

1990 BILL 284

Second Session, 22nd Legislature, 39 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 284

CODE OF ETHICS AND CONDUCT ACT

MR. MARTIN

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 284
Mr. Martin

BILL 284

1990

CODE OF ETHICS AND CONDUCT ACT

(Assented to , 1990)

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

Definitions

1(1) In this Act,

(a) "asset" means any property of value, including land or any interest in land, personal or intellectual property, shares in a corporation, interest in a business, a security or an interest in a security or a directorship in a company doing business in Alberta, but does not include

(i) a residence actually used as such by a person or his spouse,

(ii) a part of a farm or business premises which are actually used as a residence by a person or his spouse,

(iii) a recreational home used principally by a person or his spouse,

(iv) personal household effects or other property, including the normal physical contents of a residence or recreational home used for ordinary living and enjoyment by a person or his family including vehicles, boats or aircraft,

(v) cash and bank or savings accounts,

(vi) bonds or securities of any level of government in Canada or of an agency of any such government,

- (vii) a registered retirement savings plan,
 - (viii) a registered home ownership savings plan,
 - (ix) land or any interest therein or physical personal property located outside Alberta,
 - (x) an interest or directorship in a corporation doing business only outside Alberta,
 - (xi) a security given by a corporation doing business only outside Alberta or given on assets located outside Alberta,
 - (xii) an insurance policy or benefit, or
 - (xiii) a pension, annuity or interest therein;
- (b) "associate" means
- (i) family,
 - (ii) a corporation in which the public official holds
 - (A) the position of director or senior official, or
 - (B) 0.5% or more of the equity;
 - (iii) a partnership in which the public official holds an interest of 0.5% or more,
 - (iv) a person whom the public official has held out to the community to be a business partner or for whom the official acts as agent;
- (c) "business" means a profession, trade, occupation or undertaking of any kind whatever and includes an office or employment;
- (d) "conflict of interest" means a situation where an individual's private interests conflicts with his public duty;
- "real conflict of interest" means a situation in which a person has a pecuniary interest that is sufficient to influence the exercise of his public duties and responsibilities; and
- "apparent conflict of interest" means a situation in which there are grounds which would cause a reasonable person to believe a real conflict of interest exists.

(e) "pecuniary interest" includes an actual or expected benefit, profit or enhancement of an asset or a payment, fee, commission or other compensation paid or payable for representing the interests of any person, corporation, partnership or organization;

(f) "family" means a spouse, sibling or parent, or any dependent relative living with a person;

(g) "spouse" means

(i) a person who is married and not judicially separated, or

(ii) if there is no one to whom subclause (i) applies, a person who

(A) lived with the other person

(I) for the two year period immediately preceding, or

(II) for the one year period immediately preceding, if there is a child born to that person and the other person, and

(B) was, during that period, held out by the other person in the community in which they lived as his consort.

(h) "executive staff member" means a deputy minister, assistant deputy minister or a person appointed by a Minister to serve on his executive staff, and who is paid out of public funds, but does not include secretarial or clerical staff;

(i) "senior officer" means, with reference to a Provincial agency,

(i) the president, vice-president, secretary, comptroller, treasurer or general manager of the agency, or

(ii) any other person, including a full-time chairman, who performs functions for the agency similar to those normally performed by persons holding the offices referred to in subclause (i).

(j) "shareholder" means a person holding directly or beneficially any amount of the issued share capital of a company;

(k) "lobbyist" means any individual who, for a fee or other benefit, undertakes to meet or communicate with a public official, in an attempt to influence

- (i) the development of a legislative proposal;
- (ii) the introduction, passage, defeat or amendment of a bill or resolution of the Assembly;
- (iii) the making or amending of any regulation;
- (iv) the development or amendment of any policy or program of the Government;
- (v) the awarding of any monetary grant, contribution, guarantee, loan or other financial benefit by the Government;
- (vi) the awarding of any contract by the Government

and "lobby" has a corresponding meaning;

(l) "divest" means to dispose of all interest in an asset;

(m) "withdraw" means to declare a pecuniary interest and withdraw from participating in discussion, voting, attempting to influence, or in any other way affect the exercise of a public duty or responsibility where a conflict of interest might exist.

(n) "public official" means a Member or officer of the Legislative Assembly or of the Legislature, an executive staff member, or a senior officer of a Provincial agency.

(o) "Member" means a Member of the Legislative Assembly.

Associates
interests

2 For the purpose of this Act, a pecuniary interest of an associate of that public official is deemed to be a pecuniary interest of that public official.

CONFLICT OF INTEREST

Payment to act

3 No public official shall request or accept a payment or other benefit for carrying out a function which is part of his public duties other than the remuneration and benefits accruing to his position.

Influence

4(1) No public official shall use his position to influence any decision in which he has a pecuniary interest.

(2) No public official shall take part in any decision or course of action which might affect his pecuniary interest.

(3) Where in the exercise of his public duty, there arises a matter in which a public official may have a conflict of interest, he shall disclose the general nature of the conflict and immediately withdraw.

(4) No public official shall use, for personal gain or the gain of any other person, information which is not available to the public and which he acquires in the exercise of his official duty.

(5) No public official shall, directly or indirectly, himself or through another, communicate with another person for the purpose of influencing any decision that person has the power to make, that could affect the public official's pecuniary interest.

Other employment 5 No Member or officer of the Legislative Assembly may take any other employment or hold any other office other than as authorized by or pursuant to any Act,

(a) which is performed in such a way as to appear to be an official act, or to directly represent the Legislative Assembly or the Government of Alberta; or

(b) which unduly interferes with his responsibilities as a Member or officer;

Ministers'activities 6 No Minister may carry on any business outside his office, except a family farm.

Other officials' activities 7 No executive staff member or head of a Provincial agency shall

(a) carry on any business outside his office or employment, except a family farm;

(b) be a person, or be a director, officer or shareholder of a corporation, or hold an interest in a partnership, if that corporation or partnership holds or is engaged in any contract or agreement with the Crown under which any public money of the Province is expended for any service or work, matter or thing, other than the contract under which he holds his position.

Officer in conflict 8 A public official who fails to comply with section 3 to 7 is in a conflict of interest.

9 The provisions of this Act are supplementary to and do not affect the provisions of the *Legislative Assembly Act*.

EMPLOYMENT FOLLOWING PUBLIC OFFICE

10(1) Every public official shall

(a) disclose to the Minister to whom his office is responsible all serious offers of positions outside Government service which would put him in a position of conflict of interest;

(b) disclose to the Minister any job offer under serious consideration that has been received and which has a commercial orientation in the private sector and is from an organization with which he has had official dealings.

(2) In seeking or negotiating a position outside Government service every executive staff member shall ensure that such endeavours do not interfere with his official duties or place him in real or apparent conflict of interest.

(3) In this section,

(a) in the case of a member of the Executive Council, "Minister" means the Premier, and

(b) in the case of a Member who is not a member of the Executive Council, "Minister" means the Speaker.

11(1) For a period of 4 years following holding office, no person who has been a public official shall,

(a) be appointed to any disqualifying office listed in the Schedule to the *Legislative Assembly Act*;

(b) accept a directorship of a corporation which was in a special relationship with the department or Provincial agency with which he was last employed or held office, whereby the corporation was subject to regulation by the department or Provincial agency, or received subsidies, loans or other financial assistance from funds administered by the department or Provincial agency,

(c) act for or on behalf of any person, as counsel, agent, advisor, consultant or by any other such means, with whom he had a personal and substantial involvement on behalf of a department or Provincial agency; or

(d) lobby on behalf of any person before any department or Provincial agency with which he was employed or in which he held office during the period of 4 years prior to the termination of his employment or office.

(2) No Member shall accept a directorship of or employment with a corporation, or in any way act for on or behalf of a corporation, if

(a) that corporation was created by a Private Act; and

(b) the Member was a member of the Standing Committee of the Legislative Assembly on Private Bills at any time during the Committee's consideration of the Bill for the Act which created the corporation,

for a period of 4 years following the commencement of the Act creating the corporation.

(3) Subsections (1) and (2) do not apply to a company, fund or other organization that is formed for charitable purposes and operates on a non-profit basis.

(4) No public official shall, within a period of 2 years following employment or holding office,

(a) accept employment with a person with whom he had significant direct official dealings during the last 12 months of his employment or office;

(b) act for or on behalf of any person as counsel, agent, advisor, consultant or by any other such means in connection with any proceeding, transaction, cause or other matter which came under authority of his department or Provincial agency during the last 12 months of his employment or office; or

(c) give advice on the programs or policies of the department or agency with which he was employed or with which he had a direct, substantial relationship during the 12 month period prior to the termination of his employment, where the advice may be used for commercial purposes.

Former officials

12(1) No former public official shall be appointed to a position in the public service of Alberta

(a) within 2 years of leaving office; or

(b) after the expiry of 2 years after leaving office unless the position has been publicly advertised and open to public competition.

(2) When a former public official is appointed to a position in the public service of Alberta pursuant to subsection (1)(b), the appointment shall be confirmed by order of the Lieutenant Governor in Council which shall include a certificate that proper and full consideration of all other qualified applicants was undertaken.

Public money

13(1) Subject to the Legislative Assembly Act with respect to a Member, no public official may accept a payment of public money except the remuneration and benefits provided for the office or position.

(2) Subsection (1) does not apply to a payment of public money where

(a) the official was, according to the enactment authorizing the payment, entitled to the payment as a matter of right or subject only to compliance with the requirements of that enactment that are conditions precedent to the payment, or

(b) the official receiving the payment

(i) was, according to the enactment under which the payment was authorized, eligible to apply for the payment and complied with the requirements of that enactment that were conditions precedent to the payment,

(ii) in respect of the application was given no preference not available to others, and

(iii) received no special benefit in relation to the application for payment.

PUBLIC DISCLOSURE

Commissioner

14(1) There shall be appointed, as an officer of the Legislature, a Commissioner for monitoring ethics in government called the Conflict of Interest Commissioner.

(2) The Lieutenant Governor in Council shall appoint the Commissioner on the recommendation of the Legislative Assembly.

(3) The Commissioner may not be a member of the Legislative Assembly and shall not hold any office of trust or profit, other

than his office as Commissioner, or engage in any occupation for reward outside the duties of his office.

(4) The Commissioner must be a Canadian citizen.

(5) Unless his office sooner becomes vacant, a person appointed as Commissioner holds office for 5 years

(a) from the date of his appointment under subsection (2), or

(b) from the date of his appointment under subsection (12) is confirmed

and continues to hold office after the expiry of his term of office until he is reappointed, his successor is appointed, or for a period of 6 months has expired, whichever occurs first.

(6) The Commissioner may at any time resign his office by writing addressed to the Speaker of the Legislative Assembly or, if there is no Speaker or if the Speaker is absent from Alberta, to the Clerk of the Legislative Assembly.

(7) On the recommendation of the Legislative Assembly, the Lieutenant Governor in Council may, at any time, suspend or remove the Commissioner from his office for disability, neglect of duty, misconduct or bankruptcy.

(8) At any time the Legislature is not in session the Lieutenant Governor in Council, on the recommendation of the Select Standing Committee of the Legislative Assembly on Legislative offices, may suspend the Commissioner from office for disability, neglect of duty, misconduct or bankruptcy, but the suspension shall not continue in force beyond the end of the next ensuing session of the Legislature.

(9) If the Commissioner dies, retires, resigns or is removed from office, the vacancy created shall be filled in accordance with this section.

(10) If a vacancy occurs while the Legislature is in session, but no recommendation is made by the Legislative Assembly before the close of that session, subsection (11) applies as if the vacancy had occurred while the Legislature was not in session.

(11) If a vacancy occurs while the Legislature is not in session, the Lieutenant Governor in Council, of the recommendation of the Select Standing Committee, may appoint a Commissioner to fill the vacancy and unless his office sooner becomes vacant, the

person so appointed holds office until his appointment is confirmed by the Legislative Assembly.

(12) If an appointment under subsection (3) is not confirmed within 30 days after the commencement of the next ensuing regular session, the appointment lapses and there shall be deemed to be another vacancy in the office of the Commissioner.

(13) The Commissioner shall be paid a salary at a rate set by the Select Standing Committee and the Select Standing Committee shall review that salary rate at least once a year.

(14) The Commissioner shall receive similar benefits to those provided to a deputy minister.

(15) Before entering on his duties, the Commissioner shall take an oath that he will faithfully and impartially perform the duties of his office.

(16) The oath shall be administered by the Speaker of the Legislative Assembly or by the Clerk of the Legislative Assembly.

Office of the
Commissioner

15(1) There shall be an office called the Office of the Commissioner consisting of the Commissioner and the employees appointed pursuant to the Public Service Act to assist the Commissioner in the efficient carrying out of his functions under this Act.

(2) On the recommendation of the Commissioner, the Select Standing Committee may order that

(a) any regulation, order or directive made under the *Financial Administration Act*; or

(b) any regulation, order, directive, rule, procedure, direction, allocation, designation or other decision under the *Public Service Act*,

be inapplicable to, or be varied in respect of, the Office of the Commissioner or any particular employee or class of employees in the Office of the Commissioner.

(3) An order made under subsection (2)(a) in relation to a regulation, order or directive made under the *Financial Administration Act* operates notwithstanding that Act.

(4) The *Regulations Act* does not apply to orders made under subsection (2).

(5) The chairman of the Select Standing Committee shall lay a copy of each order made under subsection (2) before the Assembly if it is then sitting or, if it is not then sitting, within 15 days after the commencement of the next sitting.

(6) Every person holding an office or appointment under the Commissioner shall, before he begins to perform his duties under this Act, take an oath, to be administered by the Commissioner, that he will not divulge any information received by him under this Act except for the purpose of giving effect to this Act.

(7) The *Financial Administration Act*, and the *Public Service Act* apply to the Office of the Commissioner in the same way as they apply to the Ombudsman.

(8) The Commissioner shall submit annually to the Select Standing Committee in respect of each fiscal year an estimate of the sum that will be required to be provided by the Legislature to defray the several charges and expenses of the Office of the Commissioner in that fiscal year.

(9) The Select Standing Committee shall review each estimate submitted pursuant to subsection (8) and, on completion of the review, the chairman of the Committee shall transmit the estimate to the Provincial Treasurer for presentation to the Assembly.

(10) If at any time the Legislative Assembly is not in session the Select Standing Committee on Legislative Offices, or if there is no Select Standing Committee, the Provincial Treasurer,

(a) reports that the Commissioner has certified that in the public interest an expenditure of public money is urgently required in respect of any matter pertaining to his office; and

(b) reports that either

(i) there is no supply vote under which an expenditure with respect to that matter may be made, or

(ii) there is a supply vote under which an expenditure with respect to that matter may be made but the authority available under the supply vote is insufficient,

the Lieutenant Governor in Council may order a special warrant to be prepared to be signed by himself authorizing the expenditure of the amount estimated to be required.

(11) When the Legislative Assembly is adjourned for a period of more than 14 days, then, for the purposes of subsection (8), the

Assembly shall be deemed not to be in session during the period of the adjournment.

(12) When a special warrant is prepared and signed under subsection (10) on the basis of a report referred to in subsection (10)(b)(i), the authority to spend the amount of money specified in the special warrant for the purpose specified in the special warrant is deemed to be a supply vote for the purposes of the *Financial Administration Act* for the fiscal year in which the special warrant is signed.

(13) When a special warrant is prepared and signed under subsection (10) on the basis of a report referred to in subsection (10)(b)(ii), the authority to spend the amount of money specified in the special warrant is, for the purposes of the *Financial Administration Act*, added to and deemed to be part of the supply vote to which the report relates.

(14) When a special warrant has been prepared and signed pursuant to this section, the amounts authorized by it are deemed to be included in, and not to be in addition to, the amounts authorized by the Act, not being an Act for interim supply, enacted next after it for granting to Her Majesty sums of money to defray certain expenditures of the Public Service of Alberta.

Duties

16 It is the function and duty of the Commissioner to

- (a) administer this Act;
- (b) administer a system of public disclosure for public officials and order divestment when he considers it necessary as provided in this Act;
- (c) order officials to withdraw when he considers it necessary, and to establish a Withdrawal Registry;
- (d) enable public access to information held by the Withdrawal Registry;
- (e) provide public officials with information, education and consultation on the requirements of this Act;
- (f) rule on questions that arise about compliance;
- (g) undertake investigations to ensure that compliance is achieved;
- (h) investigate complaints of non-compliance or conflict of interest;

(i) commence proceedings in the Court of Queen's Bench when he believes an offence has been committed.

Disclosure;
divesting;
withdrawal

17(1) Every public official shall, within 60 days of taking office, and within 30 days of any change, make full public disclosure to the Commissioner of

(a) his assets, by source, type, and purchase price or estimated value; and

(b) all positions held on or before the date of filing during the current calendar year as an officer, director, trustee, partner, proprietor, representative, employee or consultant of any corporation, company, firm, partnership or other business enterprise, non-profit organization, labour organization, educational or other institution, but not including a religious, charitable or political entity or positions solely of an honorary nature.

(2) The disclosure shall be filed with the Commissioner and, excepting the purchase price or estimated range of value of the asset, shall become a public record.

(3) The Commissioner shall determine whether or not any of the assets owned might place him in a real or apparent conflict of interest position while he carries out his public duties.

(4) The Commissioner may order the official to divest himself of any asset where he considers a conflict of interest would be difficult to avoid.

(5) The Commissioner may order the official to withdraw from any issue which affects or could affect any of the official's assets specified by the Commissioner.

(6) An order to withdraw or divest shall be filed in the Withdrawal Registry.

(7) A divestment or withdrawal does not excuse the official from the obligation to withdraw from decision making when a real or apparent conflict of interest arises.

Spouse

18(1) The spouse of a public official shall, within 60 days of the official taking office and subsequently within 30 days of any change, make full public disclosure of all assets.

(2) The Commissioner has the same powers with respect to a spouse as he holds in respect of a public official.

(3) If the Commissioner considers that a spouse's interests are essentially economically independent from those of the public official, he may decide not to require divestment.

Complaint **19** The Commissioner shall investigate any written complaint filed with him by an elector that shows details of an alleged violation of this Act by a public official.

Record closed **20** When the Commissioner, either of his own accord or in response to a complaint begins an investigation, every record relating to disclosures by the official being investigated shall cease to be public until the investigation is concluded or abandoned.

Court **21** If the Commissioner determines that an official is in a conflict of interest position or that any other violation of this Act has occurred, he shall refer the matter immediately to the Court of Queen's Bench by commencing proceedings against the official for a violation of this Act, in that Court.

Offences; penalties **22** Any person who violates a provision of this Act is guilty of an offence, and liable on summary conviction to be removed from public office and remain ineligible for appointment or election to any office or position of public official for up to 7 years and to be declared ineligible to be a member of the Legislative Assembly for up to 7 years, or to a fine of up to \$10 000 or to both ineligibility and fine.

Regulations **23** The Lieutenant Governor in Council may make regulations to provide for forms and for the administration of this Act.

Consequential
c.A-19, 1980 **24(1)** *The Alberta Energy Company Act is amended by this section.*

(2) Section 31 is repealed.

Consequential
c.L-10.1, 1983 **25(1)** *The Election Act is amended by this section.*

(2) The following is added after section 52.2:

52.3 A person is prohibited from being nominated as a candidate in an election if

(a) he has been declared ineligible to be a Member of the Legislative Assembly under section 22 of the *Code of Ethics and Conduct Act*, and

(b) the period of ineligibility has not expired before nomination day.