

1998 BILL 2

Second Session, 24th Legislature, 46 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 2

CONFLICTS OF INTEREST AMENDMENT ACT, 1998

THE MINISTER OF JUSTICE AND ATTORNEY GENERAL

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 2

1998

CONFLICTS OF INTEREST AMENDMENT ACT, 1998

(Assented to _____, 1998)

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

Amends SA
1991 cC-22.1

1 The *Conflicts of Interest Act* is amended by this Act.

2 The following Preamble is added before the enacting clause:

Preamble

WHEREAS the ethical conduct of elected officials is expected in democracies;

WHEREAS Members of the Legislative Assembly are expected to perform their duties of office and arrange their private affairs in a manner that promotes public confidence and trust in the integrity of each Member, that maintains the Assembly's dignity and that justifies the respect in which society holds the Assembly and its Members; and

WHEREAS Members of the Legislative Assembly, in reconciling their duties of office and their private interests, are expected to act with integrity and impartiality:

3 The enacting clause is amended by adding "THEREFORE" before "HER MAJESTY".

4 Section 1 is amended

(a) in subsection (7)(c)(iii) by adding “, shares or units in a mutual fund, futures and forward contracts or exchange contracts” after “publicly-traded securities”;

Explanatory Notes

1 Amends chapter C-22.1 of the Statutes of Alberta, 1991.

2 Preamble.

3 Consequential to addition of preamble.

4 Section 1(7)(c)(iii) and (iv) presently read:

(7) For the purposes of this Act, a trust is a “blind trust” if it meets the following criteria:

(c) the terms of the trust, in the opinion of the Ethics Commissioner,

(b) in subsection (7)(c)(iv) by adding “, in shares or units in a mutual fund, in futures and forward contracts, in exchange contracts” after “publicly-traded securities”.

5 Section 2 is amended

(a) in subsection (2) by adding “, if present at the meeting,” after “the Member must”;

(b) by adding the following after subsection (4):

(5) In the case of a meeting of the Legislative Assembly or a committee of it, where a Member has complied with subsection (2), the Clerk of the Legislative Assembly or the secretary of the meeting shall file with the Ethics Commissioner, as soon as practicable, a copy of the deliberations and proceedings, as recorded in Alberta Hansard, of the meeting from which the Member withdrew.

(6) In the case of a meeting of the Executive Council or a committee of it, where a Member has complied with subsection (2), the secretary of the meeting shall record

(a) the declaration,

**(b) the general nature of the private interest declared,
and**

(c) the withdrawal of the Member from the meeting.

(7) The secretary of the meeting shall file the information recorded under subsection (6) with the Ethics Commissioner as soon as practicable after the meeting.

(8) Information filed with the Ethics Commissioner under subsection (7) is confidential and may not be disclosed or inspected, but the information may be inspected and used by the Ethics Commissioner if the information is likely to be material in determining whether or not a Member has breached this Act.

(9) If no record was kept of who was present at a meeting at the time a matter for decision arose in which a Member, a Member’s minor child or a person directly associated with a Member had a private interest, no inference that the Member was present at the meeting at the time the matter arose can be made for the purposes of determining whether there was a breach under subsection (2).

- (iii) *require that the Member may deposit in the trust only securities verified by the Ethics Commissioner as being publicly-traded securities, and*
- (iv) *require the trustee to invest only in publicly-traded securities or in certificates of deposit, deposit receipts or other evidence of indebtedness given by a bank, trust company, credit union or treasury branch in consideration of a deposit made with the bank, trust company, credit union or treasury branch.*

5 Section 2 presently reads:

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 or the Member's minor child.

(2) Where a matter for decision in which a Member has reasonable grounds to believe that the Member, the Member's minor child or a person directly associated with the Member has a private interest is before a meeting of the Executive Council or a committee of the Executive Council or the Legislative Assembly or a committee appointed by resolution of the Legislative Assembly, the Member must declare that interest and must withdraw from the meeting without voting on or participating in the consideration of the matter.

(3) A Member who fails to comply with subsection (2) breaches this Act.

(4) If a matter referred to in subsection (1) requires a decision of a Minister, the Minister may request another Minister to act in the Minister's stead in connection with the decision and the Minister to whom it is referred may act in the matter for the period of time necessary.

6 Section 8(3) is repealed and the following is substituted:

(2.1) Where a contract to which the Crown is also a party, other than a contract referred to in subsection (1)(a) to (e), is entered into in which a Member or a person directly associated with a Member is a party but did not receive a preference from the Crown or a benefit under the contract not available to other members of the public under contracts of the same class, the Minister responsible for the Department or the agency or other body of the Crown that awarded the contract

- (a) must advise the Ethics Commissioner of the contract, and
- (b) must provide to the Ethics Commissioner a statutory declaration setting out
 - (i) the procedure used for awarding the contract, and
 - (ii) that the Member or the person directly associated with a Member did not receive a preference from the Crown or a benefit under the contract not available to other members of the public under contracts of the same class.

(3) A Member does not breach subsection (1) in respect of a renewal of a contract to which subsection (1) would otherwise apply if

- (a) at the time of becoming a Member, the Member or the person directly associated with the Member was a party to the contract,
- (b) the contract is to be renewed according to the provisions of the contract, and
- (c) the Ethics Commissioner, before the renewal is made by the Member or the person directly associated with the Member, gives an opinion that
 - (i) the provisions of the renewal are fair and reasonable in the circumstances, having regard to the provisions of the existing contract,
 - (ii) the renewal will be effected in accordance with the provisions of the contract pertaining to its renewal, and

6 Section 8 presently reads:

8(1) A Member breaches this Act if, while being a Member, the Member or a person directly associated with the Member becomes a party to a contract within any of the following classes:

- (a) a contract under which the Member or the person directly associated with the Member borrows money from a treasury branch;*
- (b) a contract under which the Member or the person directly associated with the Member conveys or agrees to convey to the Crown any interest in land otherwise than
 - (i) by consenting to the acquisition by the Crown of the interest under section 30 of the Expropriation Act and executing a conveyance under that section, or*
 - (ii) with the approval of the Ethics Commissioner on certification that the consideration for the conveyance is fair and reasonable;**
- (c) a contract to which the Crown is also a party and that is for the construction, demolition, alteration or repair of a public work;*
- (d) a contract under which the Agriculture Financial Services Corporation lends money to, or guarantees a debt of, the Member or the person directly associated with the Member;*
- (e) a contract under which the Alberta Opportunity Company lends money to, or guarantees a debt of, the Member or the person directly associated with the Member;*
- (f) a contract to which the Crown is also a party, other than a contract referred to in clauses (a) to (e), if the Member or the person directly associated with the Member receives a preference from the Crown on entering into the contract or receives a benefit under the contract not available to other members of the public under contracts of the same class.*

(2) Subsection (1)(f) does not prevent a Member or a person directly associated with the Member from becoming a party to a contract with the Crown if the contract provides for a payment or benefit permitted under section 9(2)(a), (b) or (c).

- (iii) the Member or the person directly associated with the Member has not received any preference from the Crown in relation to the renewal and will not receive a benefit under the renewal not available to other members of the public under a contract of the same class.

7 Section 12 is amended

(a) by repealing clause (a) and substituting the following:

- (a) shall include a statement, as of a date determined by the Ethics Commissioner, of the assets, liabilities and financial interests of the Member, of any private corporation controlled by the Member and of any private corporation controlled by a combination of the Member and the Member's spouse or minor children, but not including investments in a blind trust,
- (a.1) shall include a statement, as of a date determined by the Ethics Commissioner, of the assets, liabilities and financial interests of the Member's spouse and minor children and of any private corporation controlled by the Member's spouse, minor children or any combination of them, so far as known to the

(3) A Member does not breach subsection (1) in respect of a renewal or renegotiation of a contract to which that subsection would otherwise apply if

- (a) at the time of becoming a Member, the Member or the person directly associated with the Member was a party to the contract,*
- (b) the contract is to be renewed according to the provisions of the contract or is to be renegotiated,*
- (c) the contract is not within any of the classes mentioned in subsection (1)(a) to (e), and*
- (d) the Ethics Commissioner, before the renewal is made or the replacement contract is executed by the Member or the person directly associated with the Member, gives an opinion that*
 - (i) the provisions of the renewal or the replacement contract are fair and reasonable in the circumstances, having regard to the provisions of the existing contract or previous contract,*
 - (ii) in the case of a renewal, the renewal will be effected in accordance with the provisions of the contract pertaining to its renewal, and*
 - (iii) the Member or the person directly associated with the Member has not received any preference from the Crown in relation to the renewal or in negotiating the replacement contract and will not receive a benefit under the renewal or replacement contract not available to other members of the public under a contract of the same class.*

7 Section 12 presently reads:

12 A disclosure statement

- (a) shall include a statement, as of a date determined by the Ethics Commissioner, of the assets, liabilities and financial interests of the Member and, so far as known to the Member, of*
 - (i) the Member's spouse and minor children, and*
 - (ii) any private corporation controlled by the Member and the Member's spouse and minor children, or any one or more of them,**but not including investments in a blind trust,*
- (b) need not include obligations being incurred for ordinary living expenses that will be discharged in the ordinary course of the Member's affairs,*

Member after the Member has requested information from the Member's spouse,

(b) by repealing clause (c) and substituting the following:

(c) shall include a statement

(i) of the income that the Member and persons referred to in clause (a), and

(ii) of the income that, so far as known to the Member after the Member has requested information from the Member's spouse, any other person mentioned in clause (a.1)

have received in the preceding 12 months or expect to receive in the next 12 months and, to the extent required by the Ethics Commissioner, of the sources of the income, and

8 Section 14(4)(e) is amended by adding “, except property taxes under the *Municipal Government Act* and taxes under the *School Act*” after “taxes”.

9 Section 16(4) is amended by adding the following after clause (j):

(j.1) payments of salary, expenses and benefits, including pension benefits, paid to persons who are directly associated with the Member, but the report must indicate that payments were received by those persons,

- (c) *shall include a statement of the income that the Member and, so far as known to the Member, any other person mentioned in clause (a), has received in the preceding 12 months or expects to receive in the next 12 months and, to the extent required by the Ethics Commissioner, the sources of the income, and*
- (d) *shall include a list of all fees, gifts and benefits approved for retention under section 7(2)(b).*

8 Section 14(4) presently reads:

(4) The following shall be excluded from a public disclosure statement unless the Ethics Commissioner is of the opinion that disclosure of the asset, liability, financial interest, source of income or information is likely to be material to the determination of whether or not a Member is or is likely to be in breach of this Act:

- (a) assets, liabilities or interests having a value of less than \$1000;*
- (b) a source of income of less than \$1000 per year;*
- (c) information identifying a home or recreational property occupied by the Member or one of the Member's family;*
- (d) things used personally by a Member or one of the Member's family;*
- (e) unpaid taxes;*
- (f) support obligations.*

9 Exclusion from Provincial Treasurer's report. Section 16(4) presently reads:

- (4) A report prepared under subsection (1) shall not include*
 - (a) payments made to or on behalf of the Member pursuant to Part 3 or 4 of the Legislative Assembly Act,*

10 The following is added after section 18:

Reimburse-
ment for costs

18.1(1) Members are entitled to be reimbursed for costs associated with the completion of their disclosure statements and the establishment and administration of their blind trusts.

(2) The amount of the reimbursement is subject to the approval of the Ethics Commissioner.

11 The heading to Part 4 is amended by adding “AND LEADER OF HER MAJESTY’S LOYAL OPPOSITION” after “COUNCIL”.

12 The following is added after section 21:

Leader of the
opposition

21.1(1) Sections 19, 20 and 21(2) apply, with the necessary modifications, to the Leader of Her Majesty’s loyal opposition.

(2) For the purposes of sections 19(1) and 20(1) as they apply to the Leader of Her Majesty’s loyal opposition,

- (b) *payments required to be included in a report under section 43 of the Legislative Assembly Act,*
- (c) *payments of benefits under the Alberta Health Care Insurance Act,*
- (d) *payments of social allowances or handicap benefits under the Social Development Act,*
- (e) *payments of handicap benefits under the Assured Income for the Severely Handicapped Act,*
- (f) *payments under the Seniors Benefit Act,*
- (g) *pensions under the Widows' Pension Act,*
- (h) *compensation paid under the Workers' Compensation Act or Blind Workers' Compensation Act,*
- (i) *payments made by way of student financial assistance under the Students Finance Act,*
- (j) *senior citizen renter assistance grants under the Property Tax Reduction Act,*
- (k) *payments made by way of refunds, or*
- (l) *any other class of payments by the Crown if the disclosure in the report of the identity of the recipients would contravene any law in force in Alberta that contains confidentiality requirements in respect of that class of payments.*

10 Reimbursement for costs of complying with Act.

11 The Part 4 Heading presently reads:

PART 4

MEMBERS OF THE EXECUTIVE COUNCIL

12 Leader of the opposition.

- (a) with respect to a person who becomes the Leader of Her Majesty's loyal opposition after this section comes into force, the period is 60 days after becoming the Leader of Her Majesty's loyal opposition, and
- (b) with respect to a person who is the Leader of Her Majesty's loyal opposition on the coming into force of this section, the period is 60 days after the coming into force of this section,

or such longer period as may be prescribed by the Ethics Commissioner.

13 Section 23 is amended

(a) by adding the following after subsection (4):

(4.1) The Ethics Commissioner may re-investigate an alleged breach in respect of which the Ethics Commissioner's findings have already been reported under this section only if, in the Ethics Commissioner's opinion, there are new facts that on their face might change the original findings.

(b) by repealing subsection (5) and substituting the following:

(5) If the Ethics Commissioner refuses to investigate or ceases to investigate an alleged breach or refuses to re-investigate an alleged breach, the Ethics Commissioner shall so inform

- (a) the Member against whom the allegation was made, and
- (b) the Speaker of the Legislative Assembly, the President of the Executive Council or the person who made the request under section 22, as the case may be.

14 Section 25(1) is repealed and the following is substituted:

Ethics
Commis-
sioner's report

25(1) A report by the Ethics Commissioner to the Speaker of the Legislative Assembly under section 23(6) must be concise and may set out only the following:

13 Section 23 presently reads in part:

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

(a) the request is frivolous or vexatious or was not made in good faith, or

(b) there are no or insufficient grounds to warrant an investigation or the continuation of an investigation.

(5) If the Ethics Commissioner refuses to investigate or ceases to investigate an alleged breach, the Ethics Commissioner shall so inform

(a) the Member against whom the allegation was made, and

(b) the Speaker of the Legislative Assembly, the President of the Executive Council or the person who made the request under section 22, as the case may be.

14 Section 25(1) presently reads:

25(1) A report by the Ethics Commissioner to the Speaker of the Legislative Assembly under section 23(6) shall set out

(a) the facts found by the Ethics Commissioner, and

(b) the Ethics Commissioner's findings as to whether or not the Member has breached this Act and, if so,

- (a) the facts relating to the alleged breach found by the Ethics Commissioner, and
- (b) the Ethics Commissioner's findings as to whether or not the Member has breached this Act and, if so,
 - (i) the nature of the breach, and
 - (ii) the Ethics Commissioner's recommendation for the sanction, if any, that the Legislative Assembly may impose on the Member for the breach.

15 Section 40(2) is repealed and the following is substituted:

(2) Where this Act provides for the doing of anything by a time or within a prescribed period of time, the Ethics Commissioner may, before or after the time has expired, extend the time for the doing of that thing under this Act.

16 The following is added after section 44.1:

PART 7.1

REVIEW

Review of Act

44.2 Within 5 years after the coming into force of this section and every 5 years after that, a special committee established by the Legislative Assembly must begin a comprehensive review of this Act and must submit to the Legislative Assembly, within one year after beginning the review, a report that includes any amendments recommended by the committee.

17 This Act comes into force on Proclamation.

- (i) the nature of the breach, and*
- (ii) the Ethics Commissioner's recommendation for the sanction, if any, that the Legislative Assembly may impose on the Member for the breach.*

15 Section 40(2) presently reads:

(2) Where this Act provides for the doing of anything by a time or within a prescribed period of time, the Ethics Commissioner may, prior to the expiration of the time, extend the time for the doing of that thing under this Act.

16 Act to be reviewed every 5 years.

17 Coming into force.