Proposed Improvements to the *Conflicts of Interest Act*

Submitted by

The Office of the Ethics Commissioner of Alberta

March 2024

Table of Contents

A. INTRODUCTION 3

B. GENERAL RECOMMENDATIONS 4

1. Renumber the Act and simplify the language used (high priority) 4

2. Align and Consolidate the Act and Codes overseen by the Office of the Ethics Commissioner (high priority) 5

C. POLICY CHANGES 6

1. Expand those whose private interests are included for the purposes of section 2 and 3 of the Act (high priority) 6

2. Include apparent conflicts of interest within the scope of section 2 of the Act (high priority) 9

3. Amend section 3 of the Act to prohibit Members from using their office or powers to influence the decision of any person to further their private interests (high priority) 11

4. Amend the Act to permit the Ethics Commissioner to commence or continue investigations on or after the 10th day after election day (high priority) 13

5. Clarify the definition of "private interest" (high priority) 17

6. Clarify the post-employment provisions in the Act (high priority) 19

7. Apply a 6-month post-employment provision to former Members who are not former Ministers 26

8. Revise the process regarding Returns related to persons directly associated with political staff or with Designated Office Holders 28

9. Allow the Ethics Commissioner to disclose certain information regarding investigations and advice 30

10. Restrict Members from commenting on a request for investigation until the Ethics Commissioner has confirmed whether an investigation is being undertaken 33

11. Implement codes of conduct for Members and all political staff for certain activities outside the Legislative Assembly, including social media use 34

12. Increase the maximum administrative penalty that the Commissioner can impose for late filing of disclosure 36

13. Amend sections 13 and 18 to clarify that Members breach the Act by failing to attend the annual meeting with the Ethics Commissioner 38

14. Grant the Ethics Commissioner the authority to publicly disclose names of those found in breach of the Act 40

15. Expand the class of assets which Ministers are restricted from owning or having a beneficial interest in to include futures and commodities 42

16. Amend the prohibition restricting Ministers from having rental properties 44

17. Expand the scope of the "direct associate" definition with respect to partners 45

18. Remove the blind trust requirement for the Leader of His Majesty's loyal opposition 46

19. Restrictions on holdings that apply to the Premier's Chief of Staff should apply to the Deputy Chief of Staff and any political staff that report directly to the Premier 47

20. Amend the Act to ensure that all Investigation Reports become public 49

D. ADMINISTRATIVE CHANGES 52
1. Clarify the applicability of the FOIP Act to OEC records (high priority) 52
2. Align records retention requirements 54
3. Amend the provision regarding travel on non-commercial aircraft 56
4. Remove the requirement to submit a final Direct Associates report 58
5. Clarify the deadline by which new public agencies must submit a code of conduct to the Ethics Commissioner for review 59

A. INTRODUCTION

Oversight and accountability are essential parts of government. Government wields enormous power and the public has a right to be assured that it is not abused.

As a result, auditors general make sure that government money is appropriately spent, ethics commissioners are in place to prevent politicians from corruption or illegal financial gain and ombudsmen and public interest commissioners make sure there is no abuse of power against citizens.

Oversight and accountability are essential to protect democracy. It is a “red flag” to the public if a politician is resistant or opposed to oversight and accountability.

In approaching the review of the *Conflicts of Interest Act* and to achieve “gold standard” legislation, Committee members should consider putting aside their personal views of the oversight process and ask themselves, “What restrictions do I feel would be necessary if the other party were in power?”

A pragmatic approach should be taken when reviewing the legislation and the question to be asked is, “What is the behaviour that needs to be prevented and why?”

The present *Conflicts of Interest Act* is far from perfect. Some areas are too lax and do not go far enough to prevent inappropriate behaviour. Some sections are too complex to understand and need clarification. Other parts do not provide the tools to adequately deal with fairly common situations. The recommendations put forth by the Office of the Ethics Commissioner deal with these needed changes.

B. GENERAL RECOMMENDATIONS

1. Renumber the Act and simplify the language used (high priority)

Issue

The Act has an extremely complex numbering structure due to a series of significant amendments over the years. This makes the Act difficult for many to understand and follow. Amendments over the years have also resulted in language that is inconsistent or difficult to interpret.

Recommendation

The Act should be renumbered to make the provisions easier to understand and interpret. Inconsistent or difficult to understand language should be simplified to improve understanding of the Act.

Explanation

The Act was last renumbered in 2002 when the Revised Statutes of Alberta 2000 came into force. Since that time, the Act has seen significant amendments which have resulted in a complex numbering structure. Parts 4.1, 4.2 and 4.3 are particularly complex as those Parts were added following the previous renumbering and contain a large number of sections.

The Act also contains many cross-references which can cause significant confusion. This is particularly an issue with the various provisions setting out the Ethics Commissioner's authority to conduct investigations. Reducing the number of cross-references throughout the Act would improve clarity.

Finally, the Act has some inconsistent language as a result of amendments occurring over time. This inconsistent language should be cleaned up to simplify the Act.

Note Regarding Previous Review

During the previous review of the Act, this Office made substantially the same recommendation. In its August 2018 Report, the Standing Committee on Resource Stewardship made the following recommendation which was never acted upon:

Recommendation 11: That the Act be amended by replacing its complex numbering structure with ordinary sequential numbering.

2. Align and Consolidate the Act and Codes overseen by the Office of the Ethics Commissioner (high priority)

Issue

Provisions respecting conflicts of interest, financial disclosure, direct associate reporting and post-employment for Deputy Ministers and other Designated Office Holders are currently contained in the *Public Service Act*, rather than the *Conflicts of Interest Act*.

Recommendation

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

Explanation

The Office of the Ethics Commissioner regulates conflict of interest matters for five groups: Members, Ministers, political staff, Designated Senior Officials and Designated Office Holders. The conflict-of-interest provisions for Members, Ministers, political staff and Designated Senior Officials are all contained in the *Conflicts of Interest Act*.

However, similar provisions for Designated Office Holders, a group made up of the Deputy Ministers and a few other designated officials, are contained in the *Public Service Act*. This separation causes confusion about the jurisdiction of the Office of the Ethics Commissioner. It also prevents adequate review of the conflict-of-interest provisions for the Deputy Ministers during the review of the *Conflicts of Interest Act*.

Note Regarding Previous Review

During the previous review of the Act, this Office made substantially the same recommendation. In its August 2018 Report, the Standing Committee on Resource Stewardship made the following recommendation which was never acted upon:

Recommendation 14: That the provisions in Part 2 of the Public Service Act pertaining to Deputy Ministers and other designated office holders be consolidated into the Conflicts of Interest Act.

C. POLICY CHANGES

1. Expand those whose private interests are included for the purposes of section 2 and 3 of the Act (high priority)

Issue

The scope of sections 2 and 3 of the Act is too narrow as there are currently too many potential close associates of a Member, such as siblings, parents and parents-in-law, who are not captured within the scope of those whose interests may be improperly served by decisions or actions of the Member.

Recommendation

Sections 2 and 3 of the Act should be amended to prohibit Members from taking part in a decision or influencing a decision which might further a private interest of the Members' parents, parents-in-law or siblings. Section 3 should also be amended to prohibit Members from using their office to influence or seek to influence decisions to further a private interest of an adult child (section 3 currently only applies to minor children).

Explanation

Section 2 of the Act currently only requires a Member to recuse him or herself from a decision if the Member knows that the decision might further his or her own private interest or the private interest of a person directly associated with the Member or the Member's minor or adult child. As such, the Act currently allows Members to participate in decisions knowing that the decision might further a private interest of the Member's parents, parents-in-law or siblings. Members should be required to recuse from these decisions.

Section 3 of the Act currently only applies to cases in which a Member uses his or her office or powers to influence or seek to influence a decision to further the Member's private interests, the private interests of a person directly associated with the Member or the Member's minor child. For all others, an assessment must be done of whether the Member *improperly* furthered the other person's private interest. The Act does not recognize that it is inherently improper to further the private interests of a Member's adult child, parents, parents-in-law or siblings.

In expanding sections 2 and 3, the definition of a direct associate under section 1(5) of the Act **should not** be expanded as this would impose unnecessary financial disclosure requirements on a large number of individuals.

Proposed Legislative Provisions

> ***2(1)*** *A Member breaches this Act if the Member takes part in a decision in the course of carrying out the Member's office or powers knowing that the decision might further a private interest of the Member, a person directly associated with the Member, the Member's minor or adult child,* ***parent, parent-in-law, or sibling****.*
>
> ***3*** *A Member breaches this Act if the Member uses the Member's office or powers to influence or to seek to influence a decision of another person to further a private interest of the Member, a person directly associated with the Member or the Member's minor* ***or adult*** *child,* ***parent, parent-in-law, or sibling****, or to improperly further another person's private interest.*

Please note that this recommendation incorporates Recommendation 3, regarding expanding the scope of section 3.

Note Regarding Previous Review

During the previous review of the Act, this Office made substantially the same recommendation. In its August 2018 Report, the Standing Committee on Resource Stewardship made the following recommendation which was never acted upon:

Recommendation 9: That sections 2 and 3 of the Act be amended to expand the definition of those whose private interest should not be furthered to include siblings, parents and parents-in-law.

Relevant Provisions from Other Jurisdictions

Federal Conflict of Interest Act Provisions:

Relatives
2(3) Persons who are related to a public office holder by birth, marriage, common-law partnership, adoption or affinity are the public office holder's relatives for the purposes of this Act unless the Commissioner determines, either generally or in relation to a particular public office holder, that it is not necessary for the purposes of this Act that a person or a class of persons be considered a relative of a public office holder.

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

Decision-making
6 (1) No public office holder shall make a decision or participate in making a decision related to the exercise of an official power, duty or function if the public office holder knows or reasonably should know that, in the making of the decision, he or she would be in a conflict of interest.

Abstention from voting
(2) No minister of the Crown, minister of state or parliamentary secretary shall, in his or her capacity as a member of the Senate or the House of Commons, debate or vote on a question that would place him or her in a conflict of interest.

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

2. Include apparent conflicts of interest within the scope of section 2 of the Act (high priority)

Issue

Section 2 of the Act currently only applies to **real** conflicts of interest and not **apparent** conflicts of interest.

Recommendation

Section 2 of the Act should be amended to prohibit Members from taking part in a decision when the Member is in an apparent conflict of interest.

Explanation

By only applying to real, not apparent, conflicts of interest, section 2 does not adequately serve to promote public confidence in the conduct of Members in the decision-making process. Members should be prohibited from taking part in decisions in which the Member is in a real or apparent conflict of interest to properly reconcile their duties of office and their private interests.

Public service and public agency employees are already subject to codes of conduct that restrict them from acting where there is an apparent conflict of interest. Members of the Legislative Assembly should be held to at least the same standards as public service and public agency employees.

British Columbia's *Members' Conflicts of Interest Act* already contains a prohibition against Members participating in decisions in which the Member is in an apparent conflict of interest.

Proposed Legislative Provisions

2(1.1) A Member breaches this Act if the Member takes part in a decision in the course of carrying out the Member's office ***if there is a reasonable perception, which a reasonably well informed person could properly have, that the Member's ability to take part in the decision must have been affected by a private interest*** *of the Member, a person directly associated with the Member or the Member's minor or adult child, parent, parent-in-law, sibling, or a relative or friend of the Member.*

Please note that this recommendation incorporates Recommendation 1, regarding expanding the scope of section 2 to apply to parents, parents-in-law and siblings.

Relevant Provisions from Other Jurisdictions

British Columbia Members' Conflict of Interest Act Provisions:

Conflict of interest

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 function or in the exercise of the power there is the opportunity to further his or her private interest.

(2) For the purposes of this Act, a member has an apparent conflict of interest if there is a 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.

Conflict of interest prohibition

3 A member must 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.

3. Amend section 3 of the Act to prohibit Members from using their office or powers to influence the decision of any person to further their private interests (high priority)

Issue

Section 3 of the Act only prohibits Members from using their office or power to influence or seek to influence decisions made by or on behalf of the Crown to further their private interest. This is much narrower than any other Canadian jurisdiction.

Recommendation

Section 3 of the Act should be amended to prohibit Members from using their office to influence or seek to influence decisions to be made by any other person to further their private interests. This is the language used in every other Canadian jurisdiction.

Explanation

As currently worded, section 3 only applies if a Member influences or seeks to influence decisions made **by or on behalf of the Crown** to further their private interests. The Act defines the "Crown" as the Crown in right of Alberta and includes a Provincial agency.

This means that section 3 does not apply if the Member uses his or her office to influence or seek to influence any decisions made outside of the Government of Alberta. For example, the Act would not apply if a Member used his or her office to influence a decision of another level of government, a foreign government or a private business to further their private interests.

Every other Canadian jurisdiction prohibits Members from influencing or seeking to influence decisions **of another person** to further their private interests. Alberta's *Conflicts of Interest Act* should adopt this same language.

Proposed Legislative Provisions

*3 A Member breaches this Act if the Member uses the Member's office or powers to influence or to seek to influence a **decision to be made by another person** to further a private interest of the Member, a person directly associated with the Member or the Member's minor or adult child, parent, parent-in-law, sibling, or a relative or friend of the Member or to improperly further another person's private interest.*

Please note that this recommendation incorporates Recommendation 1, regarding expanding the scope of section 3 to apply to parents, parents-in-law and siblings.

Relevant Provisions from Other Jurisdictions

Federal Conflict of Interest Act Provision:

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

Ontario Members' Integrity Act Provision:

Influence
4 A member of the Assembly shall not use his or her office to seek to influence a decision made or to be made by another person so as to further the member's private interest or improperly to further another person's private interest.

British Columbia Members' Conflict of Interest Act Provision:

Influence
5 A member must not use his or her office to seek to influence a decision, to be made by another person, to further the member's private interest.

Saskatchewan Members' Conflict of Interest Act Provision:

Influence
5 A member shall not use his or her office to seek to influence a decision made by another person to further the member's private interest, his or her family's private interest or the private interest of an associate.

4. Amend the Act to permit the Ethics Commissioner to commence or continue investigations on or after the 20th day after election day (high priority)

Issue

The Act currently requires a written request to continue any investigations suspended during an election period within 30 days of the "suspension end date", which is an uncertain date after a general election. The requirement for a written request within 30 days of that date could also cause investigations to cease due to a misunderstanding of the requirements of the Act.

Recommendation

Amend the Act to permit the Ethics Commissioner to commence or continue investigations on or after the 20th day after election day.

Explanation

The Act was recently amended to suspend investigations of Members from the issue of the writs in respect of a general election until the suspension end date. The suspension end date is essentially the date that all candidates have been declared elected, including in electoral divisions with recounts and appeals.

While these amendments were made in response to a recommendation from this Office, there are two issues with the current provisions that should be addressed.

Issue #1
The current wording of the Act would prevent the Ethics Commissioner from continuing investigations against **any** Member until all recounts and appeals are exhausted, even if there is no recount or appeal in the electoral division for that Member. The process for recounts and appeals can take weeks to months, which would unduly delay investigations.

As an example, following the 2004 general election, a recount and subsequent appeals in the Edmonton-Castle Downs electoral division took around 2.5 months to resolve before a candidate was declared elected. There is no apparent reason why all investigations of any Member should be suspended during this process.

Issue #2
The current wording of the Act would also require members of the public who request investigations to closely track when all recounts and appeals are complete before making a subsequent request to renew the investigation. This could result in investigations ceasing due to a misunderstanding of the requirements of the Act.

The requirement of a subsequent written request to renew the investigation is similar to Ontario's *Members' Integrity Act*. However, in Ontario, only Members may request investigations. In Alberta, where members of the public may request investigations, it is unnecessary to require those members of the public to track when they are permitted to make a subsequent request to renew an investigation.

The most straightforward way to correct both issues would be to permit the Ethics Commissioner to continue any suspended investigations on or after the 20th day after election day. This would satisfy the intent of the recommendation from this office, which was to not put the Ethics Commissioner or the Speaker of the Legislative Assembly in an untenable position during an election period.

Proposed Legislative Provisions

Suspension of investigations during elections
25.1(1) *This section applies where the subject of an investigation is a Member, former Member, Minister or former Minister.*

(2) Notwithstanding section 25(1), the Ethics Commissioner shall not commence an investigation during the period commencing on the issue of the writs in respect of a general election held under the Election Act and ending on the 20th day after election day for a general election.

(3) Notwithstanding section 25, the Ethics Commissioner shall suspend an investigation, including the making of any reports referred to in section 25, on and after the issue of the writs in respect of a general election held under the Election Act.

(4) Where an investigation has been suspended under subsection (3), the Ethics Commissioner may continue the investigation on or after the 20th day after election day for a general election.

(5) Where an investigation has been continued under subsection (4), the Ethics Commissioner shall give notice to the individual whose conduct is subject to the investigation.

28(2.1) *Notwithstanding subsection (2), the Speaker shall not make copies of a report available to the public during the period commencing on the issue of the writs in respect of a general election held under the Election Act and ending on the 20th day after election day for a general election.*

Relevant Provisions

Suspension of investigations during elections

25.1(1) In this section, "suspension end date" means, in respect of a general election held under the *Election Act*, the latest of the following dates:

(a) a candidate is declared elected under section 64 or 138 of the *Election Act* in all electoral divisions, other than an electoral division for which a declaration is made under section 148(8)(b) of that Act;

(b) in respect of any recounts, the returning officer has declared a candidate to be elected under section 147(1)(a) of the *Election Act*;

(c) in respect of any appeals, the returning officer has made a declaration under section 148(8) of the *Election Act*.

(2) This section applies where the subject of an investigation is a Member, former Member, Minister or former Minister.

(3) Notwithstanding section 25(1), the Ethics Commissioner shall not commence an investigation during the period commencing on the issue of the writs in respect of a general election held under the *Election Act* and ending on the suspension end date.

(4) Notwithstanding section 25, the Ethics Commissioner shall suspend an investigation, including the making of any reports referred to in section 25, on and after the issue of the writs in respect of a general election held under the *Election Act*.

(5) Where an investigation has been suspended under subsection (4), the Ethics Commissioner may continue the investigation after the suspension end date if, within 30 days after the suspension end date,

(a) in respect of an investigation initiated by a request under section 24(1), the Ethics Commissioner receives a written request to continue the investigation from

(i) the individual against whom the allegation was made, or

(ii) the person who made the request under section 24,

or

(b) in respect of an investigation initiated by the Ethics Commissioner under section 25(1) without receiving a request under section 24, the Ethics Commissioner determines that the investigation should continue.

(6) Where an investigation referred to in subsection (5)(a) has been suspended under subsection (4) and no written request is received under subsection (5)(a), the Ethics Commissioner shall cease the investigation and shall so inform

(a) the individual against whom the allegation was made,

(b) the Speaker of the Legislative Assembly, and

(c) the person who made the request under section 24.

Relevant Provisions from Other Jurisdictions

Ontario Members' Integrity Act Provision:

Effect of election, resignation on matter referred by member
(4.1) The Commissioner shall suspend an inquiry respecting a matter referred by a member in the following circumstances:

1. The member whose conduct is concerned resigns his or her seat.
2. A writ is issued under the *Election Act* for a general election. 2010, c. 5, s. 14 (3).

Same

(4.2) If an inquiry is suspended under subsection (4.1) because the member whose conduct is concerned resigns his or her seat, the Commissioner shall continue the inquiry if, within 30 days after the date of the resignation, the former member or the member who referred the matter submits a written request to the Commissioner that the inquiry be continued. 2010, c. 5, s. 14 (3).

Same

(4.3) If an inquiry is suspended under subsection (4.1) because of the issuance of a writ, the Commissioner shall continue the inquiry if, within 30 days after polling day in the election, the member or former member whose conduct is concerned or the member who referred the matter submits a written request to the Commissioner that the inquiry be continued. 2010, c. 5, s. 14 (3).

Same

(4.4) An inquiry shall not be continued under subsection (4.3) until after polling day in the election.

5. Clarify the definition of “private interest” (high priority)

Issue

Despite being critical to providing guidance in interpretation of the Act, the term “private interest” is currently only defined in the negative.

Recommendation

The term “private interest” should be more clearly defined by adding a positive definition in the Act.

Explanation

To provide guidance under the Act, the Ethics Commissioner must interpret the meaning of “private interest”, which is used throughout the Act. However, as the term is only defined in the negative, its full definition is not as clear as it could be, which creates difficulty for the Ethics Commissioner and those regulated by the Act.

As “private interest” is defined in the negative in conflict-of-interest legislation across Canada, Commissioners have interpreted the term differently. For example, the former federal Conflict of Interest and Ethics Commissioner, Mario Dion, concluded that the term could encompass “all types of interests that are unique to the public office holder or shared with a narrow class of individuals” including partisan political interests. On the other hand, Ethics Commissioners across Canada have generally accepted that partisan political interests are not private interests.

Amending the definition to include both a positive and a negative aspect would provide clarity to the public, those regulated by the Act and the Ethics Commissioner.

Proposed Legislative Provisions

A Member is considered to further a person's private interests when the Member's actions may result, directly or indirectly, in any of the following:

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

Subject to the above, "private interest" does not include the following:
(i) an interest in a matter
(A) that is of general application,
(B) that affects an individual as one of a broad class of the public, or
(C) that concerns an individual's own remuneration and benefits;
(ii) an interest that is trivial;
(iii) an interest of an individual relating to publicly-traded securities held in that individual's blind trust or in an investment arrangement;

Note Regarding Previous Review

During the previous review of the Act, this Office made substantially the same recommendation. In its August 2018 Report, the Standing Committee on Resource Stewardship made the following recommendation which was never acted upon:

Recommendation 9: That the Act be amended to clarify what is and what is not a private interest and to clarify the meaning of general application and broad class of the public.

6. Clarify the post-employment provisions in the Act (high priority)

Issue

The post-employment provisions in the Act are overly complex and difficult to interpret. In particular, the phrases “directly acted for” and “direct and significant official dealing” create confusion. The current provisions also create difficulty when certain individuals want to move within government either on an open competition or to return to a previous role.

Recommendation

Sections 23.1, 23.7 and 23.937 of the *Conflicts of Interest Act*, along with section 25.4 of the *Public Service Act* should be repealed and replaced with simplified wording. In particular, the phrases “directly acted for” and “direct and significant official dealing” should be removed.

Section 23.7 and 23.937 of the *Conflicts of Interest Act*, along with section 25.4 of the *Public Service Act* should also be amended to permit political staff, deputy ministers and designated senior officials to move within government if they are returning to a previous role within government or are selected for a position on an open competition.

Explanation

The current complex and difficult to interpret post-employment restrictions in the Act fail to provide the clarity that former Ministers, political staff, Designated Senior Officials and Designated Office Holders need when transitioning out of those roles. Simplifying these sections would allow this Office to provide better advice to these former office holders.

The post-employment sections of the Act for former political staff, Designated Senior Officials and Designated Office Holders also contain difficult to interpret provisions relating to employment transitions within government. The Act should be amended to simply state that these individuals are permitted to move within government if they are returning to a previous role within government or are selected for a position on an open competition, which appears to be the intent of the current sections.

Proposed Legislative Provisions

The following provisions are proposed to replace the post-employment provisions for former Ministers in section 23.1 of the *Conflicts of Interest Act* to address the concern regarding the phrases “directly acted for” and “direct and significant official dealing”:

> 23.1(1) *In this section, the terms “lobby” and “public office holder” are as defined in the Lobbyists Act.*
>
> (2) *No former Minister shall, for a period of 12 months from the last day the former Minister held his or her appointment as a Minister, lobby any public office holder.*
>
> (3) *No former Minister shall, for a period of 12 months from the last day the former Minister held his or her appointment as a Minister, act on a commercial basis or make representations on his or her own behalf or on behalf of any other person* ***on any matter to any public office holder.***
>
> *(4) No former Minister shall,* ***for a period of 12 months from the last day the Former Minister held his or her appointment as a Minister****, make representations with respect to a contract with or benefit from any department or Provincial agency.*
>
> *(5) No former Minister shall,* ***for a period of 12 months from the last day the former Minister held his or her appointment as a Minister****, solicit or accept on his or her own behalf a contract or benefit from any department or Provincial agency.*
>
> *(6) No former Minister shall,* ***for a period of 12 months from the last day the former Minister held his or her appointment as a Minister****, accept employment with any organization, or an appointment to the board of directors or equivalent body of any organization,* ***if the former Minister had any dealings or interactions with that individual, organization, board of directors, or equivalent body*** *of that organization during the time that he or she was a member of the Executive Council.*

The following provisions are proposed to replace the post-employment provisions for former political staff in section 23.7 of the *Conflicts of Interest Act*. These amendments address the concern regarding the phrases “directly acted for” and “direct and significant official dealing” and would allow former political staff to accept employment within the public service if the individual is selected on an open competition or is returning to a previous position:

> 23.7(1) *In this section, the terms “lobby” and “public office holder” are as defined in the Lobbyists Act.*
>
> (2) *No former member of the Premier’s and Ministers’ staff shall, for a period of 12 months from the last day the former member of the Premier’s and Ministers’ staff*

held his or her appointment as a member of the Premier's and Ministers' staff, lobby any public office holder.

(3) *No former member of the Premier's and Ministers' staff shall, for a period of 12 months from the last day the former member of the Premier's and Ministers' staff held his or her appointment as a member of the Premier's and Ministers' staff, act on a commercial basis or make representations on his or her own behalf or on behalf of any other person* ***on any matter to any public office holder.***

(4) No former member of the Premier's and Ministers' staff shall, ***for a period of 12 months from the last day the former member of the Premier's and Ministers' staff held his or her appointment as a member of the Premier's and Ministers' staff****, make representations with respect to a contract with or benefit from any department or Provincial agency.*

(5) No former member of the Premier's and Ministers' staff shall, ***for a period of 12 months from the last day the former member of the Premier's and Ministers' staff held his or her appointment as a member of the Premier's and Ministers' staff****, solicit or accept on his or her own behalf a contract or benefit from any department or Provincial agency.*

(6) No former member of the Premier's and Ministers' staff shall, ***for a period of 12 months from the last day the former member of the Premier's and Ministers' staff held his or her appointment as a member of the Premier's and Ministers' staff****, accept employment with any organization, or an appointment to the board of directors or equivalent body of any organization,* ***if the former member of the Premier's and Ministers' staff had any dealings or interactions with that individual, organization, board of directors, or equivalent body*** *of that organization during the time that he or she was a member of the Premier's and Ministers' staff.*

(7) *Nothing in this section restricts a member or former member of the Premier's and Ministers' staff from accepting employment with a department of the public service or a Provincial agency*

> *(a) after selection in an open competition,*
>
> *(b) if the member or former member of the Premier's and Ministers' staff is returning to the same position that they held immediately prior to becoming a member of the Premier's and Ministers' staff, or*
>
> *(c) if the member or former member of the Premier's and Ministers' staff is returning as a member of the Premier's and Ministers' staff.*

The following provisions are proposed to replace the post-employment restrictions for Designated Senior Officials in section 23.937 of the *Conflicts of Interest Act*:

> 23.7(1) *In this section, the terms "lobby" and "public office holder" are as defined in the Lobbyists Act.*
>
> (2) *No former designated senior official shall, for a period of 12 months from the last day the former designated senior official held his or her appointment as a designated senior official, lobby any public office holder.*
>
> (3) *No former designated senior official shall, for a period of 12 months from the last day the former designated senior official held his or her appointment as a designated senior official, act on a commercial basis or make representations on his or her own behalf or on behalf of any other person* ***on any matter to any public office holder.***
>
> *(4) No former designated senior official shall,* ***for a period of 12 months from the last day the former designated senior official held his or her appointment as a designated senior official****, make representations with respect to a contract with or benefit from any department or Provincial agency.*
>
> *(5) No former designated senior official shall,* ***for a period of 12 months from the last day the former designated senior official held his or her appointment as a designated senior official****, solicit or accept on his or her own behalf a contract or benefit from any department or Provincial agency.*
>
> *(6) No former designated senior official shall,* ***for a period of 12 months from the last day the former designated senior official held his or her appointment as a designated senior official****, accept employment with any organization, or an appointment to the board of directors or equivalent body of any organization,* ***if the former designated senior official had any dealings or interactions with that individual, organization, board of directors, or equivalent body*** *of that organization during the time that he or she was a designated senior official.*
>
> (7) *Nothing in this section restricts a designated senior official or former designated senior official from accepting employment with a department of the public service or a Provincial agency*
>
> > *(a) after selection in an open competition, or*
> >
> > *(b) if the designated senior official or former designated senior official is returning to the same position that they held immediately prior to becoming a designated senior official.*

The following provisions are proposed to replace the post-employment restrictions for Designated Office Holders in section 25.4 of the *Public Service Act*:

> 23.7(1) *In this section, the terms "lobby" and "public office holder" are as defined in the Lobbyists Act.*
>
> (2) *No former designated office holder shall, for a period of 12 months from the last day the former designated office holder held his or her appointment as a designated office holder, lobby any public office holder.*
>
> (3) *No former designated office holder shall, for a period of 12 months from the last day the former designated office holder held his or her appointment as a designated office holder, act on a commercial basis or make representations on his or her own behalf or on behalf of any other person* ***on any matter to any public office holder.***
>
> *(4) No former designated office holder shall,* ***for a period of 12 months from the last day the former designated office holder held his or her appointment as a designated office holder****, make representations with respect to a contract with or benefit from any department or Provincial agency.*
>
> *(5) No former designated office holder shall,* ***for a period of 12 months from the last day the former designated office holder held his or her appointment as a designated office holder****, solicit or accept on his or her own behalf a contract or benefit from any department or Provincial agency.*
>
> *(6) No former designated office holder shall,* ***for a period of 12 months from the last day the former designated office holder held his or her appointment as a designated office holder****, accept employment with any organization, or an appointment to the board of directors or equivalent body of any organization,* ***if the former designated office holder had any dealings or interactions with that individual, organization, board of directors, or equivalent body*** *of that organization during the time that he or she was a designated office holder.*
>
> (7) *Nothing in this section restricts a designated office holder or former designated office holder from accepting employment with a department of the public service or a Provincial agency*
>
> > *(a) after selection in an open competition, or*
> >
> > *(b) if the designated office holder or former designated office holder is returning to the same position that they held immediately prior to becoming a designated office holder.*

Note Regarding Previous Review

During the previous review of the Act, this Office made substantially the same recommendation. In its August 2018 Report, the Standing Committee on Resource Stewardship made the following recommendation which was never acted upon:

Recommendation 4: That the Act be amended regarding the post-employment restriction for former Ministers and former political staff to remove the words "directly acted for" and "direct and significant official dealing" wherever they appear and to simplify the wording of the provisions.

Relevant Provisions

Present Conflicts of Interest Act Provisions:

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

(2) *No former Minister shall, for a period of 12 months from the last day the former Minister held his or her appointment as a Minister, act on a commercial basis or make representations on his or her own behalf or on behalf of any other person in connection with any ongoing matter in connection with which the former Minister, while in office, directly acted for or advised a department or Provincial agency involved in the matter.*

(3) *No former Minister shall, for a period of 12 months from the last day the former Minister had a direct and significant official dealing with a department or Provincial agency, make representations with respect to a contract with or benefit from that department or Provincial agency.*

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

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

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

(2) *No former member of the Premier's and Ministers' staff shall, for a period of 12 months from the last day the former member held a position referred to in section 1(1)(c.1), act on a commercial basis or make representations on his or her own behalf or on behalf of any other person in connection with any ongoing matter in connection with which the former member, while a member of the Premier's and Ministers' staff, directly acted for or advised a department or Provincial agency involved in the matter.*

(3) *No former member of the Premier's and Ministers' staff shall, for a period of 12 months from the last day the former member had a direct and significant official dealing with a department or Provincial agency, make representations with respect to a contract with or benefit from that department or Provincial agency.*

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

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

(6) *Nothing in this section restricts a member or former member of the Premier's and Ministers' staff from accepting employment with a department of the public service or a Provincial agency in accordance with Part 1 of the Public Service Act.*

7. Apply a six-month post-employment provision to former Members who are not former Ministers

Issue

Former Members of the Legislative Assembly who are not also former Ministers are not currently subject to any post-employment restrictions.

Recommendation

Apply a six-month post-employment provision to former Members of the Legislative Assembly who are not former Ministers. The wording proposed above in Recommendation 6 should be used.

Explanation

Members who are not Ministers gain considerable contacts and influence during their time in office that could be used, or could be perceived to be used, to their benefit after leaving office. Adding a short six-month "cooling-off" period for these former Members would help to alleviate this concern.

Former Members of the Legislative Assemblies of Nova Scotia and New Brunswick are subject to post-employment restrictions.

An objection might be raised to this recommendation that it unduly restricts former Members from earning a livelihood after leaving office. To alleviate that concern, the restrictions should be for a shorter six-month period and follow the proposed language below, which is somewhat less strict than the provisions applicable to former Ministers. Additionally, the Committee may wish to recommend that a transition allowance of up to six months pay be re-instituted for former Members.

Proposed Legislative Provisions

23.1(1) *In this section, the terms "lobby" and "public office holder" are as defined in the Lobbyists Act.*

(2) *No former Member shall, for a period of six months from the last day the former Member held office as a Member, lobby any public office holder.*

(3) *No former Member shall, for a period of six months from the last day the former Member held office as a Member, act on a commercial basis or make representations on his or her own behalf or on behalf of any other person* ***on any matter to any public office holder.***

(4) No former Member shall, ***for a period of six months from the last day the former Member held office as a Member****, make representations with respect to a contract with or benefit from a department or Provincial agency.*

(5) No former Member shall, ***for a period of six months from the last day the former Member held office as a Member****, solicit or accept on his or her own behalf a contract or benefit from any department or Provincial agency.*

8. Revise the process regarding Returns related to persons directly associated with political staff or with Designated Office Holders

Issue

Returns relating to persons directly associated with political staff or with Designated Office Holders are forwarded to the person designated in the Act, typically the relevant Minister. These individuals are unsure what to do with the information.

Recommendation

If the objective of these provisions is to ensure direct associates do not receive preferential treatment, contracts or benefits from the government, this objective would be better achieved by sending the information to Alberta Treasury Board and Finance to be handled in the same way as Member's Direct Associate Reports.

Explanation

As currently drafted, the Act provides no guidance on what the recipients of direct associate reports for political staff or Designated Office Holders are to do with the information provided to them. The Act should be amended to make the purpose of this information clear.

Relevant Provisions

Present Conflicts of Interest Act Provision:

23.61(1) *Every member of the Premier's and Ministers' staff shall file with the Ethics Commissioner a return relating to persons directly associated with the member, in a form and manner determined by the Ethics Commissioner,*

(a) within 60 days after

(i) becoming a member of the Premier's and Ministers' staff, in the case of a person who becomes a member after the coming into force of this section, or

(ii) the coming into force of this section, in the case of a person who is a member of the Premier's and Ministers' staff when this section comes into force,

(b) within 30 days after the occurrence of any material change in the information contained in a current return, and

(c) within 30 days after the day he or she ceases to be a member of the Premier's and Ministers' staff.

(3) *On receipt of a return under this section, the Ethics Commissioner shall provide a copy of the return,*

(a) in the case of a return filed by a person who holds a position in the Premier's office, to the Premier, and

(b) in the case of a return filed by a person who holds a position in a Minister's office, to that Minister.

Present Public Service Act Provision:

25.31(1) *Every designated office holder shall file with the Ethics Commissioner a return relating to persons directly associated with the designated office holder in the form and manner determined by the Ethics Commissioner*

(a) within 60 days after

(i) becoming a designated office holder, in the case of a person who becomes a designated office holder after the coming into force of this section, or

(ii) the coming into force of this section, in the case of a person who is a designated office holder when this section comes into force,

(b) within 30 days after the occurrence of any material change in the information contained in a current return, and

(c) within 30 days after the day he or she ceases to be a designated office holder.

***(2)** Section 15(1)(a) and (b) and (2) of the Conflicts of Interest Act apply for the purpose of establishing the contents of and additional time requirements for a designated office holder's returns under this section.*

***(3)** On receipt of a return filed by a designated office holder under this section, the Ethics Commissioner shall provide a copy of the return,*

(a) in the case of a return filed by a deputy minister, to the Deputy Minister of Executive Council,

(b) in the case of a return filed by the Deputy Minister of Executive Council, to the Premier,

(c) in the case of a return filed by a member or person referred to in section 25.2(b), to the deputy minister to whom the member or person reports, and

(d) in the case of a return filed by a designated office holder referred to in section 25.2(c), to the Minister who has responsibility for the relevant provincial agency.

9. Allow the Ethics Commissioner to disclose certain information regarding investigations and advice

Issue

The Act currently prevents the Ethics Commissioner from making any public comment regarding an investigation until a report of the investigation is released. Further, the Act currently prevents the Ethics Commissioner from making any public comment on advice given, even when a Member publicly states that he or she is relying on advice from the Ethics Commissioner.

Recommendation

The Ethics Commissioner should be able to publicly confirm or deny that a request for investigation has been received and indicate whether an investigation is taking place. The Ethics Commissioner should also be able to give a brief summary of the allegations.

The Ethics Commissioner should also be able to publicly state that advice has been given and followed or publicly clarify advice when a Member has indicated that he or she is acting on the advice of the Ethics Commissioner.

Explanation

Under the current Act, the Ethics Commissioner is unable to confirm that a request for an investigation has been received and is being investigated. This provision has resulted in some awkward situations for persons requesting investigations, the media and persons accused of wrongdoing.

For example, individuals making a request for an investigation under the Act will often make the request public. However, the Ethics Commissioner cannot even confirm publicly that the request was received. In some cases, the person under investigation will also publicly acknowledge the investigation and the Ethics Commissioner is still not able to confirm the existence of the investigation.

Further, under the current Act, the Ethics Commissioner cannot make any public comment about advice given to Members, even if the Member indicates publicly that he or she is relying on the advice of the Ethics Commissioner. While advice to Members should remain confidential in the vast majority of cases unless released by the Member or with their consent, the Ethics Commissioner should be permitted to make some public comment when a Member publicly states that he or she is relying on the Commissioner's advice, especially in cases where the Member has only released a portion of the advice given or if the information in the public domain is misleading.

Proposed Legislative Provisions

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

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

43(3.1) *Despite subsection (3), if a Member, former Minister, political staff member or former political staff member releases only part of the opinion and recommendations of the Ethics Commissioner, the Ethics Commissioner may release part or all of the opinion and recommendations without obtaining the consent of the Member, former Minister, political staff member or former political staff member.*

Relevant Provisions

Confidentiality

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

(2) Allegations and information to which subsection (1) applies may be

(a) disclosed to the individual against whom the allegation was made;

(b) disclosed by a person conducting an investigation to the extent necessary to enable that person to obtain information from another person;

(c) disclosed in a notice or report made by the Ethics Commissioner under this Act;

(d) disclosed to the Minister of Justice or a law enforcement agency where the Ethics Commissioner believes on reasonable grounds that the disclosure is necessary for the purpose of advising the Minister of Justice or a law enforcement agency of an alleged offence under this Act or any other enactment of Alberta or an Act of the Parliament of Canada.

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

(4) The *Freedom of Information and Protection of Privacy Act* does not apply to a record that is created by or for or is in the custody or under the control of the Ethics Commissioner and relates to the exercise of the Ethics Commissioner's functions under this Act or any other enactment.

Binding advice and recommendations

43(1) A Member, former Minister or former political staff member may request the Ethics Commissioner to give advice and recommendations on any matter respecting obligations of the Member, former Minister or former political staff member under this Act.

(1.1) A political staff member may request the Ethics Commissioner to give advice and recommendations on any matter respecting obligations of the political staff member on becoming a former political staff member.

(2) The Ethics Commissioner may, in writing, provide the Member, former Minister, political staff member or former political staff member with advice and recommendations, which

(a) shall state the material facts either expressly or by incorporating facts stated by the Member, former Minister, political staff member or former political staff member,

(b) shall be based on the facts referred to in clause (a), and

(c) may be based on any other considerations the Ethics Commissioner considers appropriate.

(3) Advice and recommendations under this section are confidential until released by or with the consent of the Member, former Minister, political staff member or former political staff member.

[…]

Relevant Provisions from Other Jurisdictions

Ontario Members' Integrity Act

Confidentiality

(3) The Commissioner's opinion and recommendations are confidential, but may be released by the member or with the member's consent.

Partial release by member

(3.1) Despite subsection (3), if the member releases only part of the opinion and recommendations, the Commissioner may release part or all of the opinion and recommendations without obtaining the member's consent.

Federal Ethics and Conflict of Interest Code for Senators

Partial or inaccurate disclosure

42. (4.1) If a written opinion or advice is made public by a Senator in a way that the Senate Ethics Office considers to be misleading, the Senate Ethics Officer may provide information to the public to correct any misunderstanding, including by releasing any relevant portions of the opinion or advice provided to the Senator, but only to the extent necessary to respond to any misleading information.

10. Restrict Members from commenting on a request for investigation until the Ethics Commissioner has confirmed whether an investigation is being undertaken

Issue

The Act currently allows Members to publicly comment on requests for investigation that they plan to send or have sent to the Ethics Commissioner. This unnecessarily politicizes the investigation process.

Recommendation

The Act should be amended to restrict Members from commenting on a request for investigation until the Ethics Commissioner has confirmed whether an investigation is being undertaken.

Explanation

When Members publicly state that they will be sending or have sent a request for investigation to the Ethics Commissioner, the allegation that is made becomes the only information in the public realm, regardless of whether there is substance to the allegation or whether the Ethics Commissioner has jurisdiction over the matter.

This issue can be addressed by restricting Members from making any public comments about a request for investigation until the Ethics Commissioner has confirmed whether an investigation is being undertaken.

Proposed Legislative Provisions

24(3.1) *A Member who requests or intends to request an investigation under subsection (3) shall make no public comments relating to the request until the Ethics Commissioner has confirmed whether an investigation in relation to the request will be undertaken.*

Relevant Provisions from Other Jurisdictions

Federal *Conflict of Interest Code for Members of the House of Commons*

27 (2.1) The member who requested that an inquiry be conducted shall make no public comments relating to the inquiry until the commissioner has completed the preliminary review and both members have been notified pursuant to paragraph (3.2)(b) of this section.
[…]
(3.2) The commissioner shall:
(a) conduct a preliminary review of the request […] to determine if an inquiry is warranted; and
(b) notify in writing both members of the commissioner's decision within 15 working days of receiving the response.

11. Implement codes of conduct for Members and all political staff for certain activities outside the Legislative Assembly, including social media use

Issue

Members and their staff are not currently subject to codes of conduct that hold them to an appropriate standard of civility outside of the Legislative Assembly, in particular in the use of social media.

Recommendation

The Act should be amended to subject Members and all political staff to appropriate codes of conduct for certain activities outside of the Legislative Assembly. For political staff, the code should apply to all Premier's and Ministers' staff, caucus staff of all parties and constituency staff to ensure a level playing field.

Explanation

The current scope of the Act is narrow, generally only covering actions taken by a Member or political staff member to further their own "private interest", or the private interest of their partner, dependent child or, in a couple of specific instances, other people.

The Act does not ensure that Members and political staff act in a way that maintains the dignity and respect of their office or reassure the public that they are held to appropriate standards of conduct. Social media use can be particularly problematic when it is used to personally attack, denigrate or harass others. This conduct increases political polarization which in extreme cases is unhealthy for democracy.

Other Canadian jurisdictions have implemented codes of conduct which require that Members and political staff refrain from harassment and undertake their duties with dignity, honour and integrity. These are basic rules of behaviour that the public is entitled to expect from their politicians and staff.

In 2021, Ontario amended its *Members' Integrity Act* to specifically address social media use. Under those provisions, Ontario has implemented guidelines which state that it is unacceptable for Members to use social media to provide inaccurate or untrue statements in an unprofessional or inappropriate manner. Other jurisdictions have also implemented provisions in their legislation or codes which ensure Members and their staff are held to an appropriate standard of conduct.

Relevant Provisions from Other Jurisdictions

Ontario *Members' Integrity Act*

Social media

9.1 (1) Nothing in this Act prevents members of the Assembly from having one or more social media accounts in their individual names.

Content

(2) Subject to this section, a social media account of a member of the Assembly may include content respecting such matters as the member wishes to bring to the attention of their followers, including matters described in subsection (3), as long as the content is created, posted and maintained in a manner consistent with,

(a) any rules or guidelines that may be established or approved by the Assembly; and

(b) the requirements of sections 2, 3 and 4 of this Act.

Ethics and Conflict of Interest Code for Senators

General conduct

7.1 (1) A Senator's conduct shall uphold the highest standards of dignity inherent to the position of Senator.

Idem

7.1 (2) A Senator shall refrain from acting in a way that could reflect adversely on the position of Senator or the institution of the Senate.

Conduct: parliamentary duties and functions

7.2 A Senator shall perform his or her parliamentary duties and functions with dignity, honour and integrity.

Harassment and violence

7.3 A senator shall refrain from engaging in conduct that constitutes ***harassment and violence***.

Code of Conduct for Members of the Legislative Assembly of the Northwest Territories

2. Members must act lawfully and in a manner that will withstand the closest public scrutiny, upholding the integrity and honour of the Legislative Assembly and its Members. Members shall ensure their conduct does not bring the integrity of their office or of the Legislative Assembly into disrepute.

3. Members must treat members of the public, one another and staff appropriately and without harassment. Members must take all reasonable steps to ensure their work environment is free from harassment.

12. Increase the maximum administrative penalty that the Commissioner can impose for late filing of disclosure

Issue

The Act currently only allows the Ethics Commissioner to impose an administrative penalty for late filing of up to $500, which has been an insufficient deterrent for some public office holders.

Recommendation

The Act should be amended to increase the maximum administrative penalty for late filing of financial disclosure to at least $2,500.

Explanation

In the last few years, this office has assessed a number of administrative penalties up to $500 against a variety of public office holders. Once a $500 administrative penalty is issued, this office can take no further action against the public office holder to ensure their financial disclosure is provided in a timely manner. In some cases, public office holders have continued to provide their financial disclosure late despite being issued administrative penalties in prior years.

This suggests that the maximum penalty of $500 is insufficient to deter late filing. Allowing the Ethics Commissioner to impose larger administrative penalties would improve compliance with the deadlines and improve public trust that appropriate disclosure is being made to the Ethics Commissioner.

Proposed Legislative Provisions

30.1(1)*If the Ethics Commissioner is of the opinion that* ***a Member has committed a breach under section 18****, the Ethics Commissioner may serve a notice of administrative penalty on the Member, requiring the Member to pay to the Crown the amount set out in the notice.*

(2) *A Member is liable for an administrative penalty for each day or part of a day on which the breach occurs or continues, and the maximum cumulative amount of an administrative penalty that may be imposed under subsection (1) is* ***$2,500****.*

Relevant Provisions

Administrative penalties for late filing

30.1(1) If the Ethics Commissioner is of the opinion that a Member has breached the time requirements for filing a disclosure statement, an amending disclosure statement or a return referred to in section 18, the Ethics Commissioner may serve a notice of administrative penalty on the Member, requiring the Member to pay to the Crown the amount set out in the notice.

(2) A Member is liable for an administrative penalty for each day or part of a day on which the breach occurs or continues, and the maximum cumulative amount of an administrative penalty that may be imposed under subsection (1) is $500.

13. Amend sections 13 and 18 to clarify that Members breach the Act by failing to attend the annual meeting with the Ethics Commissioner

Issue

Sections 13 and 18 of the Act are poorly worded, such that a Member may not understand that they are obligated to attend the annual disclosure meeting with the Ethics Commissioner.

Recommendation

The Act should be amended to clearly state that each Member must meet with the Ethics Commissioner as soon as practicable after filing his or her annual disclosure and that it is a breach of the Act to fail to attend the meeting.

Explanation

The Office of the Ethics Commissioner cannot make a Member's public disclosure statement available to the public until after the Member meets with the Ethics Commissioner. As such, this office takes the position that a Member is in breach of the Act if he or she fails to attend a meeting scheduled with the Commissioner under section 13.

However, as currently worded, the Act does not explicitly state that failure to attend this meeting is a breach of the Act.

Proposed Legislative Provisions

13 As soon as practicable after the Member has filed a disclosure statement, the Member, and the Member's spouse or adult interdependent partner, if available, shall meet with the Ethics Commissioner *to ensure that the Member has made adequate disclosure and to advise about the Member's obligations under this Act.*

18 *A Member breaches this Act if the Member does not file within the time required by this Act,* ***fails to attend as scheduled a meeting under section 13*** *or knowingly gives false or misleading information in,*

(a) a disclosure statement under section 11(1),

(b) an amending disclosure statement under section 11(2), or

(c) a return under section 15.

Relevant Provisions

Meeting with Members

13 The Ethics Commissioner shall, as soon as practicable after a Member has filed a disclosure statement, meet with the Member and the Member's spouse or adult interdependent partner, if available, to ensure that the Member has made adequate disclosure and to advise about the Member's obligations under this Act.

Failure to file

18 A Member breaches this Act if the Member does not file within the time required by this Act, or knowingly gives false or misleading information in,

(a) a disclosure statement under section 11(1),

(b) an amending disclosure statement under section 11(2), or

(c) a return under section 15.

14. Grant the Ethics Commissioner the authority to publicly disclose names of those found in breach of the Act

Issue

The Ethics Commissioner is extremely limited in the information that can be provided publicly about those found to be in breach of the Act. This fails to ensure timely compliance with the Act.

Recommendation

Section 30.1(9) of the Act should be amended to state that the Ethics Commissioner shall report administrative penalties publicly, rather than to the Speaker. Further, section 30.1(9) should apply to administrative penalties assessed against any individual under the Act, including political staff, Designated Office Holders and Designated Senior Officials.

Explanation

The Act only permits the Ethics Commissioner to disclose the names of Members assessed an administrative penalty in an annual report. While the Ethics Commissioner is required to report administrative penalties to the Speaker under section 30.1(9), the Act does not require that the Speaker make those reports public.

The Act does not permit the Ethics Commissioner to disclose the names of political staff members, Designated Office Holders or Designated Senior Officials who are assessed administrative penalties under the Act.

Allowing the Ethics Commissioner to publicly disclose information about those found in breach of the Act would encourage timely compliance with the Act.

Relevant Provisions

Confidentiality

26(3) Despite subsection (1), the Ethics Commissioner may disclose to the public any information contained in a report to the Speaker under section 30.1(9) regarding an administrative penalty.

Administrative penalties for late filing

30.1(1) If the Ethics Commissioner is of the opinion that a Member has breached the time requirements for filing a disclosure statement, an amending disclosure statement or a return referred to in section 18, the Ethics Commissioner may serve a notice of administrative penalty on the Member, requiring the Member to pay to the Crown the amount set out in the notice.

(2) A Member is liable for an administrative penalty for each day or part of a day on which the breach occurs or continues, and the maximum cumulative amount of an administrative penalty that may be imposed under subsection (1) is $500.

(3) The Ethics Commissioner may, in each case, determine the amount of an administrative penalty taking into account the following matters:

(a) the objective of encouraging compliance with this Act;

(b) the Member's history of prior breaches under this Act during the 5-year period immediately before the current breach;

(c) any other factors that, in the opinion of the Ethics Commissioner, are relevant.

(4) A notice of administrative penalty must contain the following information:

(a) the name of the Member required to pay the administrative penalty;

(b) the particulars of the breach;

(c) the amount of the administrative penalty and the date by which it must be paid;

(d) a statement of the right to appeal the imposition or the amount of the administrative penalty to the Court of King's Bench.

(5) A notice of administrative penalty may not be issued more than 2 years after the date on which the breach occurred.

(6) A person who has been served with a notice of administrative penalty pursuant to this section shall pay the amount of the penalty within 30 days from the date of service of the notice.

(7) A person who pays an administrative penalty in respect of a breach shall not be subject to a sanction under section 29 in respect of the breach that is described in the notice of administrative penalty.

(8) Subject to the right to appeal, where a person fails to pay an administrative penalty in accordance with a notice of administrative penalty, the Ethics Commissioner may file a copy of the notice of administrative penalty with the clerk of the Court of King's Bench, and on being filed, the notice has the same force and effect and may be enforced as if it were a judgment of the Court.

(9) The Ethics Commissioner shall, in each case, report to the Speaker

(a) the name of the Member required to pay an administrative penalty,
(b) the particulars of the breach,
(c) the amount of the administrative penalty,
(d) whether the administrative penalty was paid or appealed, and
(e) any other information that the Ethics Commissioner considers appropriate.

15. Expand the class of assets which Ministers are restricted from owning or having a beneficial interest in to include futures and commodities

Issue

The Act does not currently place any restrictions on Ministers owning futures or commodities, despite the potential for government decisions and policies to impact the value of these assets.

Recommendation

The Act should be amended to prohibit Ministers from holding futures and commodities unless held in a blind trust or in arrangements otherwise approved by the Ethics Commissioner.

Explanation

Government decisions and policies can impact the value of futures and commodities in the same way that decisions and policies can impact the value of publicly-traded securities. Prohibiting Ministers from holding these assets would promote public confidence and trust in the integrity of Ministers. It would also ensure that Ministers can participate more fully in decision-making where the value of futures or commodities could be impacted by a decision point.

Legislation in Ontario, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Nunavut already prohibits Ministers from holding futures and commodities. Federal Ministers are also prohibited from holding futures and commodities, along with a number of additional categories of assets.

Relevant Provisions

Restriction on holdings

20(1) A Minister breaches this Act if the Minister, after the expiration of the relevant period referred to in section 22, owns or has a beneficial interest in publicly-traded securities.

(2) Subsection (1) does not apply if

(a) the publicly-traded securities are held in a blind trust approved under subsection (4) or in an investment arrangement approved under subsection (5),

(b) prior to the expiration of the relevant period referred to in section 22, the Minister applies to the Ethics Commissioner for approval to retain ownership of or a beneficial interest in the publicly-traded securities and either obtains the Ethics Commissioner's approval or, if the approval is refused, takes any steps that the Ethics Commissioner directs with respect to the disposition of the ownership or beneficial interest, or

(c) after the expiration of the relevant period referred to in section 22, the Minister acquires ownership of or a beneficial interest in publicly-traded securities with the prior approval of the Ethics Commissioner.

Relevant Provisions from Other Jurisdictions

Ontario Members' Integrity Act

Investments

11 (1) A member of the Executive Council shall not hold or trade in securities, stocks, futures or commodities.

Manitoba's Conflict of Interest (Members and Ministers) Act

Limits on investments

11(1) A minister must not

(a) hold or trade in securities or stocks that are not listed on a recognized stock exchange; or

(b) hold or trade futures or commodities for speculative purposes.

New Brunswick's Member's Conflict of Interest Act

Prohibited activities

14(1)A member of the Executive Council shall not

(a) engage in any trade, occupation or employment or in the practice of any profession,
(b) engage in the management of a business carried on by a corporation,
(c) carry on business through a partnership or sole proprietorship,
(d) hold or trade in securities, stocks, futures or commodities, or
(e) hold an office or directorship, unless holding the office or directorship is one of the member's duties as a member of the Executive Council.

16. Amend the prohibition restricting Ministers from having rental properties

Issue

The Act does not currently allow a Minister to manage even one or two of their own residential rental properties as doing so would be considered to be carrying on a business.

Recommendation

The Act should be amended to enable Ministers to manage up to four of their own residential rental properties before these activities would be considered to be carrying on a business. Any commercial property rentals should still be considered as carrying on a business.

Explanation

Some Ministers own a small number of residential rental properties. Managing these rental properties is technically considered to be carrying on a business but would normally not result in a conflict of interest. As the Act is currently drafted, unwarranted expenses are incurred to transfer the residential properties or to place the residential properties in a blind or management trust to comply with the Act.

Relevant Provisions

21(1) A Minister breaches this Act if, after the expiration of the relevant period referred to in section 22, the Minister

...

(b) carries on a business

17. Expand the scope of the "direct associate" definition with respect to partners

Issue

The definition of "direct associate" with respect to partners in the Act only applies to a Members' spouse or adult interdependent partner. This definition is too narrow.

Recommendation

The Act should be amended to include as a partner an adult who has lived with the Member in a conjugal relationship for more than one year, similar to the definition of "common law partner" for income tax purposes.

Explanation

A Member's partner is only considered a "direct associate" if that person is the Member's spouse or adult interdependent partner. Under the *Adult Interdependent Relationships Act*, a person is only considered an adult interdependent partner in limited situations, typically after three years of co-habitation.

This definition is too narrow as it excludes many partners who would generally be understood by the public to be a direct associate of a Member. It would be more appropriate for the Act to consider a partner a direct associate after one year of co-habitation, as is the case for a "common law partner" for income tax purposes.

Relevant Provisions

(5) For the purposes of this Act, a person is directly associated with a Member if that person is

(a) the Member's spouse or adult interdependent partner,

18. Remove the blind trust requirement for the Leader of His Majesty's loyal opposition

Issue

The Act requires that the Leader of His Majesty's loyal opposition comply with the same restrictions that are placed on Ministers, including that the requirement that certain assets be held in a blind trust arrangement.

Recommendation

The Act should be amended to remove the requirement that the Leader of His Majesty's loyal opposition have a blind trust for publicly-traded securities.

Explanation

Section 23 of the Act applies the same restrictions that are placed on Ministers to the Leader of His Majesty's loyal opposition. This means that the Opposition Leader cannot own publicly-traded securities unless they are held in a blind trust and cannot engage in employment or carry on business.

There do not seem to be any foreseeable circumstances where requiring the Leader of His Majesty's loyal opposition to have a blind trust is necessary. These provisions are in place as Ministers are privy to significant inside information and can set government policy that can have a significant impact on publicly-traded securities. The Opposition Leader is not in the same position so the cost and inconvenience of a blind trust is not warranted.

No other jurisdiction in Canada places a blind trust requirement on the Opposition Leader.

Relevant Provisions

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

19. Restrictions on holdings that apply to the Premier's Chief of Staff should apply to the Deputy Chief of Staff and any political staff that report directly to the Premier

Issue

With respect to political staff, the Act currently only places restrictions on holdings on the Premier's Chief of Staff, despite others such as the Deputy Chief of Staff having access to the same sensitive information.

Recommendation

The Act should be amended to place the restrictions on holdings that apply to the Premier's Chief of Staff to the Deputy Chief of Staff and any political staff in the Office of the Premier who report directly to the Premier, regardless of their title.

Explanation

The Premier's Deputy Chief of Staff will generally have access to the same sensitive information as the Premier's Chief of Staff. However, only the Premier's Chief of Staff is subject to restrictions on holdings.

Depending on the structure that each individual Premier sets for their office, there may also be other individuals who report directly to the Premier and have access to the same sensitive information and have significant impact on policy making. These individuals are also not subject to restrictions on holdings. Rather than focus on the specific title of the individual employee, the Act should be amended to ensure that any political staff that report directly to the Premier and not to the Chief of Staff are also subject to restrictions on holdings.

Relevant Provisions

Restriction on holdings

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

(2) Subsection (1) does not apply if

(a) the publicly-traded securities are held in a blind trust approved under subsection (4) or in an investment arrangement approved under subsection (5),

(b) prior to the expiration of the relevant period referred to in subsection (7), the Chief of Staff, Office of the Premier, applies to the Ethics Commissioner for approval to retain ownership of or a beneficial interest in the publicly-traded securities and either obtains the Ethics Commissioner's approval or, if the approval is refused, takes any steps that the Ethics Commissioner directs with respect to the disposition of the ownership or beneficial interest, or

(c) after the expiration of the relevant period referred to in subsection (7), the Chief of Staff, Office of the Premier, acquires ownership of or a beneficial interest in publicly-traded securities with the prior approval of the Ethics Commissioner.

(3) The Ethics Commissioner may give an approval

(a) under subsection (2)(b) or (c) if the Ethics Commissioner is of the opinion that the publicly-traded securities are securities of a corporation the interests of which are not likely to be affected by decisions of the Government, or

(b) under subsection (2)(b) if the Ethics Commissioner is of the opinion that the Chief of Staff, Office of the Premier will sustain a financial loss if the publicly-traded securities are disposed of and the public interest does not require disposition of the publicly-traded securities by the Chief of Staff.

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

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

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

20. Amend the Act to ensure that all Investigation Reports become public

Issue

The Act only requires that Investigation Reports relating to Members become public. Investigation Reports relating to political staff, Designated Office Holders and Designated Senior Officials do not become public.

Recommendation

The Act should be amended to ensure that all Investigation Reports become public.

Explanation

At this time, the Ethics Commissioner's Investigation Reports relating to Members are publicly released by the Speaker. However, Investigation Reports relating to others (political staff, Designated Office Holders and Designated Senior Officials) are only disclosed to a limited number of people. While those individuals may choose to release the reports, the Ethics Commissioner is bound by the confidentiality provisions in the Act to not disclose the report. This process fails to promote transparency and public understanding of the work of the Office of the Ethics Commissioner.

The investigation reports into allegations involving Jim Ellis, the former Chief Executive Officer of the Alberta Energy Regulator, provide an example of the difficulty with the current provisions. In that case, the Office of the Ethics Commissioner investigated jointly with the Public Interest Commissioner and the Auditor General.

While the Public Interest Commissioner and the Auditor General's reports were both automatically released publicly, the Ethics Commissioner was only able to comment on her report after the Minister responsible for the Alberta Energy Regulator voluntarily released the Ethics Commissioner's report publicly.

If the Committee does not recommend that all investigation reports be made public, the various provisions regarding the release of Investigation Reports should be amended to improve clarity and better reflect the purpose of the Act. These revisions should include, at a minimum, the following:

1. Language regarding the disclosure of reports by the Ethics Commissioner should be made mandatory. At this time, these provisions indicate that the Ethics Commissioner "may" disclose reports to particular individuals. This language should be change to state that the Ethics Commissioner "shall" release the reports to those individuals;

2. Reports relating to alleged breaches of post-employment restrictions should be disclosed to the current employer of any former Minister or member of the Premier's or Ministers' staff who is subject to an investigation if the allegations relate to conduct undertaken on behalf of the employer. This office has been faced with this situation and was unable to provide the employer with any information at the end of the investigation.

Relevant Provisions

Provisions regarding Investigation Reports relating to Political Staff

Ethics Commissioner's report under this Part

23.81(1) The Ethics Commissioner shall prepare a report regarding the outcome of an investigation under this Part.
(2) Section 27, except subsection (2), applies for the purposes of a report under this Part.
(3) The report may be disclosed

(a) to the individual against whom the allegation was made,

(b) in the case of a report respecting a member or former member of the Premier's and Ministers' staff who holds or held a position in the Premier's Office, to the Premier,

(c) in the case of a report respecting a member or former member of the Premier's and Ministers' staff who holds or held a position in a Minister's office, to that Minister, and

(d) where the Ethics Commissioner believes on reasonable grounds that the disclosure is necessary for the purpose of advising the Minister of Justice and Solicitor General or a law enforcement agency of an alleged offence under this Part or any other enactment of Alberta or an Act of the Parliament of Canada, to the Minister of Justice and Solicitor General or a law enforcement agency.

Provisions regarding Investigation Reports Relating to Designated Office Holders (Public Service Act)

Ethics Commissioner's report

25.54(1) The Ethics Commissioner shall prepare a report regarding the outcome of an investigation under this Part.
[…]
(6) The report referred to in subsection (1) may be disclosed

(a) to the individual against whom an allegation was made,

(b) to the Deputy Minister of Executive Council,

(c) in the case of a report relating to a deputy minister, to the Minister to whom the deputy minister reports,

(d) in the case of a report relating to the Deputy Minister of Executive Council, to the Premier,

(e) in the case of a report relating to a member or person referred to in section 25.2(b), to the deputy minister to whom the member or person reports,

(f) repealed 2017 c20 s5,

(g) in the case of a former designated office holder, to an individual referred to in clauses (c) to (e), as the Ethics Commissioner considers appropriate, and

(h) where the Ethics Commissioner believes on reasonable grounds that the disclosure is necessary for the purpose of advising the Minister of Justice or a law enforcement agency of an alleged offence under this Part or any other enactment of Alberta or an Act of the Parliament of Canada, to the Minister of Justice or a law enforcement agency.

Provisions regarding Investigation Reports relating to Designated Senior Officials

Ethics Commissioner's report

23.95(1) The Ethics Commissioner shall prepare a report regarding the outcome of an investigation under this Part.

[…]

(3) The Ethics Commissioner may disclose the report

(a) to the individual under investigation,

(b) to the person who made the request under section 24(5),

(c) to the responsible Minister,

(d) to the chief executive officer or, if no chief executive officer exists, to the chair, and

(e) where the Ethics Commissioner believes on reasonable grounds that the disclosure is necessary for the purpose of advising the Minister of Justice or a law enforcement agency of an alleged offence under this Part or any other enactment of Alberta or an Act of the Parliament of Canada, to the Minister of Justice or a law enforcement agency.

D. ADMINISTRATIVE CHANGES

1. Clarify the applicability of the FOIP Act to OEC records (high priority)

Issue

Section 26(4) of the Act, stating that the *Freedom of Information and Protection of Privacy Act* does not apply to records of the Office of the Ethics Commissioner, is contained in the part of the Act dealing with investigations which may cause uncertainty about the scope of this section.

Recommendation

Section 26(4) should be moved to Part 7 of the Act, which deal with the general operations of the Office of the Ethics Commissioner.

Explanation

Section 26(4) states that the FOIP Act does not apply to records of the Office of the Ethics Commissioner. However, this section is contained in the part of the Act dealing with investigations. This may cause some confusion about whether section 26(4) applies beyond records created for the purposes of an investigation. The Office always maintained that section 26(4) applies more broadly. However, moving this section to Part 7 of the Act would clarify the scope.

Note Regarding Previous Review

During the previous review of the Act, this Office made substantially the same recommendation as above. In its August 2018 Report, the Standing Committee on Resource Stewardship made the following recommendation:

Recommendation 12: That the Act be amended by moving section 26(4), which deals with investigations, to Part 6 or 7, which deal with the operation of the Office of the Ethics Commissioner.

Relevant Provisions

Confidentiality

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

(2) Allegations and information to which subsection (1) applies may be

(a) disclosed to the individual against whom the allegation was made;

(b) disclosed by a person conducting an investigation to the extent necessary to enable that person to obtain information from another person;

(c) disclosed in a notice or report made by the Ethics Commissioner under this Act;

(d) disclosed to the Minister of Justice or a law enforcement agency where the Ethics Commissioner believes on reasonable grounds that the disclosure is necessary for the purpose of advising the Minister of Justice or a law enforcement agency of an alleged offence under this Act or any other enactment of Alberta or an Act of the Parliament of Canada.

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

(4) The *Freedom of Information and Protection of Privacy Act* does not apply to a record that is created by or for or is in the custody or under the control of the Ethics Commissioner and relates to the exercise of the Ethics Commissioner's functions under this Act or any other enactment.

2. Align records retention requirements

Issue

The Act contains inconsistencies with respect to the record retention requirements within the Office of the Ethics Commissioner. Sections 17 and 23.63 are inconsistent with section 47(2) of the Act.

Recommendation

The record retention requirements should be aligned throughout the Act. It is sufficient for the Office of the Ethics Commissioner to retain all the records listed in these sections for 2 years after the individual has left their role as Member or as a member of the Premier's or Ministers' staff.

Explanation

Sections 17 and 23.63 of the Act requires the Office of the Ethics Commissioner to retain disclosure statements from Members and members of the Premier's and Ministers' staff for a period of 3 years after the person leaves his or her role, after which the records may be destroyed.

Section 47(2) of the Act requires the Ethics Commissioner to retain records of a Member or former political staff member for at least 2 years after the person leaves his or her role, after which the Ethics Commissioner is to immediately destroy the records. Section 47(2)(c) also refers to sections 31(1) and 32.1(1) of the Act, which have been repealed. This Office believes that the intention was for these to be references to section 23.1 and 23.7 of the Act and for the Ethics Commissioner to only retain these records for two years.

These record retention requirements should be updated to be consistent and to correct the references to repealed sections of the Act.

Note Regarding Previous Review

During the previous review of the Act, this Office made substantially the same recommendation as above. In its August 2018 Report, the Standing Committee on Resource Stewardship made the following recommendation:

Recommendation 14: That the Act be amended to align minor records management inconsistencies in the wording of sections 17, 23.63 and 47.

Relevant Provisions

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

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

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

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

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

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

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

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

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

3. Amend the provision regarding travel on non-commercial aircraft

Issue

Section 7.1 of the Act creates some uncertainty about whether a Member may accept a flight on a non-commercial aircraft without first seeking the approval of the Ethics Commissioner.

Recommendation

Section 7.1(2)(b) should be amended by replacing the word “or” with the word “and”.

Explanation

Under section 7.1 of the Act, a Member breaches the Act if the Members accepts an offer of travel on a non-commercial chartered or private aircraft unless:

(a) the travel is required for the performance of the Member’s office;
(b) there are exceptional circumstances warranting the acceptance of the travel, or
(c) the Member receives approval from the Ethics Commissioner before accepting the travel.

Some might argue that if the conditions under subsections (a) and (b) are met to the satisfaction of the Member, the Member may accept the flight and only needs to report it and the material background information to the Ethics Commissioner after the fact. Changing the word “or” to “and” at the end of subsection (b) would clarify that the approval of the Ethics Commissioner is always required.

Note Regarding Previous Review

During the previous review of the Act, this Office made substantially the same recommendation as above. In its August 2018 Report, the Standing Committee on Resource Stewardship made the following recommendation:

Recommendation 7: That the Act be amended in section 7.1(2) to change the word “or” at the end of paragraph (b) to “and” in order to clarify that the approval of the Ethics Commissioner to accept an offer of travel under section 7.1 is always required.

Relevant Provisions

7.1(2) *A Member breaches this Act if the Member accepts an offer of travel on a non-commercial chartered or private aircraft that is connected, directly or indirectly, with the performance of the Member's office, unless*

(a) the travel is required for the performance of the Member's office,

(b) there are exceptional circumstances warranting the acceptance of the travel, or

(c) the member receives approval from the Ethics Commissioner before accepting the travel.

4. Remove the requirement to submit a final Direct Associates report

Issue

Section 15(3) requires former Members to provide a final Direct Associates report within 30 days after ceasing to be a Member, which this Office feels is unnecessary.

Recommendation

Repeal subsection 15(3)(c).

Explanation

Section 15(3) requires former Members to provide a final Direct Associates report within 30 days after ceasing to be a Member. These reporting requirements do not seem to have any purpose. Former Members rarely provide these reports when they leave office and this Office has no practical ability to compel former Members to provide the required return as they are no longer subject to the Act once they cease to be a Member.

Note Regarding Previous Review

During the previous review of the Act, this Office made substantially the same recommendation as above. In its August 2018 Report, the Standing Committee on Resource Stewardship made the following recommendation:

Recommendation 10: That section 15(3) of the Act be amended to remove the requirement of a person who ceases to be a Member to file a final direct associate return.

Relevant Provisions

15(3) *Where a person ceases to be a Member by reason of dissolution of the Legislature or otherwise,*

(a) that person shall, within 30 days after ceasing to be a Member, furnish a return to the Ethics Commissioner showing

(i) the name and address of each person with whom the person became directly associated or with whom that person ceased to be directly associated on or after the date of that person's last return under this section, and

(ii) the date on which the direct association began or terminated, as the case may be,

5. Clarify the deadline by which new public agencies must submit a code of conduct to the Ethics Commissioner for review

Issue

The Act does not provide a deadline by which new public agencies must submit a code of conduct to the Ethics Commissioner for review.

Recommendation

The Act should be amended to require that any new public agencies submit a code of conduct to the Ethics Commissioner for review within four months of being established as a public agency.

Explanation

Section 23.922 of the Act appears to be drafted as a transitional provision, requiring that public agencies submit codes of conduct for review by the Ethics Commissioner within 4 months of that section coming into force. There is no deadline in the Act for new public agencies to submit a code of conduct for review. This makes it difficult to ensure new public agencies have a code of conduct compliant with the Act within a reasonable amount of time.

Arguably, as currently drafted, new public agencies are not even required to submit a code of conduct for review by the Ethics Commissioner, which was almost certainly not the intent of the Legislature at the time this provision was passed.