

O.C. 94/2008

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March 18, 2008

The Lieutenant Governor in Council makes the Alberta Public Service Post-Employment Restriction Regulation set out in the attached Appendix.

For Information only

Recommended by: President of the Treasury Board

Authority: Public Service Act
(section 23.1)

APPENDIX

Public Service Act

ALBERTA PUBLIC SERVICE POST-EMPLOYMENT RESTRICTION REGULATION

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Definitions

1 In this Regulation,

- (a) “department” means a department established under section 2 of the *Government Organization Act*;
- (b) “designated position” means the position of deputy minister and any position or class of positions designated under section 2;
- (c) “designated position holder” means a person who holds a designated position;
- (d) “employment” includes engagement on a fee for service basis;
- (e) “former position holder” means a person who ceases to hold a designated position;
- (f) “Provincial agency” means a Provincial agency as defined in section 1(1)(p) of the *Financial Administration Act* but does not include a corporation enumerated in section 2(5) of that Act.

Application to other designated positions

2 In addition to the position of deputy minister, the positions or classes of positions to which section 23.1 of the Act also applies are

- (a) the positions in Schedule 2 of Order in Council numbered O.C. 102/2006, as amended from time to

time, listed in Salary Range D (except the position of Chief of Staff, Office of the Premier), and

- (b) those positions designated by the Minister.

Restrictions

3(1) For the purposes of section 23.1(2) of the Act, a former position holder, for a period of 6 months after leaving that position, shall not

- (a) on behalf of himself or herself, solicit or accept

- (i) a contract or benefit from a department or a Provincial agency, or

- (ii) employment with a department or Provincial agency or appointment to a

Provincial agency

- with which the former position holder had significant official dealings during his or her last year of service as a holder of that position,

- (b) on behalf of any other person, make representations with respect to

- (i) a contract or benefit from a department or a Provincial agency, or

- (ii) employment with a department or Provincial agency or appointment to a

Provincial agency,

- (c) with respect to a person or entity other than a department or Provincial agency, accept employment with the person or entity, or an appointment to the board of directors or equivalent body of the entity, with which the former position holder had significant official dealings during his or her last year of service as a holder of that position, or

- (d) act on a commercial basis or make representations on his or her own behalf or on behalf of any other person in connection with any ongoing matter with respect to which the former position holder had significant official dealings during his or her last year of service as a holder of that position.

(2) For the purposes of subsection (1)(a) and (c), a former position holder has had significant official dealings with a department, Provincial agency, person or entity if the holder of that position, while holding that position, was directly and substantively involved with the department, Provincial agency, person or entity in an important matter.

(3) Notwithstanding subsection (1)(a)(ii), a former position holder may accept employment with any department or Provincial agency in accordance with the Act.

(4) Notwithstanding subsection (1)(b), a former position holder may provide character references or employment evaluations on behalf of a person who is seeking employment with a department or Provincial agency, if the references or evaluations are requested by the person seeking the employment or by the department or Provincial agency.

(5) For the purposes of subsection (1)(d), a former position holder has had significant official dealings in connection with a matter if the holder of that position, while holding that position, was directly and substantively involved in that matter.

Waiver of post employment limitations and restriction

4 Section 3(1) does not apply

- (a) subject to section 3(3), with respect to a contract, benefit or employment referred to in section 3(1)
 - (a) if, in the opinion of the Ethics Commissioner,

- (i) the conditions on which and the manner in which the contract, benefit or employment is awarded, approved or given are the same for all persons similarly entitled, or

- (ii) if the award, approval or grant results from an impartially administered process open to a significant class of persons,

or

- (b) if, in the opinion of the Ethics Commissioner, the activity, contract, benefit, employment or appointment will not create a conflict between a private interest of the former position holder and the public interest, and the former position holder observes and performs any conditions imposed by the Ethics Commissioner.

General advice and recommendations

5 The Ethics Commissioner may give advice and recommendations of general application to designated position holders or former position holders, or classes of any of those persons, on matters respecting obligations under this Regulation of a former position holder, which may be based on the facts set out in the advice and recommendations or on any other considerations the Ethics Commissioner considers appropriate.

Specific advice and recommendations

6(1) A designated position holder or a former position holder may request the Ethics Commissioner to give advice or recommendations on any matter respecting the obligations under this Regulation of a former position holder.

(2) The Ethics Commissioner may, in writing, provide the designated position holder or former position holder with advice and recommendations, which

- (a) shall state material facts either expressly or by incorporating facts stated by the designated position holder or former position holder,
- (b) shall be based on the facts referred to in clause (a), and
- (c) may be based on any other consideration the Ethics Commissioner considers appropriate.

Investigations

7(1) Any person may request, in writing, that the Ethics Commissioner investigate an alleged contravention of section 3 by a former position holder.

(2) On receiving a request under subsection (1) or where the Ethics Commissioner has reason to believe that a former position holder has acted or is acting in contravention of advice or recommendations given by the Ethics Commissioner or of any conditions imposed by the Ethics Commissioner under this Regulation, and on giving the former position holder concerned reasonable notice, the Ethics Commissioner may conduct an investigation.

(3) A former position holder shall co-operate with an investigation under this section.

(4) The Ethics Commissioner may refuse to investigate or may cease to investigate an alleged breach under this Regulation if the Ethics Commissioner is of the opinion that

- (a) the request is frivolous or vexatious or was not made in good faith, or
- (b) there are no or insufficient grounds to warrant an investigation or the continuation of an investigation.

(5) The Ethics Commissioner shall immediately suspend an investigation under this section if the Ethics Commissioner discovers that the subject-matter of the investigation is also the subject-matter of an investigation by a law enforcement agency to determine whether an offence under this Act or any other enactment of Alberta or under an Act of the Parliament of Canada has been committed or that a charge has been laid with respect to that subject-matter.

(6) The Ethics Commissioner may not continue an investigation under this section until any investigation or charge referred to in subsection (5) has been finally disposed of.

(7) Where the Ethics Commissioner has provided advice and recommendations under section 5 or 6 to a former position holder, the Ethics Commissioner shall cease an investigation of the former position holder if, in the opinion of the Ethics Commissioner,

- (a) based on the facts and considerations set out in the advice and recommendations under section 5, the former position holder complied with the advice and recommendations under section 5, or
- (b) based on the facts communicated to the Ethics Commissioner under section 6, the former position holder complied with the advice and recommendations under section 6.

(8) The Ethics Commissioner may re-investigate an alleged breach in respect of which the Ethics Commissioner has made a finding only if, in the Ethics Commissioner's opinion, there are new facts that on their face might change the original findings.

(9) If the Ethics Commissioner refuses to investigate or ceases to investigate an alleged breach, suspends an investigation of an alleged breach or refuses to re-investigate an alleged breach, the Ethics Commissioner shall so inform the former position holder against whom the allegation was made and, if applicable, the person who made the request under subsection (1).

(10) An investigation under this section shall not be commenced more than 2 years after the date on

which the alleged breach occurred.

(11) Where, after conducting an investigation, it appears to the Ethics Commissioner that a former position holder may have breached this Regulation, the Ethics Commissioner shall inform the former position holder of the particulars and give the former position holder the opportunity to make representations, either orally or in writing at the discretion of the Ethics Commissioner, before the Ethics Commissioner makes his or her final findings.

(12) On completion of an investigation, the Ethics Commissioner shall provide a copy of his or her findings to the former position holder, the Deputy Minister of Executive Council, the Minister responsible for the Act and, if applicable, the person who made the request under subsection (1).

(13) Where the Ethics Commissioner finds that there has been a breach of this Regulation, the Ethics Commissioner may advise the Minister of Justice and Attorney General or a law enforcement agency of the alleged offence.

Coming into force

8 This Regulation comes into force on the coming into force of section 30 of the *Conflicts of Interest Amendment Act, 2007*.