians.

Citizens now demand very high standards of ethical conduct from those who govern them. They are correct to do so. The conduct of public officials has profound consequences for the legitimacy of government. Effective policy-making is hard to undertake unless citizens and public officials are linked by bonds of mutual trust and respect.

In Alberta, a sea change occurred in the province's approach to political ethics with the proclamation of the **Conflicts of Interests Act** in 1993. **For the first time,** an act of the Legislative Assembly established a conflicts of interest system for all Members. It replaced a complex set of informal guidelines and rules. The Legislature elected in the provincial general election of 15 June 1993 is the first in Alberta's political history to operate under a conflicts of interest law.

This Panel supports the democratic principles embodied in the **Conflicts of Interest Act.** These principles should form the basis of the substantially revised legislation that we propose.

The Panel also believes that there are significant weaknesses in the existing conflicts of interest system for public office holders, both elected and appointed, in Alberta. Higher standards are required. We propose major changes which, when implemented, will provide Alberta with ethical guidelines for public office holders that will stand the test of time. Our proposals, when implemented, will impose demanding standards on a large number of influential public officials. They will be second to none in Canada.

The Panel believes its recommendations will make government in Alberta more transparent and more accountable. **Seen together, they constitute a major "Integrity in Government" package for the consideration of Albertans.** Our basic recommendations are as follows:

BASIC RECOMMENDATIONS

1. **The Conflicts of Interest Act and those regulations, guidelines and codes for appointed officials should be consolidated in a single piece of legislation called the Integrity in Government and Politics Act. The new Act would have three basic components - one for elected officials, one for appointed officials and one that applies to lobbyists in Alberta politics.**
2. **The proposed Integrity in Government and Politics Act would embrace several of the principles now found in the Conflicts of Interest Act. These include: a system of public disclosure of the financial interests of officials, a clear set of obligations and duties for public office holders and an independent Commissioner to interpret and administer the Act.**

3. The Integrity in Government and Politics Act would embrace two new principles. First, public office holders, both elected and appointed, would be expected to avoid conflicts of interest and "apparent" conflicts of interest. Second, under the proposed Integrity in Politics and Government Act, public office holders would be expected to act impartially in the performance of their duties.
4. Influential civil servants and advisors in the Government of Alberta should operate under substantially revised and strengthened conflicts of interest rules. They would be under a tough provincial statute for the first time. The Panel also recommends a new system for deciding which officials will be subject to the proposed Integrity in Government and Politics Act. Civil servants not covered by the Integrity in Government and Politics Act will continue to work under the Code of Conduct and Ethics for the Public Service. The Code would be made a regulation under the Integrity in Government and Politics Act.
5. The Integrity in Government and Politics Act will provide for the registration of lobbyists. Such a system will make government more transparent and accountable. Citizens are entitled to know who influences government and the way in which influence is brought to bear.

Operating Principles and Assumptions

The Panel proceeded from several principles and assumptions. We feel that it is important to outline these briefly here so that Albertans can understand the thinking that underpins our recommendations.

- The vast majority of public officials in Alberta are persons of integrity who undertake public office to promote the public interest.
- A public office, whether elected or appointed, is a position of **public trust**. Such a position must **never** be abused for personal gain.
- Conflicts of interest rules must never be so complex or onerous that they deter citizens from seeking public office.
- Higher standards of conduct are required for public office-holders in Alberta.
- Ethical conduct in government and politics will always be the subject of legitimate debate. Controversy is inevitable about the standards employed and their interpretation in particular cases. The Panel does not claim to have all the answers. It is wary of those who think they do.
- Laws designed to promote integrity in government are essential to the quality of democracy. But they are not, and must not be seen to be, substitutes for an alert, informed public. As the 1990 report of Chief Judge Wachowich put it: "However admirable a conflicts of interest system might be, it could not reform a corrupt government or protect an apathetic public."

- As a basic condition of holding public office, public officials must accept that their conduct will be carefully scrutinized and tested against demanding standards. Such standards will be higher than those expected of women and men in other walks of life. They will cause a loss of privacy for office holders and their families.
- An effective conflicts of interest regime outlines clear standards of conduct. Those in public office, and persons considering elected or appointed public office, must know **in advance** the conduct expected of them, their families and their associates. Those considering public office must seek full information about their obligations and duties.
- The Panel rejects an approach that specifies a long list of prohibited conducts. This "thou shalt not" approach characterizes many conflicts of interest systems in the United States. We believe that effective ethical guidelines stress broad principles that are then interpreted in the face of "real world" situations. Rather than proposing new restrictions and prohibitions, the Panel has concentrated on **standards** and on ensuring that the **Integrity in Government and Politics Act** covers the **appropriate group** of public office holders.
- Effective conflicts of interest systems require sanctions and an enforcement capacity. They also requires education and counseling so that wrongdoings and errors of judgement are **prevented**. We endorse the existing regime in Alberta which obliges the Ethics Commissioner to undertake preventative action, to educate and to counsel public officials

about their obligations. Such work is very important yet it is unknown to the public.

The Present Situation: The Conflicts of Interest Act

The **Conflicts of Interest Act** is an important law. It replaced informal guidelines for ministers, moved some rules from the **Legislative Assembly Act** and outlined obligations for Members. The Act's basic principle is that Members of the Legislative Assembly must not allow their private financial interests to influence the conduct of public business. The Act imposes obligations on Members. The following actions by Members are breaches of the Act:

1. taking part in a decision in which a Member knows that the decision might further a private interest
2. using the Member's office or powers to influence or seek to influence a decision of the Crown to further a private interest of the Member
3. using or communicating information not available to the public to seek to further a private interest.
4. accepting gifts, fees or other benefits that are connected directly or indirectly with the performance of the Member's office.
5. holding certain offices while they are Members or being involved in contracts or payments with the Crown.

The Act places additional restrictions on Members of Executive Council, the Cabinet. Ministers are prevented from engaging in certain business and professional activities and, subject to certain exceptions, from owning or from having "beneficial interests" in publicly-traded securities. Such securities

must be divested or placed in a blind trust. With the approval of the Ethics Commissioner, they may be retained. The employment opportunities and lobbying activities of former Ministers are restricted for six months after they leave public office.

The **Conflicts of Interest Act** rests on the principle of **public disclosure** of the financial interest of Members of the legislature, their spouses, their minor children and private corporations controlled either by the Member or by the Member's spouse or minor children. Members are obliged to file with the Ethics Commissioner statements about their personal and family's financial assets, liabilities and interests, income received in the preceding 12 months and expected in the next 12 months and fees, gifts and benefits exceeding $200 from the same source in any calendar year.
Such facts are publicly disclosed by the Ethics Commissioner, although the value of holdings is not made public and certain classes of information are not released. The release of such information creates an informed public which operates as a check on Members' activities.

The Panel feels that public awareness of these provisions and their consequences is not high enough. This is one of the reasons we recommend that the educational activities of the Ethics Commissioner be expanded. The **Conflicts of Interest Act** makes Members of the Legislative Assembly **publicly responsible** for the financial dealings of their family members. This principle has many consequences for women and men as they consider entering public life and for their relationships after they enter politics or government service.

We again urge those considering public office to consider carefully these consequences.

The Act establishes obligations on Members which, when breached, allow the Ethics Commissioner to recommend sanctions to the Legislative Assembly. The Ethics Commissioner is an officer of the Legislature who is independent from the Government. The Act gives considerable discretion to the Commissioner whose must interpret the Act on a daily basis. Many of the provisions of the Act can be eased by the Ethics Commissioner in particular circumstances. The assumption is that the obligations and restrictions imposed on Members might not make sense if applied without consideration of special circumstances. Finally, and this point merits emphasis, the Act covers a narrow terrain. It deals only with the financial interests of individual MLAs as these relate to government activities. It does not cover the broad range of ethical matters that make up integrity in government.

The **Conflicts of Interest Act** is an important law. It rests on democratic principles that the Panel supports. The Act asserts that there must be as clear a separation as possible between public duties and private interests, it prohibits certain activities as unacceptable, and it stipulates that an independent officer of the Legislature should interpret and enforce the Act. It requires that the public have access, through public disclosure, to facts about the personal finances of Members of the Legislative Assembly.

The Panel accepts these principles and sees them as key elements of a proposed new **Integrity in Government and Politics Act.** We also conclude,

however, that the Act should be strengthened in the context of a new **Integrity in Government and Politics Act.**

The Future: Elected Officials

The Panel recommends that an **Integrity in Government and Politics Act** embrace the following features that are not found in the present legislation. When implemented, our recommendations will establish higher standards of conduct for elected officials.

Recommendation 1: The Integrity in Government and Politics Act should begin with a clear statement of purpose that indicates, to Members of the Legislative Assembly, appointed officials and the citizens of Alberta, the ethical obligations of public office holders.

- The **Integrity in Government and Politics Act** must begin with a clear statement of the fundamental principles which it represents. The present Act has no such statement of purpose. The statement of purpose will be a constant reminder to elected officials of the importance of their roles and of their obligations to the citizens of Alberta. Such a statement of principles is contained in Ontario's recently revised **Members' Integrity Act** and the Government of Canada's Conflict of Interest and Post-Employment Code for Public Office Holders.

  Ontario's statement of purpose is not perfect. For example, it does not apply to appointed officials. But **for purposes of illustration only,** it is included here:

"It is desirable to provide greater certainty in the reconciliation of the private interests and public duties of Members of the Legislative Assembly, recognizing the following principles:

1. The Assembly as a whole can represent the people of Ontario most effectively if its members have experience and knowledge in relation to many aspects of life in Ontario and if they can continue to be active in their own communities, whether in business, in the practice of a profession or otherwise.

2. Members' duty to represent their constituents includes broadly representing their constituents' interests in the Assembly and to the Government of Ontario.

3. Members are expected to perform their duties of office and arrange their private affairs in a manner that promotes public confidence in the integrity of each member, maintains the Assembly's dignity and justifies the respect in which society holds the Assembly and its members.

4. Members are expected to act with integrity and impartiality that will bear the closest scrutiny."

Recommendation 2: The Integrity in Government and Politics Act should state that Members of the Legislative Assembly and appointed officials will avoid both real and "apparent" conflicts of interest.

- the **Integrity in Government and Politics Act** must incorporate the idea of an "apparent conflict of interest". Such a clause exists in British Columbia's legislation where it permits investigation and response to a range of perceived misconduct. It will significantly raise the standard of conduct expected of Members of the Legislative Assembly and appointed officials. The following are the relevant sections of British Columbia's **Members' Conflict of Interest Amendment Act, 1992**:
- 2 (1) For the purposes of this Act, a member has a conflict of interest when the member exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that in the performance of the duty or the function or in the exercise the power there is the opportunity to further his or her private interest.
- 2 (2). **For the purposes of this Act, a member has an apparent conflict of interest where there is as reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest".** (emphasis ours)
- 3. A member shall not exercise an official power or perform an official duty or function if the member has a conflict of interest **or an apparent conflict of interest.** (emphasis ours)

The "appearance" test does not permit fishing trips or harassment of Members. An apparent conflict of interest must be one that would be seen by "a reasonably well informed person".

The **Conflicts of Interest Act** already applies the test in several sections. For example, Section 20 (1) now prohibits Ministers from engaging in business and professional activity if such activity "creates or **appears** to create a conflict between a private interest of the Minister and the Minister's public duty." (emphasis ours). Moreover, the Code of Conduct and Ethics for the Public Service of Alberta, the rules that now apply to **all provincial civil servants regardless of rank,** also applies the "appearance standard".

The Panel recommends that the "appearance standard" be applied as a principle that governs the entire **Integrity in Government and Politics Act.** We are at ease in recommending a higher standard for Members of the Legislative Assembly and for a group of appointed officials. Their conduct should be evaluated by rigorous standards.

Recommendation 3: The Integrity in Government and Politics Act should impose an obligation on Members of the Legislative Assembly and appointed officials to act impartially on behalf of all Albertans. The present Act does not have such an obligation.

- The Panel recommends that the proposed **Integrity in Government and Politics Act** contain a clause that imposes on Members the duties of impartiality and fairness in their public dealings. An "impartiality clause" would extend the **Integrity in Government and Politics Act** into areas that

the **Conflicts of Interest Act** does not cover. Members and appointed officials would be expected to discharge their duties fairly and with due regard to proper process. They could be found in breach of the **Integrity in Government and Politics Act** for employing unethical means to further their ends.

The rationale for this clause is not theoretical. Most citizens probably assume that such an obligation is at the heart of the present Alberta Act. But it is not. This weakness in the present **Conflicts of Interest Act** has already been noted in an investigation under Alberta law, undertaken under special circumstances, by the present British Columbia Conflict of Interest Commissioner, Mr. Ted Hughes. In investigating matters surrounding the Alberta Special Waste Management Corporation, Mr. Hughes noted that there was no capacity under the **Conflicts of Interest Act** to cope with unethical behaviour that did not involve a financial conflict of interest.

An "impartiality clause" will not impede the normal processes of democratic government or the exercise of legitimate political influence. Section 5 of the present **Conflicts of Interest Act** now establishes that the Act is not meant to interfere with activities of Members on behalf of their constituents. **Such a clause must be retained in the Integrity in Government and Politics Act.**

An "impartiality clause" will remind Members and officials that their duties and obligations extend beyond the avoidance of financial conflicts

of interest. It will remind them that they are public servants in the true sense of the word. They are obliged to govern on behalf of all citizens and to observe high standards in the way they conduct public business.

The **Integrity in Government and Politics Act** could employ language like that used in the Government of Canada's Conflict of Interest and Post-Employment Code for Public Office Holders: "Public office holders shall act with honesty and uphold the highest ethical standards so that public confidence in the integrity, objectivity and impartiality of government are conserved and enhanced". A similar section is found in the law governing public office holders in the Northwest Territories: "Each Member shall perform his or her duties of office and arrange his or her private affairs in such a manner as to maintain public confidence and trust in the integrity, objectivity and impartiality of the member".

Recommendation 4: Under the proposed Integrity in Government and Politics Act, the obligations now imposed on Members of Executive Council and the restrictions now imposed on former Ministers should be extended to those Members who chair Standing Policy Committees and/or who chair or supervise significant agencies of the Government of Alberta.

- The **Conflicts of Interest Act** now imposes restrictions on the activities of Ministers that are not imposed on other Members. Under Section 6, it also imposes restrictions on former Ministers after they leave Cabinet.

The logic is obvious - Ministers wield significant policy-making and administrative power. Such power must be employed on behalf of all citizens.

Under the revised committee system established by the present government, "backbenchers" chair Standing Policy Committees. In this role, they are important players in decision-making. They are different from ordinary Members. Their positions may give them access to information that is not available to other Members. Some backbenchers also chair important provincial government agencies, although they do so under the direction of a Minister. The line between a Minister and a backbencher is blurred.

The Panel recommends that those sections of the **Conflicts of Interest Act** bearing on Members of the Executive Council be extended to Members of the Legislative Assembly who chair Standing Policy Committees or who chair provincial agencies.

The Panel deliberated at length about this important point. It is a complex matter that raises questions about where power lies in government. It also raises another question - should Members continue to work under different rules as they now do? Or should all 83 of them be subject to a single set of obligations and restrictions?

One response is to extend the restrictions on Ministers to **all** Members of the legislature. This response has the virtue of simplicity and uniformity of application. It would be a clear statement that all Members would be

expected to establish even clearer lines of separation between their public offices and their private financial and business dealings. All MLAs would be under the same obligations regardless of their party or their place in the hierarchy of power.

After considerable discussion, we decided against this approach. We worried that the imposition of Ministerial obligations on all Members would be too onerous for backbenchers on both sides of the house. For example, Section 4 of the **Conflicts of Interest Act** now prohibits ministers from engaging in certain forms of professional and business activity, although such restrictions can be eased by the Ethics Commissioner. It also limits the employment opportunities of former Ministers for a six month period after they leave office.

The imposition of such restraints on all Members is not required. Their behaviour will continue to be scrutinized through public disclosure. And when the **Integrity in Government and Politics Act** is passed, all Members will face significantly higher standards. They will have to avoid both real and "apparent" conflicts of interest. They will be obliged to act impartially in the performance of their duties.

The extension of Ministerial obligations to all Members would have a significant indirect consequence. It would be a major step toward defining membership in the Legislative Assembly as a full time job. Perhaps such a policy is desirable for the quality of democracy. But it is a significant change in our political traditions. It should be recognized as such.

Amendments to the conflicts of interest system should not be an indirect vehicle for a major policy change.

We urge Albertans to think carefully about these issues. For now though, we believe the more stringent Ministerial obligations should be extended only to Members who chair Standing Policy Committees or significant agencies of the Government of Alberta. Given the relatively small number of Members involved, the Members subject to the Ministerial rules could easily be determined by the Premier after discussion, if necessary, with the Ethics Commissioner.

Recommendation 5: Under the Integrity in Government and Politics Act, the Leader of the Official Opposition should operate under the responsibilities and obligations imposed on Members of Executive Council, those other Members of the Legislative Assembly noted in Recommendation 4 and former ministers.

- The position of Leader of the Official Opposition is significant enough to demand that she or he be subject to more stringent rules than other Members. The Leader is the object of pressure group influence. In a competitive party system as an election nears, such influence can be strong. We recommend therefore that the Leader of the Opposition be subject to rules comparable to those imposed on Members of Executive Council and those other Members of the Legislature noted above.

Summary

The Conflicts of Interest Act Review Panel is recommending **major changes** to the statutory framework for elected office holders in Alberta. Without any reduction of existing obligations and duties, we propose the following major changes:

1. Elected officials in Alberta must face a higher standard. They must avoid conflicts of interest **and** the appearance of conflict of interest as perceived by a reasonably well informed citizen.
2. An "impartiality clause" should be inserted into the **Integrity in Government and Politics Act.** Such a clause will permit investigation and censure of conduct that is unethical but which may not involve financial conflicts of interest. This obligation is not found in the present Act.
3. The **Integrity in Government and Politics Act** should contain a clear statement of purpose so that public office holders and Albertans know the democratic principles that it represents.
4. Chairs of Standing Policy Committees, Members who supervise important provincial agencies but are not Members of Executive Council, and the Leader of the Official Opposition should be subject to the same restrictions as Members of Executive Council. They would also be subject to the restrictions on "former Ministers".

Other Recommendations and Considerations: Elected Officials

In addition to the new principles outlined above, the Panel proposes changes to several sections of the existing **Conflicts of Interest of Act.** Without change, these sections should not be transferred to the **Integrity in Government and Politics Act.**

Recommendation 6: The Integrity in Government and Politics Act should employ a clear definition of the financial instruments in which Ministers and designated others should not be involved.

- Section 1 (1) j of the Act defines publicly-traded securities. It is an important definition that provides the basis for a prohibition under which Members of Executive Council operate. This definition is too narrow. Ontario's **Members' Integrity Act** has a better definition. Section 11(1) of that Act states: "A member of the Executive Council shall not hold or trade in securities, stocks, futures or commodities". This wording is clear and broad in sweep. It should be adopted in the **Integrity in Government and Politics Act.**

Recommendation 7: The present section on Members' contractual dealings with governments is too complex. It requires clarification and simplification especially as "contracting out" of government services is now a major part of public management in Alberta.

- Section 8 of the Act deals with Members' contracts with governments. This section is complex to the point of incomprehensibility. Ontario's **Members' Integrity Act** is clearer. Section 7 of the Ontario act states that Members must not knowingly contract with agencies of the Government of Ontario. It tersely notes some qualifications. Section 8 of the **Conflicts of Interest Act** should be redrafted so that its provisions and intent are clear.

  Governments have always entered into contracts with firms and individuals. This is so because many goods and services required by governments cannot be "produced" by governments themselves. But governments now also **deliver** public services through contracts with private and non-profit agencies. "Contracting out" is extensively practiced in Alberta. It brings public officials into new relationships with the private sector. The extent of "contracting out" makes it essential that the rules governing contracts between Members and agencies of the Government of Alberta be clarified. The private business and professional interests of Members must not be mingled with the processes of the privatization and contracting out.

Recommendation 8: The present obligation on Members, outlined in Section 12 of the Conflicts of Interest Act, to report the financial status of their spouses and minor children "so far as is known to the Member" is too weak. The Panel therefore recommends that Members be obliged to

make "reasonable efforts'" to ascertain the facts. Otherwise public disclosure cannot be effective.

- Section 12 of the **Conflicts of Interests Act** deals with disclosure statements to the Ethics Commissioner. At present, the Member is obliged to report the assets, liabilities and financial interests of his/her spouse, minor children and private corporations controlled by them. The Member is obliged to report these facts "so far as known to the Member".

  This section is weak. Public disclosure of information about Members' financial dealings is at the heart of the **Conflicts of Interest Act**. Disclosure must be full, complete and accurate. We recommend that section 12(a) of the Act be altered so that Members face an **obligation** to determine and understand the financial dealings of their spouses and minor children. We suggest the following terminology: "so far as known to the Member after she or he has made reasonable efforts to discover them,".

  Occasional circumstances may arise when a spouse refuses to co-operate. But clear statutory direction will outline to public office holders the obligations they operate under. If such obligations are not understood and acted upon by Members, the basic principle of public disclosure is weakened.

Recommendation 9: When Members withdraw from their legislative duties because of conflicts of interest or apparent conflicts of interest, the

general circumstances and times of such withdrawals must be part of the public record.

- As a safeguard of the public interest, section 2(2) of the **Conflicts of Interest Act** obliges Members to withdraw from deliberations when they are in a conflict of interest. In British Columbia, Members face a similar obligation. But there is a big difference. In British Columbia, the withdrawal of a member and the circumstances of such a withdrawal are part of the public record. Members must alert the Clerk of the Legislative Assembly to the general circumstances under which they have withdrawn from debate or committee work. Such information is passed on to the Office of the Ethics Commissioner where it is available for public scrutiny.

  The Panel recommends that Alberta's revised legislation contain an amendment comparable to British Columbia's. Albertans should know when and why Members of the Legislative Assembly withdraw from their duties because of conflicts of interest or apparent conflicts of interest. The Panel also notes that Alberta's **Municipal Government Act** presently imposes such on obligation on those officials who are subject to it. It is certainly not too onerous an obligation for Members of the Legislature.

Recommendation 10: The present restrictions on the activities of former Ministers are legitimate safeguards of the public interest. The existing six month "cooling off" period is too short. It should be twelve months.

- Part 6 of the Act broke new ground in Alberta when it prohibited former Ministers from lobbying the provincial government under certain circumstances or from taking employment with organizations with which he or she had "significant official dealings" in the year **preceding** departure from public office. The Act prohibits certain activities for **six months** after the former Minister leaves office.

  This time is often referred to as a "cooling off" period. It exists so that citizens have confidence that former Ministers do not have, or are not seen to have, an unfair advantage over others in influencing government. They have to hang up their skates for six months and refrain from lobbying parts of government. By the same token, the impartiality of their offices would be challenged if they immediately accepted employment with an organization with which they had been working closely while a Minister.

  The Panel views such restrictions as legitimate protections of the public interest and the integrity of government. It also believes that the present six month "cooling off period" is too short. At the same time, the two year period in British Columbia and the Government of Canada is too long. We therefore recommend a one year "cooling off " period. Chief Judge Wachowich made a similar recommendation in 1990 in his report that recommended conflicts of interest legislation in Alberta.

Recommendation 11: Members must seek advice from the Ethics Commissioner when they are uncertain about what constitutes a gift, fee or other benefit or about the circumstances in which a gift, fee or benefit may be accepted. The onus is on them. Other Canadian governments deal with gifts in a manner similar to Alberta. No obviously superior policy alternative presents itself, although other jurisdictions, notably British Columbia and Ontario, employ clearer statutory language.

- The Multi-Corp. investigation raised questions about the adequacy of the present Act's coverage of gifts and benefits. The Panel reviewed this matter. Alberta's Act, in section 7, deals with gifts in essentially the same way as British Columbia, Ontario and Canada. The Act specifies that a Member breaches the Act if he/she or the Member's spouse or minor child accepts "a fee, gift or other benefit that is connected directly or indirectly with the performance of the Member's office." The Act further specifies that this general rule does not apply to gifts received as "an incident of protocol or of the social obligations that normally accompany the responsibilities of the Member's office". Such gifts must not exceed the value of $200 in a calendar year. Alternatively, the Member can apply to the Ethics Commissioner for permission to retain such a gift. The Commissioner must be satisfied that the retention of such a gift or benefit raises "no reasonable possibility" of a conflict of interest.

The Panel sees no need for a statutory change in the provisions about gifts. The Act provides a broad definition when it mentions "a fee, gift or other benefit". It provides a bit of flexibility in the circumstances under which the receipt of gifts, fees or an other benefit are acceptable for a public office-holder. The Act makes no explicit mention of the source of gifts. We assume this silence means that the rules apply to gifts **from any source**.

The experience of other Canadian jurisdictions offers no panacea or superior model. Other governments use a broadly similar approach - a general prohibition against the receipt of gifts and benefits subject to a recognition that public office holders may sometimes receive gifts in the conduct of public business.

Other jurisdictions express their policy more clearly than does the **Conflicts of Interest Act.** The Ontario **Members' Integrity Act** is a model.

Members should be cautious. As a general rule, they should refuse gifts and other benefits as is the intent of the Act. When they are uncertain, they must get advice from the Ethics Commissioner.

Recommendation 12: Income, gifts or other benefits received from a political party are covered by the Act and must be reported and disclosed. Leaders of political parties must be especially mindful of their obligations in this regard.

- The Premier and the Leader of the Official Opposition are also leaders of political parties. In a legislature with more than two parties, other Members will also be party leaders. In their capacities as party leaders, they may receive income and/or benefits from their party in recognition of their onerous positions. The Act is silent about such a situation. As already noted, it is silent about the source of gifts and income generally. We have no evidence that problems are arising. Indeed, Premier Klein's public disclosure statement now shows income from the Progressive Conservative Association of Alberta. This is as it should be.

  For the record, our view is a straightforward one. Income, benefits or gifts **from political parties** must be disclosed to the Ethics Commissioner and, subject to any limits in the Act, through that Office to the public where applicable.

Recommendation 13: The Integrity in Government and Politics Act should be reviewed by a committee of the Legislature every five years.

- The **Integrity in Government and Politics Act**, should be reviewed by a committee of the legislature at least once every five years from now on. A mandatory review acknowledges the importance of the Act and recognizes the need to assess it regularly in light of changing public expectations, alterations to the role of government, and changes in the responsibilities

of Members. The recent creation of Standing Policy Committees is a good example of the last point.

Recommendation 14: Consideration should be given to separating the Offices of the Ethics Commissioner and the Office of the Access to Information and Privacy Commissioner.

- Consideration should be given to the question of whether the duties of the Ethics Commissioner and the Access to Information and Privacy Commissioner should be undertaken by the same person. When the **Integrity in Government and Politics Act** is passed, the work load will probably be too demanding for a part-time Commissioner. As well, the functions of the two Offices may not be compatible. Information about Members could be sought under the Access to Information and Privacy Act.

Recommendation 15: The educational activities of the Office of the Ethics Commissioner should be enhanced. The Commissioner should meet with each caucus at least twice annually. Candidates for elected office should be informed of their ethical obligations when they are nominated or even earlier if possible.

- The educational role of the Ethics Commissioner should be enhanced. The Ethics Commissioner should continue to work closely with party caucuses

as he/she is obliged to do under Section 40 (1) of the Act. Such organizations must make efforts to keep up to date on changes in legislation elsewhere, Members' obligations under the Act and public expectations. Each caucus should meet at least twice annually with the Ethics Commissioner to discuss matters of mutual concern. Steps should also be taken to ensure that candidates for election to the Legislative Assembly are informed of their obligations under the **Integrity in Government and Politics Act** when they file nomination papers.

Recommendation 16: Members' unpaid taxes should be publicly disclosed.

- Under section 14(4) e of the **Conflicts of Interest Act**, Members' unpaid taxes are not publicly disclosed. We see no reason for such an exemption. Elected officials, of all citizens, should pay their taxes promptly. We can envision occasional circumstances where taxes are unpaid because they are in dispute. This could be noted in the disclosure statement. But it is not a legitimate rationale for non-disclosure.

Recommendation 17: The disclosure forms used by the Office of the Ethics Commissioner must be continuously reviewed and updated. The forms should clearly state the Members' obligations and the purposes served by the information being requested.

The Multi-Corp. investigation revealed deficiencies in the forms employed by the Office of the Ethics Commissioner. The Panel reviewed the revised forms. We are satisfied that they are now adequate to the task. The forms employed by the Office of the Ethics Commissioner should be continuously reviewed for their appropriateness. Where possible and relevant, they should embrace the relevant statutory obligations without becoming encumbered by legal text.

Recommendation 18: The legitimate costs of Members for complying with the Act should be paid for by public funds.

Members of the Legislative Assembly who incur legal, accounting or other legitimate expenses when complying with the **Integrity in Government and Politics Act** should be compensated from public funds.

Recommendation 19: The Integrity in Government and Politics Act should be drafted as clearly and as tersely as possible. It must be "reader friendly". Such an important Act should be comprehensible to citizens and to those whose activities are governed by it.

- We advance this recommendation without further specific comments. The **Conflicts of Interest Act** is often complex in its prose to the point of incomprehensibility. The Acts in British Columbia and Ontario rest on

similar principles. Yet they are shorter and more clearly written than the **Conflicts of Interest Act**.

INTEGRITY IN GOVERNMENT: APPOINTED OFFICIALS

The Panel deliberated at length about the place of appointed officials in an "Integrity in Government" policy. Our terms of reference obliged us to do so.

The problem of appointed officials in a conflicts of interest system is a complex one. There are 83 Members of the Legislative Assembly of Alberta. There are **thousands** of civil servants and appointed officials. Appointed officials in Alberta undertake technical, regulatory and policy advisory roles. They vary in their influence and discretion. They are located all over the province. In several important cases, they represent Alberta's interests in other countries and in Ottawa. They work in government agencies of different sizes, with different traditions and with different legal and financial relations with government.

In modern politics, public concern about government ethics has focused on elected officials. Much less attention is paid to the role of civil servants. This imbalance in public debate is unfortunate. Civil servants are less visible than politicians. Their backgrounds and views are not well known even to well informed citizens. Yet civil servants and other appointed officials are significant forces in modern governments. Civil servants advise governments on new policy initiatives and the reform of existing policies. They exercise discretion in shaping regulations and making day to day decisions that put flesh on the bones of legislation. They deal with interest

groups. They negotiate contracts, procure costly goods and services from businesses and supervise "contracting out". Appointed officials evaluate government programs to find out what is working and what is ineffective. They often exercise discretion in the performance of their duties.

For these reasons, an effective integrity in government system must carefully consider the place of appointed officials. To ignore their role in Alberta government would lead to an incomplete analysis.

The Panel believes that the vast majority of appointed officials in Alberta are persons of integrity, competence and dedication. But their place must be clearly acknowledged in a conflicts of interest system that has the confidence of the public.

Appointed Officials: The Present Situation

Appointed officials in Alberta operate under the conflicts of interest system, the key elements of which are:

A. Almost all provincial civil servants are covered by the **Code of Conduct and Ethics for the Public Service of Alberta**. This Code covers such topics as outside employment, political activities of civil servants, investment and management activities, acceptance of gifts and dealings with relatives. The Code is administered by the deputy ministers. There are sanctions, including dismissal, for its violation.

In a recent report, the Auditor-General noted that the Code had not been updated for several years in light of changing circumstances. The Code is

presently under review. The Code of Conduct and Ethics for the Public Service of Alberta does not have the force of law.

- Departments may extend and enhance the service-wide Code with rules that reflect their special circumstances and mandates. Departmental codes cannot be more permissive than the system-wide Code.
- In 1993, a memorandum (hereafter referred to as the Fowler memorandum) from the then Minister of Justice and Attorney General of Alberta, Hon. Richard Fowler, outlined an important set of rules for a small group of appointed officials called "senior officials". The Fowler memorandum did not clearly define "senior officials". The term now applies to a small group (currently about 70 people) including deputy ministers, the heads of important provincial agencies and senior staff in the Premier's Office. These persons are subject to a set of rules broadly comparable to those facing Members of the Executive Council under the **Conflicts of Interest Act**. "Senior officials" are prohibited from owning certain publicly-traded securities unless they are in a blind trust approved by the Ethics Commissioner.

The rules for "senior officials" rest on **disclosure** of financial and business activities. "Senior officials" must file disclosure statements with the Ethics Commissioner. Their statements require disclosure of assets, liabilities and income sources in a manner comparable to that for Members of the Legislative Assembly. "Senior officials" are obliged to reveal financial data

about their spouses, minor children and private corporations controlled by any one or more of them.

"Senior officials" are not now subject to post-employment restrictions. Their disclosure statements are not made public after submission to the Ethics Commissioner. Problems with disclosure statements or complaints about conduct of senior officials are dealt with by the Ethics Commissioner who acts by notifying the responsible Minister and the Minister of Justice. Sanctions for non-compliance or breach of the rules are not specified. Nor is there an appeal process. Finally, the Fowler memorandum is a policy statement. It does have the force and significance of law.

Appointed Officials: Recommendations

The Panel concludes that the framework of controls over appointed officials in the Government of Alberta requires significant changes. Without such changes, the "Integrity in Government" policy that we are proposing will be deficient. For this reason, we advance the following recommendations:

Recommendation 20: The Code of Conduct and Ethics for the Public Service must continue to be systematically reviewed and modernized in light of changing circumstances. Provincial public employees must know their obligations under the Code. Training and development activities in this area should be reviewed continuously to determine their effectiveness.

- Under the direction of the Public Service Commissioner of Alberta, the Code of Conduct and Ethics for the Public Service of Alberta must continue to be refined and updated. This work should be **a priority**. The Code is the set of rules and obligations that governs the behaviour of the civil servants with whom Albertans interact on a daily basis. Its importance cannot be underestimated. Through appropriate means, a draft version of a revised Code should be made available for public discussion. The Public Service Commissioner of Alberta should continue his efforts in the area of training and development. In an organization as

large as the Government of Alberta, employees must understand their obligations to their employer, to their fellow employees and to Albertans.

Recommendation 21: A new group of officials is proposed as the basis for a revised policy for appointed officials. The group will be called "policy officials". In addition to the obligations imposed by the Code of Ethics and Conduct for the Public Service, "policy officials" will be subject to obligations and restrictions outlined in the Integrity in Government and Politics Act. "Policy officials" means all present "senior officials", all assistant deputy ministers, executive assistants, senior staff in the Office of the Leader of the Opposition and a further group who, in the view of their Minister and the Premier, wield enough policy or administrative influence to be included.

- The present definition of "senior officials" places too few influential appointed officials under a tough conflicts of interest system. Accordingly, we recommend that the term "senior officials" be abandoned. In its place we recommend the term, "policy officials". The new group of "policy officials" will be larger than the present group of "senior officials". It will embrace the following categories of officials:

1. all those that are presently covered under the term "senior officials"
2. assistant deputy ministers. Chief Judge Wachowich's 1990 report noted that this group of officials should be subject to demanding guidelines. They exercise important policy and decision-making responsibilities.

3. Executive assistants to ministers or to other "policy officials". Such officials are not now covered by any clear rules. Admittedly, they are a heterogeneous group whose Members have different relationships with Ministers and who wield influence in different degrees. But they are officials who are close to the centre of power and who may have access to important information or influence over the expenditure of public funds. In his 1990 report, Chief Judge Wachowich also recommended that executive assistants should work under clear ethical guidelines. At the federal level, they are covered by the Government of Canada's Conflict of Interest and Post-Employment Code for Public Office Holders.
4. Senior officials in the Office of the Leader of the Opposition and in the offices of the leaders of other political parties that are represented in the Legislative Assembly.
5. A designated group of other officials. This final group would comprise those appointed officials, **further to those noted above**, employed by the Government of Alberta who exercise significant influence over the development of policy and/or who exercise significant influence over the interpretation of existing policy and/or who have routine access to significant confidential information and/or who are significantly involved in contracting out, the negotiation of contracts and tenders, the procurement of goods and services and the discretionary allocation of public funds.

This pool of "policy officials" would be a dynamic one. It would not necessarily be large. It would be selected in the following way. For each department or agency for which they are responsible, the Minister, after consultation with the deputy minister and/or senior responsible official, would develop a further list of "policy officials". Such a list would recognize the diversity of the agencies of the Government of Alberta and the unique characteristics of their roles and personnel.

To ensure a system-wide perspective, the list would be examined and finalized by the Premier after consultation with the Deputy Minister to the Executive Council and the Public Service Commissioner of Alberta. The list of "policy officials" would then be discussed and amended, if necessary, by the Premier and the Ethics Commissioner. (Officials in the Office of the Leader of the Official Opposition and, when applicable, other political parties will be determined by the Leader of the Opposition or party leader). The list of "policy officials" will be part of the public record.

Such an approach to the determination of "policy officials" is feasible. It would highlight to the public a set of key decision-makers. It would determine in a unique way a set of appointed officials who must operate under rigorous conflicts of interest rules, not simply because of their titles, but because of **their positions and the nature of their work**. It would be a major contribution to an "Integrity in Government" policy that would mark Alberta as a leader.

Recommendation 22: "Policy Officials" will be covered by the Integrity in Government and Politics Act. The legislation will establish the disclosure obligations, post-employment restrictions and other obligations under which such officials should operate. To the extent possible, "policy officials" should be subject to the same obligations as Members of the Legislature and the same restrictions as Ministers and those other elected officials noted in Recommendation 4.

- "Policy officials" should be subject to the **Integrity in Government and Politics Act**. Only in this way, will the importance of the issues be highlighted. In this way, Albertans will know what conduct is expected of appointed public officials.

  The statute will rest on the principle that "policy officials" wield power in government and that this power should be subject to clear standards of conduct. Public disclosure of financial assets, liabilities, income and business activities will be at the heart of the section.

  The provisions on "policy officials" would define "policy officials" according to the criteria noted above, outline the obligations, including post-employment rules, under which such officials will operate, note their obligation to disclose information about themselves, their spouses, their minor children and their direct associates and establish sanctions for breach of the Act. The role of the Ethics Commissioner would be outlined in detail as it relates to "policy officials".

"Policy officials" would be subject to the "apparent" conflict of interest test. They would also work under an obligation to act impartially in the conduct of their public duties. They would be obliged to withdraw from government business when they are in conflict or apparent conflict of interest.

The Code of Conduct for and Ethics for the Public Service of Alberta should be a regulation under the **Integrity in Government and Politics Act**.

Recommendation 23: "Policy Officials" should be subject to post-employment restrictions comparable to those imposed on Members of Executive Council and others specified in recommendation 4. This means a one year "cooling off" period.

- "Policy officials" should be subject to post-employment guidelines. Like Ministers, they should be subject to restrictions on lobbying activities and for assuming employment with organizations with which they dealt, as "policy officials", in significant ways. A suitable "cooling off" period is one year.

  This policy must be carefully and thoughtfully administered. For example, elected officials may resign or be defeated in an election. On the other hand, appointed officials, even at the senior levels, can be laid off. The changing nature of public employment demands that each case be carefully assessed.

Recommendation 24: The disclosure statements of "Policy Officials" should be made available to the public through the Ethics Commissioner.

- Under the Fowler memorandum, the disclosure statements of "senior officials" are submitted to the Ethics Commissioner but not to the public. We recommend a significant change. The disclosure documents for "policy officials" and for their spouses, minor children and direct associates should be made available **to the public** through the Office of the Ethics Commissioner (subject to a list of excluded information like that governing the disclosure statements of Members of the Legislative Assembly).

  The Panel thought hard about this recommendation. It is a change in the terms and condition of employment for important appointed officials in Alberta. Their personal financial lives and those of their families will be exposed to public scrutiny. In a perhaps unexpected way, they are defined as "public figures".

  At the end of the day, we concluded that disclosure, if it is to contribute significantly to public confidence in government, **means disclosure to the public at large.**

Recommendation 25: In the event of an alleged breach of the law by a "policy official", the Commissioner will investigate. If necessary he will recommend sanctions to the responsible minister, or party leader, who will decide on action to be taken, if any.

- The Panel recommends that the Ethics Commissioner, who is presently responsible for "senior officials", should retain considerable, but not total, responsibility for "policy officials". We do not make this recommendation lightly. In our system of government, ministerial responsibility for the actions of his/her subordinates is a central constitutional principle. In our work, we frequently heard this argument. Appointed officials are widely thought to be agents of the government. Seen from this angle, it is argued that the Ethics Commissioner, as an officer of the Legislature, should have no role monitoring, let alone judging, the conduct of appointed officials. On the other hand, a strong case can be made that a neutral official, by that we simply mean someone independent of the executive branch of government, must interpret ethical rules for the influential appointed officials, must occasionally investigate their conduct and must **recommend** sanctions where necessary. Disciplinary action, if required, would be determined by the responsible Minister or party leader. In this way and through the recommended system for selecting some of the "policy officials", management of the conflicts of interest system for appointed officials would be shared between the Government, leaders of

the opposition parties, as it relates to persons employed in their offices, and the Ethics Commissioner.

Summary: Proposals for Appointed Officials

By any standards, these are significant changes. For the first time, important appointed officials in Alberta would be subject to a law that establishes a conflicts of interest system for them.

The system will apply to a larger group of public officials than at present. It covers the present "senior officials", assistant deputy ministers, executive assistants , senior staff in the Office of Leader of the Official Opposition, and a final group of officials who wield sufficient influence to merit inclusion. "Policy officials" would, for the first time, be subject to post-employment guidelines.

Other Provincial Institutions: A Further Important Consideration

Recommendation 26: Conflicts of interest rules are needed for those persons who hold significant positions in public institutions but who are not covered by the Integrity in Government and Politics Act. This policy would address the status of those in institutions that are extensively funded by the Government in Alberta like universities and colleges, school boards and regional health authorities. There are many other examples.

Persons who hold positions of power and public trust in such institutions must work under conflicts of interest rules that are clear, fair to the Albertans involved, and that promote the integrity of public institutions. Conflicts of interest rules are needed whenever persons in public institutions influence policy, have access to important information and influence the allocation of public money. As soon as possible, the Government should outline a detailed policy that covers these organizations and the people that serve in them.

Government in Alberta is always changing. Sometimes change is subtle and piecemeal. At other times, like the present, change is fast and wide-ranging. In response to the pressures of deficit and debt reduction, the Government of Alberta has significantly altered its roles. Such changes have exerted major impacts on the institutions of government.

New organizations like the regional health authorities, the Alberta Economic Development Authority and the Alberta Science and Research Authority have policy-making and administrative power.

These new public agencies have implications for the effectiveness and integrity of government in Alberta. Again, the Panel imputes no ill will to those involved in these changes. To the contrary, many public spirited Albertans give considerable amounts of their time to the organizations noted above and to many others. But the Panel is worried that these changes blur the boundaries between government and private organizations and confer policy power, and access to important information, on persons who are neither elected nor appointed officials by any conventional definition. In some cases, key persons are unremunerated volunteers who have demanding full time jobs. Their ethical conduct is beyond the scope of the present rules and those that we propose. So too is the conduct of persons who hold positions of power and public trust in such important provincially funded bodies as universities and colleges, school boards and hospitals.

The Panel is concerned about this situation. We did not have the time to examine the issues with the care they deserve. As a priority, we recommend that the Government of Alberta examine carefully those agencies which confer policy power or access to information on persons who are not subject to the rules and guidelines under which elected and appointed officials operate.

The Government should determine a policy that is fair to the Albertans involved and that respects the integrity of government.

In undertaking this work, the Panel recommends that the Government accept the following principle -- **persons who wield significant policy authority on behalf of government in any way, through any form of government organization or government funded organization, or employment or advisory relationship with government should operate under conflicts of interest rules.** As soon as possible, the Government should issue a detailed policy statement that covers these organizations and the people who serve in them session.

The Control of Lobbyists in Alberta: Another New Dimension of Government Integrity

Recommendation 27: The Integrity in Government and Politics Act should require the registration of lobbyists and set standards for their conduct. Such legislation will make government more transparent and more accountable.

So far our report has stressed the integrity of **public** office-holders both elected and appointed. Our final concern is with those persons who lobby government for policy, administrative, legal and regulatory changes in their interest, in the interests of clients who pay for their services or in the interest of an organization that employs them. In a democracy, citizens must know which organizations and individuals influence public policy, the techniques they employ, who in government they meet and when and the extent of their efforts to shape public policy.

As a third dimension of a strong **Integrity in Government and Politics Act**, Alberta should require the registration of lobbyists. Such legislation would boost the quality and openness of public policy-making in Alberta.

The lobbyists' section of the **Integrity in Government and Politics Act** will not impede the normal conduct of democratic politics or that of pressure

groups. Such an Act would not interfere with the activities of citizens seeking to influence government. Nor would it interfere with such activities such as municipal-provincial negotiations.

Our proposed law requires that individuals who lobby for clients, or organizations who employ people whose principal role is to lobby governments for policy changes, must register their activities and make public who they work for, what purposes they are pursuing, who they are attempting to persuade and possibly the financial arrangements under which they operate.

In 1995, Parliament significantly updated the federal **Lobbyist Registration Act** to streamline its administration, to extend its scope, to provide better information to the public about lobbying and to increase public confidence in government.

The federal Act, subject to suitable modifications, could serve as a guide for Alberta.

CONCLUSIONS AND LIST OF RECOMMENDATIONS

The proposed **Integrity in Government and Politics Act** advances significantly revised conflicts of interest rules for elected and appointed officials and a lobbyist registration process. It builds on the past and offers new principles and ideas. The proposed **Act** combined with the recently passed **Access to Information and Privacy Act**, will provide Albertans with a tough, but realistic, "Integrity in Government" package. Alberta's conflicts of interest rules will be second to none in Canada.

Recommendation 1: The Integrity in Government and Politics Act should begin with a clear statement of purpose that indicates to Members of the Legislative Assembly , appointed officials and the citizens of Alberta, the ethical obligations of public office holders.

Recommendation 2: The Integrity in Government and Politics Act should state that Members of the Legislative Assembly and appointed officials will avoid both real and "apparent" conflicts of interest.

Recommendation 3: The Integrity in Government and Politics Act should establish an obligation on Members of the Legislative Assembly and

appointed officials to act impartially on behalf of all Albertans. The present Act does not have such an obligation.

Recommendation 4: Under the proposed Integrity in Government and Politics Act, the obligations now imposed on Members of Executive Council and the restrictions now imposed on "former Ministers" should be extended to those Members of the Legislative Assembly who chair Standing Policy Committees and/or who chair or supervise in significant ways agencies of the Government of Alberta.

Recommendation 5: Under the Integrity in Government and Politics Act, the Leader of the Official Opposition should operate under the responsibilities and obligations imposed on Members of Executive Council, those other Members of the Legislative Assembly noted in recommendation 4 and former Ministers.

Recommendation 6: The Integrity in Government and Politics Act should employ a clear definition of the financial instruments in which Ministers and designated others should not be involved.

Recommendation 7: The present section on Members' contractual dealings with governments is too complex. It requires clarification and

simplification especially as "contracting out" of government services is now a major part of public management in Alberta.

Recommendation 8: The present obligation on Members, outlined in Section 12 of the Conflicts of Interest Act, to report the financial status of their spouses and minor children "so far as is known to the Member" is too weak. The Panel therefore recommends that Members be obliged to make "reasonable efforts'" to ascertain the facts. Otherwise public disclosure cannot be effective.

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Recommendation 17: The disclosure forms used by the Office of the Ethics Commissioner must be continuously reviewed and updated. The forms should clearly state the Members' obligations and the purposes served by the information being requested.

Recommendation 18: The legitimate costs of Members for complying with the Act should be paid for by public funds.

Recommendation 19: The Integrity in Government and Politics Act must be drafted as clearly and as tersely as possible. It must be "reader friendly". Such an important Act should be readily comprehensible to citizens and to those whose activities are governed by it.

Recommendation 20: The Code of Conduct and Ethics for the Public Service must continue to be systematically reviewed and modernized in light of changing circumstances. Provincial public employees must know their obligations under the Code. Training and development activities in this area should be reviewed continuously to determine their effectiveness.

Recommendation 21: A new group of officials is proposed as the basis for a revised policy for appointed officials. The group will be called "policy officials". In addition to the obligations imposed by the Code of Ethics and

Conduct for the Public Service, "policy officials" will be subject to obligations and restrictions outlined in the Integrity in Government and Politics Act. "Policy officials" means all present "senior officials", all assistant deputy ministers, executive assistants, senior staff in the Office of the Leader of the Opposition and a further group who, in the view of their Minister and the Premier, wield enough policy or administrative influence to be included.

Recommendation 22: "Policy Officials" will be covered by a section of the Integrity in Government and Politics Act. The section will establish the disclosure obligations, post-employment restrictions and other obligations under which such officials should operate. To the extent possible, "policy officials" should be subject to the same obligations as Members of the Legislature and the same restrictions as Ministers and those other elected officials noted in Recommendations 4 and 5.

Recommendation 23: "Policy Officials" should be subject to post-employment restrictions comparable to those imposed on Members of Executive Council and others specified in recommendations 4 and 5.. This means a one year "cooling off" period.

Recommendation 24: The disclosure statements of "Policy Officials" should be disclosed to the public through the Ethics Commissioner.

Recommendation 25: In the event of an alleged breach of the law by a "policy official", the Commissioner will investigate. If necessary he will recommend sanctions to the responsible minister, or party leader, who will decide on action to be taken, if any.

Recommendation 26: Conflicts of interest rules are needed for those persons who hold significant positions in public institutions but who are not covered by the Integrity in Government and Politics Act. This policy would address the status of those in institutions that are extensively funded by the Government in Alberta like universities and colleges, school boards and regional health authorities. There are many other examples.

Persons who hold positions of power and public trust in such institutions must work under conflicts of interest rules that are clear, fair to the Albertans involved, and that promote the integrity of public institutions. Conflicts of interest rules are needed whenever persons in public institutions influence policy, have access to important information and influence the allocation of public money. As soon as possible, the Government should outline a detailed policy that covers these organizations and the people that serve in them.

Recommendation 27: The Integrity in Government and Politics Act should require the registration of lobbyists and set standards for their conduct. Such legislation will make government more transparent and more accountable.