

## BRIEF CHECKLIST FOR REVIEW OF PUBLIC AGENCY CODES OF CONDUCT

### A. GENERAL RECOMMENDATIONS REGARDING CODES OF CONDUCT

- |   |   |  |
|---|---|--|
| <p><b>1. The code of conduct should use plain language.</b></p> <ul style="list-style-type: none"> <li>- Aim to state general principles, policies, or rules as clearly and briefly as possible, followed by additional explanation or details to clarify as necessary. Use practical examples for clarification purposes where possible.</li> </ul>  | <p>Yes<br/><input type="checkbox"/></p> | <p>No<br/><input type="checkbox"/></p> |
| <p><b>2. The content of the code of conduct should be balanced in tone.</b></p> <ul style="list-style-type: none"> <li>- Aim to achieve a balance between content setting out the general principles and intent of the code of conduct, content which describes specific conduct and procedure that is required in particular circumstances, and content which sets out specific conduct that is prohibited. The focus generally should be on describing required conduct and procedure.</li> </ul>   | <p>Yes<br/><input type="checkbox"/></p> | <p>No<br/><input type="checkbox"/></p> |
| <p><b>3. The code of conduct should address any ethical risks which are particular to the public agency.</b></p> <ul style="list-style-type: none"> <li>- Consider whether there are risks specific to the public agency's particular mandate or activities that need to be addressed. E.g. should those subject to the code of conduct have restrictions from participating in certain activities licensed, conducted, managed, or overseen by the public agency and/or from having an interest in entities or subject areas regulated by the public agency?</li> </ul>  | <p>Yes<br/><input type="checkbox"/></p> | <p>No<br/><input type="checkbox"/></p> |
| <p><b>4. The code of conduct should appropriately address areas requiring individual discretion.</b></p> <ul style="list-style-type: none"> <li>- In areas of activity which necessarily require the exercise of individual discretion, a code of conduct should articulate the general standards of behaviour that must guide the exercise of that individual discretion. A balance should be achieved in these standards between principles which may be overly broad or vague and rules which may be overly rigid or restrictive.</li> </ul>   | <p>Yes<br/><input type="checkbox"/></p> | <p>No<br/><input type="checkbox"/></p> |
| <p><b>5. The code of conduct should be consolidated and easily available.</b></p> <ul style="list-style-type: none"> <li>- All code of conduct provisions required by the <i>Conflicts of Interest Act</i> must be set out in a single document. Cross-referencing other documents will not be accepted, as it does not provide transparency and it renders it more difficult for readers to ascertain and locate all of the obligations, restrictions and procedures to which they are subject.</li> </ul> <p>A public agency may have a limited number of separate codes of conduct (e.g. a code of conduct for board members, a code of conduct for senior officials and employees, or a code of conduct for a particular segment of employees that is significantly distinct from the others). However, each of these codes of conduct must contain all of the provisions applicable to the individuals that are subject to the code and cannot simply cross-reference separate agreements or policy and procedure documents.</p> <ul style="list-style-type: none"> <li>- Codes of conduct should be published on the agency's website.</li> </ul> | <p>Yes<br/><input type="checkbox"/></p> | <p>No<br/><input type="checkbox"/></p> |
| <p><b>6. The code of conduct should include a preamble setting out the general principles and intent of the code of conduct.</b></p> <ul style="list-style-type: none"> <li>- <u>See e.g. Preamble of the Code of Conduct and Ethics for the Public Service of Alberta:</u> "The people of Alberta have a right to a public service which is conducted with impartiality and integrity. It is this special obligation to Albertans that demands that there not be, nor seem to be, any conflict between the private interests of employees and their duty to the public. At the same time, it is recognized that employees should enjoy the same rights in</li> </ul>   | <p>Yes<br/><input type="checkbox"/></p> | <p>No<br/><input type="checkbox"/></p> |

their private dealings as any other citizens unless it can be demonstrated that a restriction is essential to the public interest.”

- See e.g. Preamble of the Code of Conduct for Employees Serving in the Offices of the Premier and Cabinet Ministers: “The people of Alberta expect and deserve responsible, accountable government. They must be confident that government is trustworthy and focused on the public interest. Employees that serve the government in the Office of the Premier or in an office of a Cabinet Minister are expected to conduct themselves with the highest standards of professionalism, deportment, ethical behaviour and within the rule of law. Employees must demonstrate the highest degree of integrity, responsibility and accountability to colleagues, the Alberta public service and the people of Alberta.”

7. **The code of conduct should include definitions of key terms for the purposes of the code and should use those terms consistently throughout the code.** Yes  No

8. **The code of conduct should include an ‘Application’ section.** Yes  No

- See e.g. Part 2 (Application) of the Code of Conduct and Ethics for the Public Service of Alberta: “(1) This Code applies to all employees. [...] (2) This Code is in addition to any statute pertaining to the actions of employees and to any instructions issued by the Government or a department head to Deputy Heads or Senior Officials. (3) Conflicts between the private interests of employees and their duty to the public not specially addressed in this Code must be dealt with according to the principles and intent of the Code.”

## **B. CONTENT REQUIRED BY PART 4.3 OF THE AMENDED CONFLICTS OF INTEREST ACT**

### **I. APPLICABLE TO ALL OF THE PUBLIC AGENCY’S MEMBERS, EMPLOYEES, SENIOR OFFICIALS, AND DESIGNATED SENIOR OFFICIALS**

1. **Requirement for the public agency’s members, employees, senior officials, and designated senior officials, if any, to be subject to the code of conduct (s.23.922(1))** Yes  No

- Pursuant to s.23.922(1), every public agency shall have a code of conduct in respect of its members, employees, senior officials, and designated senior officials, if any.
- The code of conduct should be clear as to who is subject to it (consider including in the Application of Code section (see General Recommendations Regarding Codes of Conduct #8 above)) and this must include all members, employees, senior officials, and designated senior officials as required by s.23.922(1).

2. **Requirement to act impartially in carrying out their duties (s.23.922(2)(a))** Yes  No

- Pursuant to s.23.922(2)(a), a public agency’s code of conduct must require persons subject to it to conduct themselves impartially in carrying out their duties.
- E.g. “Employees and board members must act impartially in carrying out their duties at all times.”

3. **Prohibition from acting in self-interest or furthering private interests by virtue of their position or through carrying out their duties (s.23.922(2)(b))** Yes  No

- Pursuant to s.23.922(2)(b), a public agency’s code of conduct must prohibit persons subject to it from acting in self-interest or from furthering private interests by virtue of their position or through the carrying out of their duties.

- E.g. "Employees and board members must not act in self-interest or further their private interests by virtue of their position or through carrying out their duties."

**4. Requirement to disclose real and apparent conflicts of interest (s.23.922(2)(c))** **Yes** **No**

- Pursuant to s.23.922(2)(c), a public agency's code of conduct must require persons subject it to appropriately and adequately disclose real and apparent conflicts of interest.
- It is recommended that disclosure of real and apparent conflicts of interest be required to be in writing.
- E.g. "At the earliest opportunity, employees and board members must disclose, in writing, to their Code Administrator any real or apparent conflict of interest, including all circumstances where their private interests could conflict, appear to conflict, or do conflict with the performance of their duties."

**5. Restrictions and monetary limit regarding gifts (s.23.922(2)(d))** **Yes** **No**

- Pursuant to s.23.922(2)(d), a public agency's code of conduct must both:  
  - (1) Include restrictions to avoid a conflict of interest or the appearance of a conflict of interest due to the acceptance of gifts by the persons subject to the code of conduct; and
  - (2) Establish maximum cash values of gifts, including a maximum cash value of gifts within a year from a single source, that may be accepted by the persons subject to the code of conduct.
- E.g. "Employees and board members must not use their position to solicit gifts, hospitality, or other benefits. Employees and board members shall not accept gifts, hospitality or other benefits that are or may be perceived as being connected directly or indirectly with the performance of their duties from any individual or organization, other than in the following limited instances:
  - (a) within the course of the normal exchange of gifts, hospitality or other benefits between persons doing business together;
  - (b) tokens exchanged as part of protocol;
  - (c) the normal presentation of gifts, hospitality, or other benefits to people participating in public functions;

provided in all instances that such gifts, hospitality or other benefits must not be of such a nature that they could have a real, apparent, or potential influence on the employee or board member's objectivity and impartiality in performing their duties on behalf of [agency].

Employees and board members must not accept cash or cash equivalents as gifts.

The value of a single tangible gift permitted under this section shall not exceed [\$100]. The total value of all tangible gifts received by an employee or board member in a calendar year from a single source shall not exceed [\$200]. Hospitality that is incidental to a meeting (such as a business lunch or dinner) is considered a tangible gift and subject to these limits.

The value of a single event invitation, inclusive of admission, travel fees, hospitality and accommodation, shall not exceed [\$400]. The total value of all event invitations received by an employee or board member in a calendar year from a single source shall not exceed [\$400].

Employees and board members may accept paid conference invitations. The value of any single conference invitation accepted (inclusive of admission, travel, accommodation, hospitality, and other incidentals) shall not exceed \$[1,000]. The total value of all

conference invitations received from a single source in a calendar year shall not exceed \$[1,500]. Any conference invitation exceeding these monetary limits may be accepted with prior written approval from the Code Administrator, whose permission shall only be granted in writing, in accordance with the principles and provisions of this [policy], and where acceptance of the conference invitation would not create a real or apparent conflict of interest.”

**6. Restrictions and process for seeking approval regarding concurrent employment or appointment to other offices (s.23.922(2)(e))** **Yes** **No**

- Pursuant to s.23.922(2)(e), a public agency’s code of conduct must include both:
  - (1) Restrictions to avoid a conflict of interest or the appearance of a conflict of interest due to a person’s involvement in an appointment or employment (including self-employment) other than the appointment or employment that is subject to the code of conduct; and
  - (2) A process by which concurrent appointment or employment may be reviewed and, if consisting with the restrictions in subclause (i), approved in writing.
- Individuals must be required to disclose all concurrent appointments, businesses, undertakings or employment for review in writing, rather than only being required to disclose it if they think that it entails a real, apparent or potential conflict of interest.
- E.g. “Employees and board members may participate in a supplementary appointment, business, undertaking or employment, including self-employment, (“Supplementary Employment”) unless it:
  - (a) causes a real or apparent conflict of interest;
  - (b) is performed in such a way as to appear to be an official act of the [agency], or to represent the [agency’s] opinion or policy;
  - (c) interferes through telephone calls, email, or otherwise with regular duties or has an impact on the employee’s performance or impartiality with the [agency]; or
  - (d) involves the use of insider knowledge or of the [agency’s] premises, equipment, supplies, or proprietary knowledge.

Prior to accepting any Supplementary Employment, employees and board members must notify their Code Administrator in writing about the nature of such Supplementary Employment. The Code Administrator must review the proposed Supplementary Employment for real or apparent conflicts of interest. If there is no real or apparent conflict of interest, the Code Administrator must approve the Supplementary Employment in writing. If there is a real or apparent conflict of interest, the Code Administrator must then, in writing, either deny the Supplementary Employment or allow the Supplementary Employment and put procedures in place to manage the real or apparent conflict of interest.”

**7. Process for receiving and investigating complaints and for responding to a finding of breach (s.23.922(2)(f))** **Yes** **No**

- Pursuant to s.23.922(2)(f), a code of conduct must indicate the public agency’s process for receiving and investigating complaints alleging breach of code and for responding to a finding that a code of conduct has been breached.
- It is recommended that this process expressly include procedural fairness measures, in particular the right for the respondent to receive fair notice of the allegations and the opportunity to respond and be heard before a decision is made. It also is recommended that there be a requirement for a written decision with reasons to be provided. Agencies also should consider whether to include a right to review of the decision.

- E.g. "Disclosure, Breach, Discipline And Review Process"
  - (1) Employees and board members shall report any actual or suspected breaches of the Code in writing to their Code Administrator.
  - (2) When reporting a potential breach of another employee or board member in good faith and with reasonable grounds, the reporting person will be protected from reprisal for such reporting.
  - (3) The identity of the person reporting a breach or potential breach will not be disclosed by the Code Administrator unless required by law or he or she consents to disclosure.
  - (4) Once an actual or potential breach of the Code has been reported, the Code Administrator will review the circumstances and details of the actual or potential breach and ensures the confidentiality of all disclosures.
  - (5) Subject to section (3), if a reported breach or potential breach relates to an employee or board member other than the person reporting it, the employee or board member in question must be made aware of the allegations and must be given the opportunity to respond to the allegations and provide any other relevant information before a decision is made.
  - (6) The Code Administrator must make a decision and complete a written report with reasons in a timely manner, and will provide the report to the employee or board member that was the subject of the report, their immediate supervisor, and other parties as necessary.
  - (7) Breaches of this Code may result in disciplinary action, up to and including suspension or termination of their position with [the agency].
  - (8) The employee or board member that was the subject of the report may request in writing that [...] review a decision made by the Code Administrator about a breach of the Code."

**8. Notice period for code of conduct coming into force (s.23.922(2)(g))**

Yes

No

- Pursuant to s. 23.922(2)(g), a code of conduct must set out the period of notice from the date on which the code of conduct is made public until the date on or before which the code of conduct will come into force.
- E.g. "This Code will be published on or before April 30, 2019 and will come into effect 90 calendar days after it is published."



**9. Requirements and matters specified in the regulations (s.23.922(2)(h))**

Yes

No

- Pursuant to s.23.922(2)(h), a code of conduct must conform to any requirement and include any matter specified in the regulations.
- There currently is not a regulation, so this requirement is not applicable.



**II. APPLICABLE TO SENIOR OFFICIALS AND DESIGNATED SENIOR OFFICIALS ONLY**

**10. Subject-matter of section 23.925 - prohibition from furthering private interests and restrictions on using influence and insider information (s.23.922(2)(b))**

Yes

No

- Pursuant to s. 23.922(2)(b), in the case of a code of conduct respecting senior officials or designated senior officials, the code of conduct must include all of the subject matter of s.23.925 and any additional detail regarding the subject-matter of s.23.925 that is appropriate to the particular agency and positions subject to the code.

- s.23.925 pertains to senior officials' statutory obligations regarding decisions furthering private interests and requires that:
  - (1) A senior official must not take part in a decision in the course of carrying out his/her office or powers knowing that the decision might further a private interest of the senior official, a person directly associated with the senior official, or the senior official's minor or adult child;
  - (2) A senior official must not use his/her office or powers to influence or seek to influence a decision to be made by or on behalf of the Crown or a public agency to further a private interest of the senior official, a person directly associated with the senior official, the senior official's minor child or to improperly further any other person's private interest;
  - (3) A senior official must not use or communicate information not available to the general public that was gained by the senior official in the course of carrying out his/her office or powers to further or seek to further a private interest of the senior official or any other person's private interest; and
  - (4) A senior official must appropriately and adequately disclose a real or apparent conflict of interest.
- To ensure that all of the subject-matter of s.23.925 is captured, it is recommended that agencies copy and paste section 23.925 into their codes and then tailor the provisions to apply to the appropriate position at the agency rather than the generic "senior official". E.g. "The President and CEO must not..." instead of "A senior official must not..."

**11. Subject-matter of section 23.926 - restrictions on concurrent employment or appointment to other offices (s.23.922(2)(e)(i))** **Yes** **No**

- |  | <input type="checkbox"/> | <input type="checkbox"/> |
|--|--------------------------|--------------------------|
| - Pursuant to s.23.922(2)(e)(i), in the case of a code of conduct respecting senior officials or designated senior officials, the code of conduct must include all subject matter of s.23.926 and any additional detail regarding the subject-matter of s.23.926 that is appropriate to the particular agency and positions subject to the code.   | <input type="checkbox"/> | <input type="checkbox"/> |
| - s.23.926 applies to all chief executive officers and all designated senior officials.  |                          |                          |
| - This provision also must set out any applicable statutory transition period for the individual who is currently in the chief executive officer or designated senior official position.   |                          |                          |
| - E.g. "The President and CEO must not be involved in any appointment, business, undertaking, or employment, including self-employment, other than their employment as the President and CEO ("Concurrent Employment"), unless the President and CEO applies to the Ethics Commissioner for approval in writing to engage in the Concurrent Employment and complies with any conditions imposed on the same. Before applying to the Ethics Commissioner for approval, the President and CEO must obtain approval from the [agency's] board of directors for the Concurrent Employment. |                          |                          |

This provision comes into effect for the current President and CEO on the earlier of: (i) [December 15, 2019] or (ii) upon renewal or extension of their contract or employment. For new hires or appointments, this provision will come into effect immediately."

**III. APPLICABLE TO DESIGNATED SENIOR OFFICIALS ONLY**

**12. Subject-matter of section 23.93 - restrictions on holdings** **Yes** **No**

- |  |                          |                          |
|--|--------------------------|--------------------------|
| - Designated senior officials have statutory restrictions on holdings of publicly-traded securities as provided in s.23.93 of the amended <i>Conflicts of Interest Act</i> .           | <input type="checkbox"/> | <input type="checkbox"/> |
| - A code of conduct applicable to a designated senior official must be consistent with and include a provision addressing the designated senior official's restrictions on holdings in |                          |                          |

s.23.93. This provision also must set out any applicable statutory transition period for the individual who is currently in the designated senior official position.

- E.g. "As set out in s.23.93 of the *Conflicts of Interest Act*, the President and CEO must not own or hold a beneficial interest in publicly-traded securities unless held in a blind trust or investment arrangement approved by the Ethics Commissioner or the Ethics Commissioner grants prior approval of the retention of the ownership or beneficial interest. Approvals must be granted in writing by the Ethics Commissioner.

Publicly-traded securities must be addressed in accordance with this section within 60 days of this provision coming into effect for the President and CEO or of the acquisition of publicly-traded securities by gift or inheritance. The Ethics Commissioner may set out a longer period.

This provision comes into effect for the current President and CEO on the earlier of: (i) [April 4, 2020], or (ii) upon renewal or extension of their contract or employment. For new hires or appointments, this provision will come into effect immediately."

**13. Subject-matter of sections 23.931 and 23.932 – disclosure statements and returns relating to persons directly associated** **Yes** **No**

- |   |                          |                          |
|---|--------------------------|--------------------------|
|   | <input type="checkbox"/> | <input type="checkbox"/> |
| - Designated senior officials have statutory disclosure obligations in respect of themselves and persons directly associated as provided in ss.23.931 and 23.932 of the amended <i>Conflicts of Interest Act</i> .  |                          |                          |
| - A code of conduct applicable to a designated senior official must be consistent with and include a provision addressing the designated senior official's disclosure obligations in ss. 23.931 and 23.932. This provision also must set out any applicable statutory transition period for the individual who is currently in the designated senior official position.   |                          |                          |
| - E.g. "Each year at a time specified by the Ethics Commissioner, the President and CEO must provide to the Ethics Commissioner a disclosure statement of the assets, liabilities, and financial interests of the President and CEO, the President and CEO's spouse or adult interdependent partner, the President and CEO's minor children, and any private corporation controlled by the President and CEO, the President and CEO's spouse or adult interdependent partner, the President and CEO's minor children, or any combination thereof. |                          |                          |

The President and CEO also must provide a return relating to persons directly associated to the Ethics Commissioner within 60 days of this provision coming into effect for the President and CEO.

The President and CEO must file an updated disclosure statement or return relating to persons directly associated within 30 days of any material changes to a previous disclosure statement or return relating to persons directly associated. The President and CEO also must file an updated return relating to persons directly associated within 30 days of ceasing to be President and CEO.

This provision comes into effect for the current President and CEO on the earlier of: (i) [April 4, 2020], or (ii) upon renewal or extension of their contract or employment. For new hires or appointments, this provision will come into effect immediately."

**14. Subject-matter of section 23.937 – post-employment restrictions** **Yes** **No**

- |  |                          |                          |
|--|--------------------------|--------------------------|
|  | <input type="checkbox"/> | <input type="checkbox"/> |
| - Designated senior officials have statutory post-employment restrictions for period of 12 months as provided in s.23.937 of the amended <i>Conflicts of Interest Act</i> .  |                          |                          |
| - A code of conduct applicable to a designated senior official must be consistent with and include a provision addressing the designated senior official's post-employment restrictions in s.23.937. This provision also must set out any applicable statutory transition period for the individual who is currently in the designated senior official position. |                          |                          |

- E.g. “As required by s. 23.937 of the *Conflicts of Interest Act*, for 12 months after the last day that they hold their position as President and CEO, the President and CEO:
  - (1) Must not lobby any public office holder, as defined in the *Lobbyists Act*;
  - (2) Must not act on a commercial basis or make representations on behalf of any party in connection with any ongoing matter in connection with which the President and CEO directly acted for or advised a department or public agency;
  - (3) Must not make representations with respect to or solicit or accept on his/her own behalf a contract or benefit from a department or public agency with which the President and CEO had a direct and significant official dealing; and
  - (4) Must not accept employment with an individual, organization, board of directors, or equivalent body of an organization with which the President and CEO had direct and significant official dealing

The President and CEO may apply to the Ethics Commissioner for a waiver or reduction of the time period applicable to these restrictions.

This provision comes into effect for the current President and CEO on the earlier of: (i) [April 4, 2020], or (ii) upon renewal or extension of their contract or employment. For new hires or appointments, this provision will come into effect immediately.”

**Last updated: November 1, 2018**