

1980 BILL 206

Second Session, 19th Legislature, 29 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 206

THE CONFLICT OF INTEREST ACT

MR. R. C. CLARK

First Reading -----

Second Reading -----

Committee of the Whole -----

Third Reading -----

Royal Assent -----

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Bill 206
Mr. R. C. Clark

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THE CONFLICT OF INTEREST ACT

(Assented to , 1980)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

DEFINITIONS

1. In this Act

- (a) "blind trust" means a trust of which the trustee is other than a spouse or child or the settlor and where the settlor or beneficiary has no control over the trust estate during the trust, other than by way of receipt of income;
- (b) "business" includes the carrying on of a profession, trade, occupation, calling, manufacture or undertaking of any kind whatever;
- (c) "executive staff member" means a person appointed by a Minister to serve on his executive staff, whether or not of the status of a Deputy Minister, and who is paid out of public funds, but does not include secretarial or clerical staff;
- (d) "head of a Crown corporation or government agency" means the chief executive officer of any corporation listed in the Schedule;
- (e) "shareholder" means a person holding, directly or beneficially, otherwise than through a blind trust, more than 5% of the issued share capital of a company.

MEMBERS OF THE LEGISLATIVE ASSEMBLY

2. (1) No member of the Legislative Assembly shall

- (a) hold any office of emolument in the gift or disposal of the Government of the Province or under any department thereof except an office where any Act provides that the office is to be or may be held by a member;
- (b) be a person, or be a director, officer or shareholder of a company, holding, undertaking or executing, directly or indirectly, alone or with any other, by himself or by the

Explanatory Notes

1. Definitions.

2. Conflict of interest for members; exceptions.

interposition of a trustee or third party, any contract or agreement with Her Majesty, or with any public office, department or agency with respect to the public service of the Province or under which any public money of the Province is expended for any service or work, matter or thing;

- (c) be a surety for any person referred to in clause (b);
 - (d) hold any permanent office, commission or appointment in the service of the Government of Canada, or any department thereof requiring his full-time services, with a salary or emolument directly or indirectly attached thereto, by whomsoever to be paid or allowed, or howsoever payable;
 - (e) be a commissioner, appraiser or arbitrator to investigate, adjust, settle or determine any claim, matter or difference to which the Government of the Province is a party, or to investigate or inquire into the management of affairs in any public institution in the Province, except in the normal course of his duties as a member of the Legislative Assembly;
 - (f) solicit or accept any fee, gift, gratuity or other benefit which could reasonably be deemed to be liable to influence in any manner his actions as a member;
 - (g) make use in any way, to his personal gain or the gain of others, of his position or of any confidential information which has come to his knowledge in his capacity as a member of the Legislative Assembly during such time as it remains confidential.
- (2) A member who fails to comply with subsection (1) shall be deemed to be in a conflict of interest.
- (3) Nothing in this section applies to any member of the Legislative Assembly by reason of his being
- (a) in receipt of a pension in respect of previous service of the Crown or any loan from the Government of Canada or compensation as a result of an expropriation;
 - (b) a justice of the peace, coroner or notary public;
 - (c) the holder of 5% or less of the issued share capital of a company having a contract or agreement with the Government of the Province;
 - (d) a person who is a surety for a sheriff, registrar or other public officer, or a surety or contractor for the payment of the maintenance of a patient in a treatment centre or hospital;
 - (e) a member of Her Majesty's armed forces;
 - (f) insured under a contract of group life insurance in which all members of the Legislative Assembly may participate and for which the premiums are contributed wholly or in part by the Province; or
 - (g) a person who receives or agrees to receive any money or benefit under any programme established or funded in

whole or in part by the Government or any service, commodity, fee, refund, rebate, loan, guarantee, subsidy or other benefit that is authorized under any Act to be extended to members of the public generally, or to specific classes of the public, if the receipt of the benefit is upon terms common to all persons receiving similar benefits, and if no special benefit or preference not available to other members of the public or of the class of the public to which the Act applies is obtained by him.

MINISTERS

- 3.** (1) No Minister, during the period he holds office, shall
- (a) carry on any business other than as a Minister, except as may be determined by the judge pursuant to section 11 not to be a conflict of interest;
 - (b) solicit or accept any fee, gift, gratuity, or other benefit which could reasonably be deemed to be liable to influence in any manner his actions as a Minister;
 - (c) make use in any way, to his personal gain or the gain of others, of his position or of any confidential information which has come to his knowledge as a Minister of the Crown, during such time as it remains confidential;
 - (d) hold or in any way be involved with any office or position, the duties, responsibilities or interests of which may interfere in any way with his duties, responsibilities and interests as a Minister;
 - (e) make use of his position or the resources available to him as Minister in any way to raise or attempt to raise funds by or for a political party.
- (2) A Minister who fails to comply with subsection (1) shall be deemed to be in a conflict of interest.

EXECUTIVE STAFF MEMBERS

- 4.** (1) No executive staff member shall, during the period he holds office,
- (a) be a person, or be a director, officer or shareholder of a company, holding, undertaking or executing, directly or indirectly, alone or with any other, by himself or by the interposition of a trustee or third party, any contract or agreement with Her Majesty, or with any public office, department or agency with respect to the public service of the Province or under which any public money of the Province is expended for any service or work, matter or thing;
 - (b) be a surety for any person referred to in clause (a);
 - (c) investigate, adjust, settle or determine any claim, matter or difference to which the Government of the Province is a party, or investigate or inquire into the management of affairs of any public institution in the Province, except in the normal course of his duties as an executive staff member;

3. Conflict of interest for Ministers.

4. Conflict of interest for executive staff members.

- (d) carry on business other than as an executive staff member unless he has the prior written approval of his Minister;
 - (e) solicit or accept any fee, gift, gratuity or other benefit which could reasonably be deemed to be liable to influence in any manner his actions as an executive staff member;
 - (f) make use in any way, to his personal gain or the gain of others, of his position or of any confidential information which has come to his knowledge in his capacity as an executive staff member, during such time as it remains confidential; and
 - (g) hold or in any way be involved with any office or position, the duties, responsibilities or interests of which may interfere in any way with his duties, responsibilities and interests as an executive staff member.
- (2) An executive staff member who fails to comply with subsection (1) shall be deemed to be in a conflict of interest.

DEPUTY MINISTERS

5. (1) No Deputy Minister, during the period he holds office, shall

- (a) be a person, or be a director, officer or shareholder of a company, holding or engaging in, undertaking or executing, directly or indirectly, alone or with any other, by himself or by the interdisposition of a trustee or third party, any contract or agreement with Her Majesty, or with any public office, department or agency with respect to the public service of the Province or under which any public money of the Province is expended for any service or work, matter or thing;
- (b) be a surety for any person referred to in clause (a);
- (c) carry on business other than as a Deputy Minister without the prior written approval of his Minister;
- (d) solicit or accept any fee, gift, gratuity or other benefit which could reasonably be deemed to be liable to influence in any manner his actions as a Deputy Minister;
- (e) make use in any way, to his personal gain or the gain of others, of his position or of any confidential information which has come to his knowledge in his capacity as a Deputy Minister, during such time as it remains confidential;
- (f) hold or in any way be involved with any office or position, the duties, responsibilities or interests of which may interfere in any way with his duties, responsibilities and interests as a Deputy Minister.

A Deputy Minister who fails to comply with subsection (1) shall be deemed to be in a conflict of interest.

5. Conflict of interest for Deputy Ministers.

HEADS OF CROWN CORPORATIONS AND GOVERNMENT AGENCIES

6. (1) No person who is a head of a Crown corporation or government agency, during the period he holds such office, shall

- (a) be a person, or be a director, officer or shareholder of a company, holding, undertaking or executing, directly or indirectly, alone or with any other, by himself or by the interposition of a trustee or third party, any contract or agreement with Her Majesty, or with any public office, department or agency with respect to the public service of the Province or under which any public money of the Province is expended for any service or work, matter or thing;
- (b) be a surety for any person referred to in clause (a);
- (c) carry on business other than as a head of a Crown corporation or government agency without the prior written approval of the board of the corporation or agency and the Minister responsible for it;
- (d) solicit or accept any fee, gift, gratuity or other benefit which could reasonably be deemed to be liable to influence in any manner his actions as head of a Crown corporation or government agency;
- (e) make use in any way, to his personal gain or the gain of others, of his position or of any confidential information which has come to his knowledge in his capacity as head of a Crown corporation or government agency, during such time as it remains confidential;
- (f) hold or in any way be involved with any office or position, the duties, responsibilities or interests of which may interfere in any way with his duties, responsibilities and interests as head of a Crown corporation or government agency.

(2) A head of a Crown corporation or government agency who fails to comply with subsection (1) shall be deemed to be in a conflict of interest.

7. Nothing in sections 4, 5 and 6 applies to an executive staff member, a Deputy Minister or a head of a Crown corporation or government agency respectively by reason only of his being

- (a) in receipt of a pension in respect of previous service of the Crown in the right of Alberta or in the right of Canada;
- (b) a person who receives or agrees to receive any money or benefit under any programme established or funded in whole or in part by the Government or any service, commodity, fee, refund, rebate, loan, guarantee, subsidy, or other benefit that is authorized under any Act to be extended to members of the public generally, or to specific classes of the public, if the receipt of the benefit is upon terms common to all persons receiving similar benefits and if no special benefit or preference not available to other members of the public or of the class of the public to which an Act applies is obtained by him.

6. Conflict of interest for heads of Crown corporations and government agencies.

7. Exceptions.

**FORMER MEMBERS OF THE LEGISLATIVE ASSEMBLY,
FORMER MINISTERS, FORMER EXECUTIVE STAFF
MEMBERS, FORMER DEPUTY MINISTERS, AND FORMER
HEADS OF CROWN CORPORATIONS AND GOVERNMENT
AGENCIES**

8. Except as a public official or employee, no former member of the Legislative Assembly, former Minister, former executive staff member, former Deputy Minister or former head of a Crown corporation or government agency shall influence or attempt to influence for compensation, the public agency by which he was employed or which he served, or any of its members, officers or employees in their official duties within a period of 5 years after the termination of his employment or service.

DISCLOSURE

9. (1) Every member of the Legislative Assembly, Minister, executive staff member, Deputy Minister and head of a Crown corporation or government agency shall, prior to taking office under his respective appointment, or if in office immediately prior to the coming into force of this Act, then within 60 days after the coming into force of this Act, disclose under oath in the form prescribed by regulation, to a judge of the Court of Queen's Bench designated by the Lieutenant Governor in Council, all information pertaining to his involvement with or ownership of real and personal property of any nature or kind, and all business and financial involvement of any nature whatsoever, save and except the following:

- (a) the principal residence owned or controlled by any such person;
- (b) private vehicles, boats or aircraft owned or controlled by any such person;
- (c) items of domestic, household or personal use or ownership, including cash, bonds, trust and bank certificates and retirement savings plans; and

(2) The disclosure to be made pursuant to subsection (1) shall also be made on the occasion of any change in the involvement with or ownership of any property, business or financial involvement disclosed, prior to or upon such changes being effected, or in the involvement with or ownership of additional property, or business and financial involvement, subsequent to the making of the disclosure, and in any event once in each year following the original disclosure.

(3) Any person may examine the written disclosure filed with the designated judge upon attending at the prescribed office during regular business hours for such examination.

(4) Upon the application of any person who states under oath that he believes that a person referred to in subsection (1)

- (a) has not disclosed information that is required to be disclosed pursuant to this section and has a conflict of interest; or

8. Position of former M.L.A.s, Ministers, staff members, Deputy Ministers and heads of Crown corporations and agencies.

9. Disclosure.

- (b) has disclosed information that is required to be disclosed pursuant to this section but due to a change in circumstances now has a conflict of interest;

the designated judge shall inquire into the allegation, and in the event he finds that a conflict of interest exists, shall proceed in accordance with sections 11(2) to 11(5).

(5) For the purposes of exercising jurisdiction and of making an order under this Act, the designated judge has all the powers, rights and privileges that are vested in the Court of Queen's Bench with respect to the attendance and examination of witnesses, the production and inspection of documents, the enforcement of orders and all other matters necessary or proper therefor; and may establish such rules of procedure as he considers appropriate.

10. For the purpose of this Act, property transferred by a Member of the Legislative Assembly, a Minister, an executive staff member, a Deputy Minister or a head of a Crown corporation or government agency to his spouse or a child, whether in trust or otherwise, within a period of one year preceding the coming into force of this Act or the taking of office, whichever is later, or at any time thereafter, shall be deemed to be his property during the period it is held by his spouse or his child.

DIVESTITURE

11. (1) Upon the filing of the written disclosures required pursuant to section 9, the designated judge shall forthwith examine them and may inquire into any matter related to the information so disclosed and, upon finding that the person so disclosing is not in breach of any of the provisions of this Act, shall so advise that person of the finding.

(2) Upon finding that a person is in breach or has been in breach of any of the provisions of this Act, the designated judge shall advise him of such finding and direct him to comply with an order as follows:

- (a) in the case of a breach of section 2(1)(a), to relinquish the office;
- (b) in the case of a breach of section 2(1)(a), 4(1)(a), 5(1)(a) or 6(1)(a), to discontinue his association with any contract covered thereby, or if a director or officer of a company to resign such position, or if a shareholder, to divest himself of the shares or to place them in a blind trust;
- (c) in the case of a breach of section 2(1)(c), 4(1)(b), 5(1)(b) or 6(1)(b), to discontinue his association as surety;
- (d) in the case of a breach of section 2(1)(d), to resign from the permanent office, commission or appointment in the service of the Government of Canada;
- (e) in the case of a breach of section 2(1)(e) or 4(1)(c), to resign his position in respect thereof;

10. Transfers to a spouse or child.

11. Divestiture upon judge's order.

- (f) in the case of a breach of section 2(1)(f), 3(1)(c), 4(1)(f), 5(1)(e) or 6(1)(e), to return any gain realized thereby;
- (g) in the case of a breach of section 3(1)(a), 4(1)(d), 5(1)(c) or 6(1)(c), to completely disassociate himself from the other business;
- (h) in the case of a breach of section 2(1)(g), 3(1)(b), 4(1)(e), 5(1)(d) or 6(1)(d), to return any fee, gift, gratuity or other benefit, or its equivalent in money if it is unable to be returned in specie;
- (i) in the case of a breach of section 3(1)(d), 4(1)(g), 5(1)(f) or 6(1)(f), to resign the interfering office or position described;
- (j) in the case of a breach of section 8, to discontinue such activity.

(3) The finding of the designated judge under subsection (1) and the satisfaction of any order made by the designated judge pursuant to subsection (2) is prima facie proof of compliance with this Act.

(4) A person to whom an order has been directed by the designated judge to deal with involvement with any of the conflict of interest items contemplated under this Act shall, prior to his accepting or continuing his position, satisfy the designated judge that the order has been complied with by such date as the designated judge shall specify in the order.

(5) A finding or order of the designated judge may be appealed to the Court of Appeal by any person within 30 days of the making of the finding or order, and the court may confirm, vacate or vary the order and make such order as to costs as it considers appropriate.

(6) Every finding and order made pursuant to this section shall be kept on record at a place and in the manner prescribed by the judge and shall be available for examination during regular business hours by any person.

12. In addition to advising a person of a finding pursuant to section 11(1) or making an order pursuant to section 11(2), the designated judge may advise such person of any situation disclosed that in his opinion is a potential conflict of interest.

ENFORCEMENT

13. In the event that a person does not comply with section 9(1) or 9(2), or who does not comply with an order of the designated judge pursuant to the provisions of section 11(2), that person commits an offence and is liable upon summary conviction to a fine of up to \$10 000, or to imprisonment for a term of not more than one year, or to both a fine and imprisonment.

12. Judge's opinion on potential conflict of interest.

13. Enforcement, offences and penalties.

14. The Lieutenant Governor in Council may make regulations

- (a) prescribing forms as may be required for the carrying out of the provisions of this Act;
- (b) prescribing offices pursuant to sections 9(3) and 11(6); and
- (c) adding Crown corporations to the Schedule.

CONSEQUENTIAL

15. (1) *This section amends the Legislative Assembly Act.*

(2) *Sections 10, 11, and 12 are repealed.*

16. This Act comes into force on a date to be fixed by Proclamation.

14. Regulations.

15. Consequential amendments to repeal the conflict of interest sections of The Legislative Assembly Act.

SCHEDULE

Alberta Agriculture Development Corporation
Alberta Educational Communications Corporation
Alberta Energy Company
Alberta Government Telephones
Alberta Hail and Crop Insurance Corporation
Alberta Housing Corporation
Alberta Municipal Financing Corporation
Alberta Oil Sands Technology and Research Council
Alberta Opportunity Company
Alberta Resources Railway Corporation
Pacific Western Airlines