

2020 Bill 202

Second Session, 30th Legislature, 69 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 202

**CONFLICTS OF INTEREST (PROTECTING THE RULE OF
LAW) AMENDMENT ACT, 2020**

MS GANLEY

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 202

2020

CONFLICTS OF INTEREST (PROTECTING THE RULE OF LAW) AMENDMENT ACT, 2020

(Assented to _____, 2020)

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

Amends RSA 2000 cC-23

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

2 Section 1 is amended

(a) in subsection (1)

(i) by adding the following immediately after clause (a):

(a.01) “constituency association” has the same meaning
as in the *Election Finances and Contributions
Disclosure Act*;

**(ii) by adding the following immediately after clause
(a.1):**

(a.11) “excluded private interest” means an interest that is
any one of the following:

(i) an interest of an individual that relates to
publicly-traded securities held in the individual’s
blind trust or in an investment arrangement,

(ii) an interest that is trivial, or

(iii) an interest in a matter that

Explanatory Notes

1 Amends chapter C-23 of the Revised Statutes of Alberta 2000.

2 Section 1 presently reads in part:

1(1) In this Act,

- (a) “blind trust” means a blind trust approved under section 20(4), 23.5(4) or 23.93(4), as appropriate;*
- (a.1) “Crown” means the Crown in right of Alberta and includes a Provincial agency;*
- (a.2) “former member of the Premier’s and Ministers’ staff” means an employee who has ceased to hold a position referred to in clause (c.1);*
- (b) “former Minister” means a person who has ceased to be a member of the Executive Council, whether or not the person is a Member of the Legislative Assembly;*
- (b.1) “investment arrangement” means an investment arrangement approved under section 20(5), 23.5(5) or 23.93(5), as appropriate;*
- (c) “Member” means a Member of the Legislative Assembly and includes a Minister whether or not the Minister is a Member of the Legislative Assembly;*

- (A) applies to the public generally,
- (B) affects an individual as one of a broad class of members of the public, or
- (C) concerns the remuneration or benefits of an individual;

(iii) by adding the following immediately after clause (b.1):

- (b.2) “legal privilege” means solicitor-client privilege, litigation privilege, parliamentary privilege or any other type of legal privilege, including a privilege of the law of evidence;

(iv) by repealing clause (g) and substituting the following:

- (g) “private interest”, of a person, includes the following but does not include an excluded private interest of the person:
 - (i) an asset, liability or any other type of financial interest of the person;
 - (ii) a position of director or officer in a corporation that the person holds or is eligible to hold;
 - (iii) a membership on a board, commission or agency of a provincial or federal Crown or a municipality that the person holds or is eligible to hold;
 - (iv) an office, commission or employment in the service of the Government of Canada or the government of a province or territory that the person holds due to an appointment or nomination by that government;
 - (v) a proceeding to which the person is subject, including the disposition of that proceeding;
 - (vi) a benefit or interest of a type that if provided to the person could reasonably be expected to improperly further their personal interests;

- (c.1) *“member of the Premier’s and Ministers’ staff” means an employee providing services other than administrative support who holds*
- (i) *a position in the Office of the Premier or an office of a Minister, or*
 - (ii) *a position in any other office designated by the Chief of Staff, Office of the Premier;*
- (d) *“Minister” means a member of the Executive Council;*
- (e) *“minor child” includes a minor to whom a Member has demonstrated a settled intention to treat as a child of the Member’s family;*
- (f) *“private corporation” means a corporation none of whose shares are publicly-traded securities;*
- (g) *“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 the remuneration and benefits of an individual;*
 - (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;*
- (h) *“Provincial agency” means a Provincial agency as defined in the Financial Administration Act, and includes a management body within the meaning of the Alberta Housing Act and a regional health authority and a subsidiary health corporation under the Regional Health Authorities Act;*
- (i) *“publicly-traded securities” means*
- (i) *securities of a corporation that are listed or posted for trading on a recognized stock exchange, or*

(g.01) “proceeding” means an investigation that is conducted, or a court proceeding that is commenced or initiated, under an Act or regulation of the Legislature or Parliament;

(v) by adding the following immediately after clause (i):

(i.01) “registered political party” has the same meaning as the definition “registered party” in the *Election Finances and Contributions Disclosure Act*;

(i.02) “relative”, of a Member, means an individual who is related to the Member by means of birth, adoption, marriage, common-law partnership or affinity to the Member;

(b) by adding the following immediately after subsection (5):

(5.01) For the purpose of section 2, a person is considered to be a person directly associated with a Member if the person is any of the following:

- (a) a person of a type of person described in subsection (5);
- (b) an individual who is a relative of the Member;
- (c) the leader of the registered political party of which the Member is a member;
- (d) a principal officer of the Member’s constituency association;
- (e) an individual for whom the Member could reasonably be expected to have cause to further the individual’s private interest based on the Member’s personal, business or political associations or dealings with that individual.

- (ii) *securities of a corporation that has more than 15 shareholders and any of whose issued securities were part of a distribution to the public;*
- (j) *“securities” means*
- (i) *shares of any class or series of shares of a corporation, or*
 - (ii) *bonds, debentures, notes or other evidence of indebtedness or guarantees of a corporation, whether secured or unsecured,*
- but does not include shares or units in a mutual fund;*
- (k) *“senior officer” means, with reference to a corporation,*
- (i) *the president, vice-president, secretary, comptroller, treasurer or general manager of the corporation, or*
 - (ii) *any other person who performs functions for the corporation similar to those normally performed by persons holding the offices referred to in subclause (i);*
- (l) *“spouse” means the spouse of a married person but does not include a spouse who is living separate and apart from the person if the person and spouse have separated pursuant to a written separation agreement or if their support obligations and family property have been dealt with by a court order;*
- (m) *“Standing Committee” means the Standing Committee on Legislative Offices.*
- (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,*
 - (b) *a corporation having share capital and carrying on business or activities for profit or gain and the Member is a director or senior officer of the corporation,*
 - (c) *a private corporation carrying on business or activities for profit or gain and the Member owns or is the beneficial owner of shares of the corporation,*
 - (d) *a partnership*
 - (i) *of which the Member is a partner, or*

3 Section 2 is amended

- (a) by repealing subsection (1) and substituting the following:**

Prohibition – no decision that furthers private interests

2(1) A Member must not, in the course of carrying out their office or powers, make or take part in making a decision which the Member knows or ought to know could further their own private interest or that of a person directly associated with them.

(1.01) For the purpose of subsection (1)

- (a) a vote by the Member on a matter being considered by the Legislative Assembly is considered to be a decision which the Member took part in making, and
- (b) a Member is considered to have known that making, or taking part in making, a decision could further their own private interest or that of a person directly associated with them if the decision could reasonably be expected to affect a proceeding to which the Member or the person is subject.

- (b) by repealing subsection (2) and substituting the following:**

(2) If a matter being considered by the Legislative Assembly or the Executive Council (including a committee of either body) is, or could reasonably be expected to be, related or connected to a private interest of a Member or a person directly associated with the Member, the Member must, if present when the matter is brought forward for consideration by that body, immediately

- (a) declare that the matter relates to or is connected with that private interest,

(ii) *of which one of the partners is a corporation directly associated with the Member by reason of clause (b) or (c),*

or

(e) *a person or group of persons acting with the express or implied consent of the Member.*

3 Section 2 presently reads in part:

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 or adult child.

(2) Where a matter for decision in which a Member has reasonable grounds to believe that the Member, the Member's minor or adult 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, if present at the meeting, declare that interest and must withdraw from the meeting without voting on or participating in the consideration of the matter.

(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 or adult 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).

- (b) withdraw from all consideration of the matter and not offer any views on the matter, and
- (c) not vote in respect of all votes conducted by that body that relate to or are connected with the matter.

(c) **in subsection (9) by striking out** “, a Member’s minor or adult child”.

4 Section 25 is amended

(a) **in subsection (5)(a)(ii) by striking out** “any documents or other things” **and substituting** “any documents or other things, including documents or things that are subject to a legal privilege,”;

(b) **by repealing subsection (12) and substituting the following:**

(12) If a request for an investigation was made under section 24(1), (3) or (4), on conclusion of the investigation, the Ethics Commissioner must

- (a) provide to the Speaker of the Legislative Assembly a report that sets out their findings based on the investigation, and
- (b) file a copy of the report with the Provincial Court if
 - (i) the investigation related to an allegation made against a Member,
 - (ii) a finding in the report states that the Member breached section 2(1) or (2) in a manner that furthered a private interest of a person directly associated with the Member,
 - (iii) the person referred to in subclause (ii) is
 - (A) a person described in section 1(5.01) (c), (d) or (e), or
 - (B) a person described in section 1(5.01) (f) whose association or dealings with the Member are of a political nature, and
 - (iv) the report recommends

4 Section 25 presently reads in part:

(5) For the purpose of conducting an investigation, the Ethics Commissioner may

- (a) in the same manner and to the same extent as a justice of the Court of Queen's Bench,*
 - (i) summon and enforce the attendance of individuals before the Ethics Commissioner and compel them to give oral or written evidence on oath, and*
 - (ii) compel persons to produce any documents or other things that the Ethics Commissioner considers relevant to the investigation,*

and

- (b) administer oaths and receive and accept information, whether or not it would be admissible as evidence in a court of law.*

(12) Where the request was made under section 24(1), (3) or (4), the Ethics Commissioner shall report the Ethics Commissioner's findings to the Speaker of the Legislative Assembly.

(13) The Ethics Commissioner, before reporting the Ethics Commissioner's findings to the Speaker of the Legislative Assembly under subsection (12),

- (a) shall provide a copy of the report to the individual against whom the allegation was made, and*
- (b) may, in the case of an allegation made against a Member, former Member or former Minister, provide a copy of the report to the leader in the Legislative Assembly of the political party to which the Member, former Member or former Minister belongs.*

- (A) that the Member be sanctioned for the breach by imposition of a penalty, and
- (B) the amount of the penalty.

(12.01) Despite section 30, on the filing of a report with the Provincial Court under subsection (12)(b)

- (a) each recommended penalty and related findings set out in the report are to be treated as an order and findings of the Provincial Court,
- (b) a penalty referred to in clause (a)
 - (i) is to be treated as if it were a penalty imposed under an enactment, and
 - (ii) is to be enforced in accordance with the *Provincial Offences Procedure Act*,
- (c) the time allowed for the Member to pay a penalty referred to in clause (a) is the 30-day period immediately following the date on which the report is filed, and
- (d) the Member may appeal the penalty and related findings to the Court of Queen’s Bench.

(c) in subsection (13)(b) by striking out “political party” and substituting “registered political party”.

5 The following is added immediately after section 25:

No waiver of legal privilege

25.1 The production in accordance with section 25(5)(a)(ii) of a document or other thing that is subject to a legal privilege, or the Commissioner’s reference in a report made under this Act to that document or other thing, does not constitute a waiver of that legal privilege by the person in whom it is vested.

6 Section 27 is amended

- (a) **in subsection (1) by striking out “to the Speaker of the Legislative Assembly”;**

5 No waiver of legal privilege.

6 Section 27 presently reads in part:

27(1) A report by the Ethics Commissioner to the Speaker of the Legislative Assembly under section 25(12) must be concise and may set out the following:

- (b) **in subsection (1)(b)(ii) by striking out** “, if any, that the Legislative Assembly may impose on a Member for a breach”.

7 Section 28(3) is amended by striking out “If in the report from the Ethics Commissioner” **and substituting** “Except in the case of a sanction that is a monetary penalty set out in a report filed with the Provincial Court under section 25(12)(b), if in the report from the Ethics Commissioner”.

8 Section 29(1) is amended by striking out “The Legislative Assembly” **and substituting** “Except in the case of a finding relating to a monetary penalty set out in a report filed with the Provincial Court under section 25(12)(b), the Legislative Assembly”.

- (a) *the facts relating to the alleged breach found by the Ethics Commissioner,*
 - (b) *the Ethics Commissioner's findings as to whether the individual under investigation has breached or contravened this Act and, if so,*
 - (i) *the nature of the breach or contravention of this Act, including any contravention of advice, recommendations or directions or conditions of any approval given by the Ethics Commissioner, and*
 - (ii) *the Ethics Commissioner's recommendation for the sanction, if any, that the Legislative Assembly may impose on a Member for a breach,*
- and*
- (c) *the Ethics Commissioner's recommendations, if any.*

7 Section 28 presently reads:

28(1) On receiving a report from the Ethics Commissioner under section 25(12), the Speaker of the Legislative Assembly shall lay the report before the Legislative Assembly if it is then sitting or, if it is not then sitting, within 15 days after the commencement of the next sitting.

(2) If the Legislative Assembly is not sitting when the Ethics Commissioner reports the Ethics Commissioner's findings to the Speaker of the Legislative Assembly under section 25(12), the Speaker shall make copies of the report available to the public.

(3) If in the report from the Ethics Commissioner the Ethics Commissioner has found that a Member or former Minister has breached this Act and the Ethics Commissioner has recommended a sanction, the Legislative Assembly shall debate and vote on the report within 15 days after the tabling of the report, or any other period that is determined by a resolution of the Legislative Assembly.

8 Section 29(1) presently reads:

29(1) The Legislative Assembly may accept or reject the findings of the Ethics Commissioner or make its own findings and may if it determines that there is a breach

- (a) *impose the sanction recommended by the Ethics Commissioner or any other sanction referred to in section 27(2) it considers appropriate, or*
- (b) *impose no sanction.*

