

# MEMBERS' CONFLICT OF INTEREST ACT

*Comparative Existing Legislation Across Canada and Potential  
Amendments for Consideration by the Select Standing  
Committee on Parliamentary Reform, Ethical Conduct, Standing  
Orders and Private Bills*

May 31, 2012

*Office of the  
Conflict of  
Interest  
Commissioner*

# Potential Amendments to the Members' Conflict of Interest Act

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## Overview

The Commissioner and two staff members met with the Select Standing Committee on Parliamentary Reform, Ethical Conduct, Standing Orders and Private Bills on May 2, 2012. At that time, we provided the Committee with discussion materials which focused on the major policy issues that the Committee may wish to consider in its review of the *Members' Conflict of Interest Act* (the "Act").

We are now providing a comprehensive list of possible amendments to the *Act*. The materials refer to recommendations for change that have been made from various quarters over the years. They also include a comprehensive review of legislation in all of the other jurisdictions across the country. This comparative information is helping in considering what may or may not be appropriate in British Columbia.

We hope that the Committee finds this document useful as it continues its deliberations.

## References to Legislation in Other Canadian Jurisdictions

**Alberta:** *Conflicts of Interest Act*, R.S.A. 2000, c. C-23

**Saskatchewan:** *The Members' Conflict of Interest Act*, S.S. 1998, c. M-11.11

**Manitoba:** *Legislative Assembly and Executive Council Conflict of Interest Act*, C.C.S.M. c. L112

**Ontario:** *Members' Integrity Act*, 1994, S.O. 1994, c. 38

**Quebec:** *Code of ethics and conduct of the Members of the National Assembly*, R.S.Q.c. C-23.1

**Nova Scotia:** *Members and Public Employees Disclosure Act*, S.N.S. 1991, c.4

**New Brunswick:** *Members' Conflict of Interest Act*, S.N.B. 1999, c. M-7.01

### **Newfoundland and Labrador:**

- *House of Assembly Act*, R.S.N.L. 1990 c. H-10 ("HOA")
- *House of Assembly Accountability, Integrity and Administration Act*, R.S.N.L. 2007 c. H-10.1 ("HOAAIA")

**Prince Edward Island:** *Conflict of Interest Act*, R.S.P.E.I. 1988 c. C-17.1

**Nunavut:** *Integrity Act*, S.Nu. 2001, c.7

**Northwest Territories:** *Legislative Assembly and Executive Council Act*, S.N.W.T. 1999, c.22

**Yukon:** *Conflict of Interest (Members and Ministers) Act*, R.S.Y. 2002, c. 37

### **Canada (House of Commons):**

- *Conflict of Interest Code for Members of the House of Commons*
- *Conflict of Interest Act*, S.C. 2006, c.9 s. 2

**Canada (Senate):** *Conflict of Interest Code for Senators*

### **Also referenced:**

- *Bill M 202 - 2010: Members' Conflict of Interest Amendment Act, 2010* proposed by former Opposition leader Carole James.<sup>1</sup>

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<sup>1</sup>Available online at [http://www.leg.bc.ca/39th2nd/1st\\_read/m202-1.htm](http://www.leg.bc.ca/39th2nd/1st_read/m202-1.htm).

## PART 1 – MATTERS AFFECTING MEMBERS

### 1. Private Interests

**Present section:** Sub-section 2(1)

**Possible change:** Include prohibition against a Member furthering the private interests of others.

**Purpose:** Although our Office has interpreted “private interest” to include interests of individuals other than the Member, this should be made explicit in the legislation for greater clarity.

#### **Discussion:**

It is clear that it is improper for Members to inappropriately further the private interests of others, not just their own. In *Blencoe*, Commissioner Hughes commented:

Private interest of other persons can also be, in some circumstances, a private interest that is to be attributed to the Member. While this class of persons is likely a narrow one, it would encompass those persons who are in a close and proximate relationship to the Member where it is reasonable to assume that the Member would benefit directly or indirectly from the benefit to the third party. Such persons would include the Member’s spouse (as I have stated on other occasions) but in some circumstances could include other family members and close personal friends and perhaps business associates.<sup>2</sup>

Subsection 2(1) should be revised to reflect this interpretation. Most other jurisdictions specifically include the private interests of others in their legislation. For example:

- Alberta: “a person directly associated with the Member or the Member’s minor or adult child” (s. 2(1))
- Saskatchewan: “his or her family’s private interest or the private interest of an associate”<sup>3</sup> (s. 3)
- Ontario: “improperly to further another person’s private interest” (s. 2)  
➔ Similar: PEI (s. 9(b)), New Brunswick (s. 4), Nunavut (s. 8), Canada (Code) (s. 3(2),(3))
- Quebec: “those of a family member or non-dependent child, or to improperly further another person’s private interests” (s. 16(1))
- Newfoundland (HOA): “member’s family” (s. 21)
- NWT: “spouse or dependent child” (s. 74(1))
- Canada (Act): “those of his or her relatives or friends or to improperly further another person’s private interests” (s. 4)
- Canada (Senate): “those of a family member or to improperly further another person’s or entity’s private interests” (s. 8)

<sup>2</sup> At p. 31. Available on our website at [http://www.coibc.ca/download/opinion\\_blencoe\\_1993.pdf](http://www.coibc.ca/download/opinion_blencoe_1993.pdf)

<sup>3</sup> “associate” and “family” are defined terms.

## Appendix 1-A: Jurisdictional Comparison Summary: Prohibition on Furthering the Private Interests of Others

Jurisdiction	Further the private interests of...	<u>Improperly</u> further the private interests of...
British Columbia	n/a	n/a
Alberta	a person directly associated with the Member or the Member's minor or adult child	n/a
Saskatchewan	the member's family or an associate	n/a
Manitoba	n/a	n/a
Ontario	n/a	another person
Quebec	a family member or non-dependent child	another person
Nova Scotia	another person	n/a
New Brunswick	another person	n/a
Newfoundland	member's family	n/a
PEI	n/a	another person
Nunavut	n/a	another person
NWT	spouse or dependent child	n/a
Yukon	n/a	n/a
Canada (Act)	relatives or friends	another person
Canada (Code)	a person's	n/a
Canada (Senate)	family member	another person or entity

## 2. Insider Information

<b>Present section:</b>	Section 4
<b>Possible change:</b>	Include prohibition against a member using and communicating <b><u>insider information</u></b> to further the private interests of <b><u>another person</u></b> .
<b>Purpose:</b>	Clarify Members' obligations with regard to the proper use of insider information.

### **Discussion:**

British Columbia is one of the only jurisdictions in Canada that does not include a prohibition against a Member using insider information to benefit someone other than themselves. Although our Office has interpreted "private interest" to include interests of others besides the Member, this should be made explicit in the legislation. One option is to simply add the words "or that of another" at the end of the current section.

Another option is to include provisions similar to the federal *Code*, which include improperly furthering another person's or entity's private interests, as well as a prohibition against communicating insider information:

- 10(1) A Member shall not use information obtained in his or her position as a Member that is not generally available to the public to further the Member's private interests or those of a member of his or her family, or to improperly further another person's or entity's private interests.
- (2) A Member shall not communicate information referred to in subsection (1) to another person if the Member knows, or ought to know, that the information may be used to further the Member's private interests or those a member of his or her family, or to improperly further another person's or entity's private interests.

Quebec also includes a prohibition against attempting to use or communicate insider information:

- 17. A Member must not use, communicate or attempt to use or communicate information obtained in or in connection with the carrying out of the duties of office that is not generally available to the public so as to further the Member's or another person's private interest.



## Appendix 2-A: Jurisdictional Comparison Summary: Insider Information

Jurisdiction	May not use insider information to further the private interest of...	May not use insider information to <u>improperly</u> further the private interest of...	Prohibition against communicating insider information
British Columbia (s. 4)	n/a	n/a	n/a
Alberta (s. 4)	another person	n/a	✓
Saskatchewan (s. 4)	family member or associate	n/a	n/a
Manitoba (s. 18)	another person	n/a	n/a
Ontario (s. 3)	n/a	another person	n/a
Quebec (s. 17)	another person	n/a	✓
Nova Scotia (s. 7(2))	another person	n/a	✓
New Brunswick (s. 5)	another person	n/a	✓
Newfoundland HOA (s. 23)	family member	another person	✓
PEI (s. 10)	n/a	another person	✓
Nunavut (s. 9)	n/a	another person	✓
NWT (s. 76)	spouse or dependent child	n/a	✓
Yukon	n/a	n/a	n/a
Canada (Act) (s. 8)	relatives or friends	another person's	n/a
Canada (Code) (s. 10)	family member	another person or entity	✓
Canada (Senate) (s. 10)	family member	another person or entity	✓

### 3. Influence

**Present section:** Section 5

**Possible change:** Include prohibition against a member using his or her office **to influence** a decision to further the private interests of **another person**.

**Purpose:** As is the case with the prohibition against using insider information, the current section could be interpreted to include a prohibition against furthering another's private interest but this should be made explicit in the *Act*.

**Discussion:**

Again, British Columbia is one of the only jurisdictions in Canada that does not include a prohibition against a Member using influence to benefit someone other than themselves. The wording adopted in this section should be consistent with whatever wording is used in sections 2 and 4. A provision similar to Ontario's could be considered:

- 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.

**Similar:** → New Brunswick (s. 6); PEI (s. 11); Nunavut (s. 10).

Other jurisdictions have similar provisions, with some variations. For example:

Quebec

- 16.** When carrying out the duties of office, a Member must not
- (2) use the position of Member to influence or attempt to influence another person's decision so as to further the Member's private interests or those of a family member or non-dependent child, or to improperly further another person's private interests (emphasis added).

Alberta

- 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 or on behalf of the Crown to further a private interest of the Member, a person directly associated with the Member or the Member's minor child or to improperly further another person's private interest.

## Newfoundland (HOA)

- 22.** A member shall not use his or her office to seek to influence a decision made by another person to further, directly or indirectly, a private interest of the member or the member's family.

**Similar:** → Saskatchewan (s. 5); NWT (s. 76(2)); Manitoba (s. 19), Canada -HOC (Act s. 9; Code s. 9); Canada – Senate (s. 9).

## Appendix 3-A: Jurisdictional Comparison Summary: Influence

Jurisdiction	May not use influence to further the private interest of...	May not use influence to <u>improperly</u> further the private interest of...
British Columbia	n/a	n/a
Alberta	a person directly associated with the Member or the Member's minor child	another person
Saskatchewan	family or associate	n/a
Manitoba	dependent	n/a
Ontario	n/a	another person
Quebec	family member or non-dependent child	another person
Nova Scotia <sup>4</sup>	n/a	another person
New Brunswick	n/a	another person
Newfoundland	family member	n/a
PEI	n/a	another person
Nunavut	n/a	another person
NWT	spouse or dependent child	n/a
Yukon	n/a	n/a
Canada (Act)	relatives or friends	another person's
Canada (Code)	family member	another person or entity
Canada (Senate)	family member	another person or entity

<sup>4</sup> Applies only to Ministers: see s. 3(f) of the Ministerial Code of Conduct (Schedule B to the *Members and Public Employees Disclosure Act*)

## 4. Procedure on Conflict of Interest

**Present section:** Section 10

- 10 (1) A member who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the Legislative Assembly or the Executive Council, or a committee of either of them, must, if present at a meeting considering the matter,
- (a) disclose the general nature of the conflict of interest, and
  - (b) withdraw from the meeting without voting or participating in the consideration of the matter.

**Possible change:** Add subsection (c): “refrain at all times from attempting to influence the matter”.

**Purpose:** Clarify that the obligation to avoid the conflict at hand extends beyond the member’s formal participation in the decision making process.

**Discussion:**

Similar subsections in other jurisdictions include s. 7(3)(c) of Nova Scotia’s *Members and Public Employees Disclosure Act* and s. 15(1) of PEI’s *Conflict of Interest Act*.<sup>5</sup>

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<sup>5</sup> Also see our comments on this issue in our letter to the Chair dated May 25, 2012.

## 5. Evasion

**Present section:** None

**Possible change:** Include a provision prohibiting Members from taking actions that are designed to evade or circumvent their obligations under the *Act*.

**Purpose:** To discourage false or misleading actions.

### **Discussion:**

The purpose of including this amendment would be to discourage the creation of “smoke and mirrors” devices intended to create a false or misleading appearance of compliance with the *Act*.

Several jurisdictions include a prohibition against Members evading or circumventing their obligations, as outlined below. Also see comparative chart in Appendix 5-A.

#### Canada – (Act)

- 18** No public office holder shall take any action that has as its purpose the circumvention of the public office holder’s obligations under this Act.

→ **Similar:** Canada (Code) s. 25; Bill M 202, proposed s. 13

#### Canada – Senate

- 34** A Senator shall not take any action that has as its purpose the evasion of the Senator’s obligations under this Code.

Quebec’s Code has a similar provision, but covers a broader range of non-cooperative behaviour:

- 41.** A Member acts contrary to this Code if he or she
- (1) refuses or fails to respond to a written request of the Ethics Commissioner within a reasonable time;
  - (2) refuses or fails to provide within a reasonable time information or a document the Ethics Commissioner has required in writing;
  - (3) misleads or attempts to mislead the Ethics Commissioner in the exercise of the Ethics Commissioner’s functions;
  - (4) in any way hinders the Ethics Commissioner in the exercise of the Ethics Commissioner’s functions.

More narrowly, Alberta prohibits Members from providing false or misleading disclosure statements:

- 18** A Member breaches this Act if the Member does not file a disclosure statement, an amending disclosure statement or a return within the time provided by section 11 or 15, as the case may be, or if the Member knowingly gives false or misleading information in a statement or return.

Also see s. 28 of Newfoundland's *House of Assembly Act*:

- 28** A member shall not sell or transfer a private interest on terms or conditions that have as their purpose the evasion of a provision of this Act.

## Appendix 5-A: Jurisdictional Comparison Summary: Evasion

Jurisdiction	Prohibition against evasion etc of obligations
British Columbia	n/a
Alberta	✓ with regard to false or misleading disclosure statements
Saskatchewan	n/a
Manitoba	n/a
Ontario	n/a
Quebec	✓ "misleads or attempts to mislead"; "hinders"
Nova Scotia	n/a
New Brunswick	n/a
Newfoundland	✓ "evasion" with regard to selling or transferring a private interest
PEI	n/a
Nunavut	n/a
NWT	n/a
Yukon	n/a
Canada (Act)	✓ "circumvention"
Canada (Code)	✓ "circumvention"
Canada (Senate)	✓ "evasion"

## 6. Outside Employment (Municipal Office etc)

**Present section:** None

**Possible change:** Prohibit Members from holding outside employment such as sitting on municipal councils.

**Purpose:** Ensure that elected Members do not hold outside employment or positions that are likely to require significant time commitments or are otherwise incompatible with their duties as MLAs.

### **Discussion:**

Many of those who are elected to provincial office may also have an interest in serving in other civic roles, such as municipal councillor. Given the time commitments involved, it would be very difficult for one person to serve simultaneously as an elected representative at both the provincial and municipal levels. Moreover, the need to recuse oneself, either in the Legislative Assembly or municipal council, would be likely to arise frequently.

Quebec, New Brunswick and Alberta place specific restrictions on the types of outside offices and employment a Member may hold:

### **Quebec**

10. The office of member of a municipal council or a school board is incompatible with the office of Member.
11. Employment, a position or any other post to which remuneration or a benefit in lieu of remuneration is attached is incompatible with the office of Member if it is held with
  - (1) the Government or one of its departments or a public body;
  - (2) the Government of Canada, the government of another province or of a territory, or a department or agency of such a government, except the regular Armed Forces or the Reserve;
  - (3) a foreign country; or
  - (4) an international non-profit organization.

However, being a Cabinet Member is not incompatible with the office of Member.

This section does not prohibit engaging in remunerated teaching activities or practising a profession within a body referred to in subparagraph 1 of section 5, subject to the Member having informed, and obtained permission from, the Ethics Commissioner.

**12.** The post of director or officer of a legal person, partnership or association engaged in professional, commercial, industrial or financial activities is incompatible with the office of President of the National Assembly.

**13.** A Member who, when elected, holds an incompatible office or post within the meaning of section 10 or 11 must resign from that office or post before taking the oath of office.

If a post incompatible with the office of Member devolves on a Member during his or her term, the Member must resign from one or the other within 30 days. Meanwhile, the Member is barred from sitting in the National Assembly.

#### New Brunswick

**10** A member, after being sworn in, shall not be employed by the Crown in right of Canada on a full-time basis, or be the holder of any permanent office by reason of an appointment by or at the nomination of the Governor-General in Council or a Minister of the Crown in right of Canada, and to which a salary is attached.

**11(1)** A member, after being sworn in, shall not be employed by the Crown in right of New Brunswick, whether the employment is permanent or temporary or on a full-time or part-time basis, or be the holder of any office by reason of an appointment by or at the nomination of the Lieutenant-Governor in Council or a Minister of the Crown in right of New Brunswick, and to which a salary is attached.

**11(2)** A member does not contravene this section by reason of being appointed to an office in the member's capacity as Minister, if the member receives no remuneration as the holder of that office other than reasonable travelling and living expenses incurred in the course of serving in that office.

**11(3)** Employment with the Crown held under a contract of employment shall be governed by this section and not section 9 [i.e. contracts with the Crown].

#### Alberta

Similarly in Alberta there are many posts that Members may not hold, including employment with the provincial or federal Crown (s. 6). The Schedule of the Act enumerates several disqualifying offices such as judicial office, offices of the Legislature, and provincial boards and commissions.

Other jurisdictions make no reference to regular Members' outside employment/activities. However at the federal level, Members/Senators are expressly *permitted* to engage in outside activities unless they would interfere with their obligations:



## Canada (Code)

**7** Nothing in this Code prevents Members who are not ministers of the Crown or parliamentary secretaries from any of the following, as long as they are able to fulfill their obligations under the Code:

- (a) engaging in employment or in the practice of a profession;
- (b) carrying on a business;
- (c) being a director or officer in a corporation, association, trade union or non-profit organization; and
- (d) being a partner in a partnership.

➔ **Similar:** Canada – Senate (s. 5).

## Appendix 6-A: Jurisdictional Comparison Summary: Outside Employment

Jurisdiction	Restrictions on outside employment (all Members)
British Columbia	n/a
Alberta	✓
Saskatchewan	n/a
Manitoba	n/a
Ontario	n/a
Quebec	✓
Nova Scotia	n/a
New Brunswick	✓
Newfoundland	n/a
PEI	n/a
Nunavut	n/a
NWT	n/a
Yukon	n/a
Canada (Act)	n/a
Canada (Code)	Outside activities permitted unless they interfere with duties
Canada (Senate)	Outside activities permitted unless they interfere with duties

## 7. Accepting Extra Benefits

**Present section:** Section 7

**Possible changes:**

- (a) Add definition
- (b) Increase threshold amount for reporting benefits
- (c) Extend prohibition to explicitly include gifts to family members
- (d) Specific timeframe to disclose receipt of gifts (i.e. “within 30 days” instead of “immediately”)
- (e) Exclude gifts received from family members [and friends]
- (f) Other exemptions (e.g. gifts from party, constituency)
- (g) Reimbursement for travel
- (h) Commissioner’s direction for disposition/forfeiture
- (i) Miscellaneous

**Purpose:** Clarify the conditions for accepting and reporting gifts to be consistent with current practice and other jurisdictions.

### **Discussion:**

#### ***a) Add definition***

It may be helpful to define the term “gift or other benefit”, or change the term to “gift or other advantage”. Only the federal Act and Code include definitions:

#### **Canada (Act)**

“gift or other advantage” means

- (a) an amount of money if there is no obligation to repay it; and
- (b) a service or property, or the use of property or money that is provided without charge or at less than its commercial value.

➔ Similar: Bill M 202

#### **Canada (Code)**

“benefit” means

- (a) an amount of money if there is no obligation to repay it; and
- (b) a service or property, or the use of property or money that is provided without charge or at less than its commercial value, other than a service provided by a volunteer working on behalf of a Member

but does not include a benefit received from a riding association or political party.<sup>6</sup>

#### ***b) Threshold for reporting benefits***

The threshold for reporting gifts in other jurisdictions ranges from a low of \$150 (Yukon) to a high of \$500 (PEI, Newfoundland, Canada (Code, Senate)). Saskatchewan, Ontario, Quebec, Canada (Act) are at the lower end of the scale at \$200, while Alberta, NWT, and Nunavut are at \$400. The threshold in Manitoba, New Brunswick, Nova Scotia is the same as British Columbia at \$250 (see summary in Appendix 7-A).

Given that the \$250 threshold has not changed since the *Act*'s inception, Commissioner Oliver suggested the threshold should be increased to \$750 (2007 Annual Report, at p. 14). However such a large increase might be negatively received by the public. As the current amount is still within the range of most jurisdictions in Canada, an increase may not be necessary.

#### ***c) Gifts given to Member's family etc***

Our Office has typically interpreted certain gifts given to a Member's spouse or children as amounting to a gift given to the Member indirectly.<sup>7</sup> There are a number of variations in other jurisdictions that can be considered:

- **Member's family:** Saskatchewan (s. 7); PEI (s. 13); Nunavut (s. 13), Canada HOC (Act s. 11; Code s. 14); Canada Senate (s. 17)
- **Member's spouse or adult interdependent partner or minor child:** Alberta (s. 7)
- **dependents:** Manitoba (s. 12, 13)
- **spouse and dependent children:** Nova Scotia (s. 6(1)(k))

Also see chart in Appendix 7-B for comparison.

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<sup>6</sup> Also see discussion under subheading (f) for background on this definition.

<sup>7</sup> Also see our comments on this issue in our letter to the Chair dated May 25, 2012.

***d) Timeframe to disclose receipt of gifts and benefits***

In practice the Office has allowed 30 days for Members to disclose any gifts received, given that “immediate” disclosure may not be possible or reasonable. For greater consistency and clarity, the *Act* should be amended to reflect this practice. Several jurisdictions allow 30 days after receipt for disclosure to be made (Quebec, Ontario, PEI, Nunavut, NWT, Canada (Act, Senate)). In Alberta gifts must be disclosed “as soon as is practicable” while in New Brunswick they must be disclosed “without delay” and “immediately” in Newfoundland. Disclosure under the federal *Code* must be made within 60 days. The remaining jurisdictions do not specify a time period for disclosure.

See Appendix 7-C for comparative chart.

***(e) Exclusion of gifts received from family and friends, or that are unlikely to influence the Member***

In practice, our Office does not require Members to disclose gifts received from family members or friends if they are of a purely personal nature. A few jurisdictions make this explicit in their legislation:

Manitoba

- 12** Subject to section 13, the member or minister shall disclose in the statement filed under subsection 11(1)
- (h) the nature, and the identity of the donor, of every gift given to the member or minister or any of his dependents at any time after the coming into force of this Act, excluding
  - (i) gifts from a family member.

Similarly, Nova Scotia’s legislation excludes gifts from or between family members (s. 6(1)(k)) and under the federal Act, gifts from “relatives or friends” do not need to be disclosed (s. 11(2)(b)).

Quebec excludes gifts, hospitality and other benefits received by a Member “in the context of a purely private relationship” (s. 32).

Other Acts contain broader exemptions, such as PEI which allow members to accept a gift or personal benefit if it is “of such a nature that it could not reasonably be regarded as likely to influence the member in the performance of the member’s duties” (s. 13(2)(b)(ii)).

→ **Similar:** Ontario, s. 6(2)(d); Nunavut, s. 13(2)(d); and Alberta, s. 7(3).

See Appendix 7-D for comparative chart.

***(f) Other exemptions (e.g. gifts or benefits from party, constituency etc.)***

In a 1999 Opinion<sup>8</sup>, Commissioner Oliver considered whether financial assistance given to a Member from his party to settle a lawsuit should have been disclosed by the Member. He determined that it did not, concluding:

...the purpose of section 7(1) of the Act is to prohibit a member of the Legislative Assembly from accepting a bribe as the price of influencing that member and the discharge of the member's legislative duties to take some action which would give to the donor some advantage inconsistent with the public interest and incompatible with the member's Oath of Office.

If the giving of gifts or personal benefits is a problem only when there is a possibility of thereby influencing a member in the exercise of his legislative duties to grant some advantage to the donor, what advantage could possibly accrue to the member's political party or riding association if legal expenses are provided by them?

The only gifts or benefits which are required to be filed are those which fall under section 7(2) and 7(3), that is gifts and personal benefits received as an incident of the protocol or social obligations that normally accompany the responsibilities of office (at p. 10).

For greater clarity, it may be helpful to include a provision in the Act indicating that gifts and benefits given to a Member from party related sources are not subject to disclosure, as is the case in Ontario, Alberta and Canada (*Code*):

Ontario

- 6(1) A member of the Assembly shall not accept a fee, gift or personal benefit that is connected directly or indirectly with the performance of his or her duties of office.
- (2) Subsection (1) does not apply to a fee, gift or personal benefit that is given, directly or indirectly, by or on behalf of a political party, constituency association, candidate or leadership contestant registered under the *Election Finances Act*, including remuneration or financial assistance.

→**Similar:** Alberta, s. 7(2.1)

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<sup>8</sup> In the Matter of an Application by Helmut Giesbrecht, MLA (Skeena) with Respect to the Alleged Contravention of Provisions of the *Members' Conflict of Interest Act* by Michael de Jong, MLA (Matsqui), June 28, 1999. Available on our website, [www.coibc.ca](http://www.coibc.ca)

## Canada (Code)

In 2009, the federal Standing Committee on Procedure and House Affairs undertook a study of the provisions of the Code pertaining to gifts and other benefits. The Committee noted:

Genuine volunteer services are part of any democratic system of government. While services provided by volunteers would not be prohibited under the proposed conflict of interest test, the Committee believes that it is important to state that principle clearly and exclude them, altogether, from the ambit of the *Code*. Political parties and riding associations oftentimes pay, or reimburse, registration fees, travel expenses and hospitality to Members for their participation at political events. These benefits cannot, under any circumstances, be seen to compromise their personal judgement or integrity, and therefore, should be excluded from the definition of “benefit”.<sup>9</sup>

The Committee’s recommendations were accepted and in June, 2009 the definition of “benefit” in the federal Code was amended as follows:

**“benefit”** means

- (a) an amount of money if there is no obligation to repay it; and
- (b) a service or property, or the use of property or money that is provided without charge or at less than its commercial value, other than a service provided by a volunteer working on behalf of a Member;

but does not include a benefit received from a riding association or political party.

See comparative chart in Appendix 7-D.

### ***g) Reimbursement for travel***

Some jurisdictions have separate provisions dealing with travel reimbursement, as distinct from gifts or benefits (see comparative chart in Appendix 7-D). For example:

## PEI

- 26(5)** Nothing in this section prohibits the acceptance of reimbursement of reasonable travel and associated expenses incurred in performing services that are in the public interest, provided that the amount and source of the reimbursement, as well as a description of the services performed, are immediately set out by the member in a disclosure statement filed with the commissioner.

➔ **Similar:** Newfoundland (HOA) s. 26(5), Nunavut s. 13(2)(c)

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<sup>9</sup> See the Committee’s report, available online at <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=3943204&Language=E&Mode=1&Parl=40&Ses=2>

#### ***h) Commissioner's approval and direction for disposition of gifts***

As noted in our *"Accepting and Disclosing Gifts: A Guide for Members"* publication, there are certain gifts that may not be expressly prohibited under the *Act*, but are nonetheless inappropriate for Members to keep. For example, the Commissioner usually recommends that gifts of certain value that are non-personal such as artwork remain in the government's possession or the minister's office rather than be kept by the Member.

Some other jurisdictions include provisions relating to the disposition of certain gifts (e.g. forfeiture) and/or include a requirement to abide by the Commissioner's direction. For example:

##### Alberta

**7(2)(b)** the member applies to the Ethics Commissioner

...and either obtains the Ethics Commissioner's approval for its retention, or any conditions the Ethics Commissioner prescribes, or, if the approval is refused, takes any steps that the Ethics Commissioner directs with respect to the disposition of the fee, gift or benefit.

**7(3)** The Ethics Commissioner may give an approval under subsection (2)(b) only where the Ethics Commissioner is satisfied that there is no reasonable possibility that retention of the fee, gift or other benefit will create a conflict between a private interest and the public duty of the Member.

##### Canada (Act)

**11(3)** When a public office holder or a member of his or her family accepts a gift or other advantage referred to in paragraph 2(c) that has a value of \$1,000 or more, the gift or other advantage, unless otherwise determined by the Commissioner, is forfeited to Her Majesty in right of Canada.

##### Yukon

**6** If a Member or Minister accepts a gift in contravention of the *Act*, then the gift is forfeited to the Government of the Yukon and the Member or Minister must immediately deliver to the Government the gift, or the gift's value if the gift is no longer in the Member's or Minister's possession or control.

##### NWT

**86.(3)** Any gift referred to in subsection (2) [i.e. received as an incident of protocol] having a value exceeding \$400 is the property of the Legislative Assembly or the Government of the Northwest Territories, and shall not be retained by the member at the expiry of his or her term of office.

**i) Miscellaneous**

The Quebec Code contains a specific prohibition against accepting a benefit in the following circumstances:

- 29** A Member must not solicit, elicit, accept or receive any benefit, whether for himself or herself or for another person, in exchange for speaking or taking a certain position on any issue, including one that may be brought before the National Assembly or a committee.

**Appendix 7-A: Jurisdictional Comparison Summary: Gifts Declaration Threshold**

<b>\$150</b>	<b>\$200</b>	<b>\$250</b>	<b>\$400</b>	<b>\$500</b>
Yukon	Saskatchewan Ontario Quebec Canada (Act)	<b>British Columbia</b> Manitoba Nova Scotia New Brunswick	Alberta Nunavut NWT	Newfoundland PEI Canada (Code) Canada (Senate)



## Appendix 7-B: Jurisdictional Comparison Summary: Gifts to Member's Family etc.

<b>Jurisdiction</b>	<b>Gifts prohibition includes gifts given to Member's...</b>
British Columbia	n/a
Alberta	spouse or adult interdependent partner or minor child
Saskatchewan	family
Manitoba	dependents
Ontario	n/a
Quebec	n/a
Nova Scotia	spouse and dependent children
New Brunswick	n/a
Newfoundland	n/a
PEI	family
Nunavut	family
NWT	n/a
Yukon	n/a
Canada (Act)	family
Canada (Code)	family
Canada (Senate)	family members

## Appendix 7-C: Jurisdictional Comparison Summary: Timeframe to Disclose Gifts

<b>Immediately, without delay, or as soon as practicable</b>	<b>30 days</b>	<b>60 days</b>	<b>No timeframe specified</b>
BC, AB, NB, NFLD	ON, QB, PEI, NU, NWT, CAN(Act), CAN (Senate)	CAN (Code)	SK, MB, NS, YK

## Appendix 7-D: Jurisdictional Comparison Summary: Gifts Excluded from Disclosure

Jurisdiction	“Family” etc exclusions	“Political party” etc exclusions	General exemption if gift not likely to influence the Member	Reimbursement for travel
British Columbia	n/a	n/a	n/a	n/a
Alberta	n/a	✓	✓	n/a
Saskatchewan	n/a	n/a	n/a	n/a
Manitoba	✓ “family member”	n/a	n/a	n/a
Ontario	n/a	✓	✓	n/a
Quebec	✓ “received in the context of a purely private relationship”	n/a	n/a	n/a
Nova Scotia	✓ between family members	n/a	n/a	n/a
New Brunswick	n/a	n/a	n/a	n/a
Newfoundland	n/a	n/a	n/a	✓
PEI	n/a	n/a	✓	✓
Nunavut	n/a	n/a	✓	✓
NWT	n/a	n/a	n/a	n/a
Yukon	n/a	n/a	n/a	n/a
Canada (Act)	✓ “relatives or friends”	n/a	n/a	n/a
Canada (Code)	n/a	✓	n/a	n/a
Canada (Senate)	n/a	n/a	n/a	n/a

## PART 2 – MATTERS AFFECTING MINISTERS

### 8. Expenses for Creating and Maintaining Blind Trusts

**Present section:** Section 9

**Possible change:** Include a provision entitling members to be reimbursed for the costs associated with complying with the disclosure and blind trust provisions of the *Act*.

**Purpose:** Ensure that Members are not out of pocket for meeting the trust requirements of the *Act*.

**Discussion:**

Currently Members must pay their own costs to establish and maintain blind trusts if required to do so in order to be in compliance with the *Act*. We may consider a provision providing for reimbursement for certain costs related to trusts and other compliance measures, as in some other jurisdictions:

Alberta

- 19(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.

➔ **Similar:** Nunavut s. 14(9); PEI s. 19(3)

Under the federal regime, the costs of certain additional compliance measures are eligible for reimbursement<sup>10</sup>:

Canada (Act)

- 31(1) The Commissioner may order that the following administrative costs incurred by a public office holder be reimbursed:
  - (a) In relation to a divestment of assets,
    - i. Reasonable legal, accounting and transfer costs to establish and terminate a trust determined to be necessary by the Commissioner,

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<sup>10</sup> “General Guidelines for the Reimbursement of Costs under the *Conflict of Interest Act*” available online at <http://ciec-ccie.gc.ca/resources/Files/English/Public%20Office%20Holders/Guidelines%20and%20Information%20Notices/Guideline%20for%20reimbursement%20of%20costs.pdf>

- ii. Annual, actual and reasonable costs to maintain and administer the trust, in accordance with rates set from time to time by the Commissioner,
- iii. Commissions for transferring, converting or selling assets where determined necessary by the Commissioner,
- iv. Costs of other financial, legal or accounting services required because of the complexity of the arrangements for the assets, and
- v. Commissions for transferring, converting or selling assets, if there are not provisions for a tax deduction under the *Income Tax Act*, and

(b) In relation to a withdrawal from activities, the costs of removing a public office holder's name from federal or provincial registries or corporations.

(2) The following administrative costs are not eligible to be reimbursed under subsection (1):

- (a) charges for the day-to-day operations of a business or commercial entity;
- (b) charges associated with winding down a business;
- (c) costs for acquiring permitted assets using proceeds from the required sale of other assets; and
- (d) any income tax adjustment that may result from the reimbursement of trust costs.

#### Ontario<sup>11</sup>

**11(3) 8.** The member is entitled to be reimbursed by the Commissioner for reasonable fees and disbursements actually paid for the establishment and administration of the trust, as approved by the Commissioner, but is responsible for any tax liabilities that may result from the reimbursement (*emphasis added*).

**12.1** All fees and disbursements payable by the Commissioner for the purposes of paragraph 6 of subsection 7(5), paragraph 8 of subsection 11(3) and subsection 12(2) are a charge on and are payable out of the Consolidated Revenue Fund.

In Alberta and at the federal level, approved trust costs are paid by the Minister's or public office holder's department.<sup>12</sup> However in Ontario, as a result of legislative changes in 2010, approved trust costs are reimbursed directly by the Commissioner through a designated budget line.<sup>13</sup>

In British Columbia in 2010/11, only four Members had created blind trusts under the supervision of the Commissioner.

<sup>11</sup> See also the Integrity Commissioner's "Guidelines for the Reimbursement of Costs for Trustees' Fees" (September 2010). Not available online. PDF copy available from our Office upon request.

<sup>12</sup> Information provided by Glen Resler, Chief Administrative Officer, Alberta Office of the Ethics Commissioner and Nancy Belanger, Legal Counsel for the federal Conflict of Interest and Ethics Commissioner.

<sup>13</sup> Information provided by Valerie Jepson, Legal Counsel for the Ontario Integrity Commissioner. \$50,000 has been allocated to this budget line, but actual payments are far below this amount.

## 9. Carrying on a Business or Profession – Exemption to Maintain Professional Qualifications

**Present section:** Section 9

- 9(1) A member of the Executive Council must not
- (a) engage in employment or in the practice of a profession
- 9(5) For the purposes of this section, the management of routine personal financial interests does not constitute carrying on a business.

**Possible change:**

- 9(5) For the purposes of this section,
- (a) the management of routine personal financial interests does not constitute carrying on a business; and
- (b) maintaining qualifications in a profession or occupation as required by the profession or occupation does not constitute carrying on a business or engaging in employment or in the practice of a profession.

**Purpose:** Avoid unnecessary damage to a Member's professional standing since certain professions terminate the practitioner's right to practice after a certain non-practicing period.

### **Discussion:**

Over the years our Office has received a number of requests from Members [Ministers] asking for permission to attend to their practice occasionally in order to preserve their professional standing (eg physicians). The advice given consistently acknowledges that the performance of the minimum activities required by law or by the governing bodies of the Member's profession or occupation does not constitute "carrying on a business" or engaging in employment or in the practice of a profession.

A similar problem was noted in Ontario, prompting a legislative change that relaxed the rules relating to outside activities, giving the Commissioner more discretion.<sup>14</sup> Section 13 of the Ontario *Integrity Act* now reads:

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<sup>14</sup> As explained by Ontario Integrity Commission's Legal Counsel Valerie Jepson by email, November 9, 2011. See sections 10 and 13 of the *Integrity Act*.

- 13.** A member of the Executive Council may engage in an activity prohibited by section 10 or subsection 11 (1) [holding or trading securities] or 12 (1) [carrying on a business] if the following conditions are met:
1. The member has disclosed all material facts to the Commissioner.
  2. The Commissioner is satisfied that the activity, if carried on in the specified manner, will not create a conflict between the member's private interest and public duty.
  3. The Commissioner has given the member his or her approval and has specified the manner in which the activity may be carried out.
  4. The member carries the activity out in the specified manner.

Another option is to adopt a more specific provision, similar to s. 21(3)(b) of Alberta's Act:

- 9(5)** For the purposes of this section,
- (b) maintaining qualifications in a profession or occupation as required by the profession or occupation does not constitute carrying on a business or engaging in employment or in the practice of a profession.

Alberta appears to be the only jurisdiction with such a specific provision.

## PART 3 – DISCLOSURE MATTERS

### 10. Commissioner’s Discretion – Consistency between the *Act* and Regulations

**Present section:** Section 16

**Possible change:** Include wording which makes it clear that the Commissioner has discretion to exclude certain assets, liabilities or financial interests (e.g. assets/liabilities under a certain threshold) from disclosure obligations.

**Purpose:** Greater consistency between the *Act* and the regulation (disclosure forms).

**Discussion:**

Under section 16(2) of the *Act*, the disclosure statement “must contain a statement of the nature of the assets, liabilities and financial interests of a member, the member’s spouse and minor children, and private corporations controlled by any of them...”

In 2010, the disclosure forms which had been in use since 1998 were amended to be more up to date and user-friendly. One of the changes made was to exclude certain assets, liabilities and financial interests from disclosure, such as children’s student loans. In early 2012, further amendments were made to the forms, primarily to provide greater clarity.

For greater consistency it would be appropriate for the *Act* to be amended to expressly authorize the Commissioner to exclude certain assets, liabilities and financial interests from disclosure requirements. As a practical matter, some exclusions have been dealt with in the existing disclosure forms, which are regulations to the *Act*. However, the authority for granting these exclusions should be clearly set out in the *Act*.

## 11. Requirement for Electronic Filing of Disclosure Statements

**Present section:** None

**Possible change:** Require disclosure statements to be filed electronically.

**Purpose:** Increase efficiency and consistency in the disclosure process.

### **Discussion:**

Our Office is currently in the process of replacing the current paper-based disclosure system with an electronic one. To ease the transition to the new system, our staff has created forms for each Member, and filled them in with the majority of the Member's disclosure data from 2011. The Member simply needs to open the form(s), make any required additions/changes to reflect this year's disclosure, and submit the form(s). This year's form(s), revised by the Member, will then serve as a template for next year, and so on.

Not only will the new electronic filing process be much simpler for the Members, its intention is also to reduce paper use and increase administrative efficiency. Therefore, electronic filing should be mandatory so that the benefits of the new system can be maximized. In the event that the *Act* is amended so that other public office holders are subject to disclosure requirements, the case for mandatory electronic filing is even more compelling.

The wording of s. 16(1) of the *Act* could easily be amended, as indicated in bold, to give the Commissioner explicit authority to direct the manner of disclosure:

- 16(1)** Every member must, within 60 days of being elected, and after that annually, file with the commissioner a confidential disclosure statement in the form **and in the manner** prescribed by the regulations.



## 12. Exit Disclosure Statement

**Present section:** Section 16

**Possible change:** Include requirement for Members who resign from office before their term is up, as well as those who are not re-elected, to submit an “exit” disclosure statement. This could take the form of adding wording to s. 16(1) or adding another sub-section.

**Purpose:** Transparency of Members’ financial affairs for the entire time they hold office.

### **Discussion:**

As the current disclosure provisions only apply to sitting Members, Members who resign before their term is completed or are not re-elected are not required to disclose their financial interests for the period between their last disclosure and the date they leave Office. Depending on the timing of a Member’s departure, their disclosure statement(s) could be several months out of date. Accordingly an “exit” disclosure statement may be appropriate in order to ensure transparency of Members’ financial interests for the entire time that they are elected officials.

In the *Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings between Karlheinz Schreiber and the Right Honourable Brian Mulroney* (the “Oliphant Commission”), Commissioner Oliphant made several recommendations to improve the regulation of post-employment activities.<sup>15</sup> One of those recommendations was that the *Conflict of Interest Code for Members of the House of Commons* be amended to oblige a departing member to file a disclosure statement, current as of the member’s last day in office, within 60 days of the member’s last day in office (at p. 534).

Former Members may see such a provision as onerous and intrusive, given that they have moved on from public life. However including such a requirement would dispel any perception that there could be something questionable in the former Member’s financial affairs, and be seen as a way to confirm that Members have left public office in good standing.

It does not appear that any other jurisdiction in Canada requires former Members to file an exit disclosure statement. However some state governments in the US require employees and officials to submit disclosure statements upon leaving office:

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<sup>15</sup> See Oliphant Commission Report Volume 3, Chapter 11: Trust, Ethics and Integrity available online at <http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/oliphant/2010-07-20/english/reports/reports.php.htm>.

## California

Under section 87204 of the California Government Code, officials must file a disclosure statement within 30 days of leaving office. The statement must disclose any investments and interests in real property held at any time during the period covered by the statement, whether or not they are still held at the time of filing.<sup>16</sup>

A late filing fee of \$10 a day is imposed, to a maximum of \$100. Those who fail to file in a timely manner may also be referred to the California Fair Political Practices Commission for investigation and are subject to a fine of up to \$5,000.

## Maryland

Similarly, article 15-604 of Maryland's Ethics Law<sup>17</sup> requires public officials to submit a disclosure statement after leaving office. Officials and employees terminating service must file within 60 days of leaving office for the calendar year immediately preceding (unless that statement has been previously filed) and for any portion of the current calendar year served prior to leaving.<sup>18</sup>

### **Issues to consider:**

- What would the timeframe be for submitting the disclosure statement (30, 60, 90 days after leaving office?)
- Would it be necessary for former Members to submit a full disclosure statement, or would a scaled back version suffice? Perhaps all that would be required is a declaration of material changes and gifts received since the last disclosure statement.
- What occurs in the event of non-compliance? Should penalties be imposed or would the pressure of public/media scrutiny be sufficient to encourage compliance (as in UK's post-employment regime)? Or should the Commissioner's jurisdiction be expanded to cover former Members?
- If the *Act* is amended to include an exit interview for post-employment purposes<sup>19</sup>, the exit disclosure statement could be reviewed at the same time.

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<sup>16</sup> See <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=87001-88000&file=87200-87210>

<sup>17</sup> See <http://ethics.gov.state.md.us/Ethics%20Law.pdf>

<sup>18</sup> See <http://ethics.gov.state.md.us/bluepamphlet.htm>

<sup>19</sup> For discussion on post-employment issues including exit interviews, please see *Discussion and Material – Potential Major Issues*, presented to the Committee on May 2, 2012 (pages 14-17).

### 13. Online Access to Public Disclosure Statements

**Present section:** Sub-section 17(3)

**Possible change:** Require public disclosure statements to be posted online.

**Purpose:** Increase transparency by providing greater accessibility to Members' disclosure statements.

#### **Discussion:**

Currently the public disclosure statements are sent to the Clerk of the House, where they are available for public inspection. Online access would increase openness and transparency. Currently access to online disclosure is only available in Ontario and under the federal regime.

A provision similar to Ontario's could be considered:

#### **Ontario**

- 21(7)** The Commissioner shall make the public disclosure statement readily accessible to the public by ensuring that the public disclosure statement is published on the Internet and by any other means that the Commissioner considers appropriate.

#### **Canada**

##### *Code*

- 23(1)** The Commissioner shall prepare a disclosure summary based on each Member's statement filed under section 21 and submit it to the Member for review.
- (2) Each summary is to be placed on file at the office of the Commissioner and made available for public inspection during normal business hours, and posted on the website of the Commissioner. Each summary shall also be available to the public, on request, by fax or mail.

For the purposes of this section, the federal Commissioner maintains an online registry which contains Members' Disclosure Summaries and public statements relating to gifts or other benefits, sponsored travel and material changes.<sup>20</sup>

Similarly, section 51 of the *Act* establishes a public registry of various compliance documents. The registry contains Summary Statements of ministers, parliamentary secretaries and other reporting public office holders, as well as their public declarations relating to gifts or other advantages, travel, certain

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<sup>20</sup> See <http://ciec-ccie.gc.ca/PublicSearchMembers.aspx> . The registry only contains documents signed after January 27, 2009, when the forms were adopted by the House of Commons.

assets and liabilities, outside activities and other declarations as necessary. This registry can also be accessed online, although this is not specified in the *Act*.<sup>21</sup>

In his 2009-2010 Annual Report, Senate Ethics Officer Jean Fournier recommended that senators' public disclosure summaries be available online. In Mr. Fournier's words:

The reality is that Canadians are increasingly getting their information online. For reasons of transparency, cost and convenience, consideration should be given to having the information in the Public Registry available online. Canadians living in Vancouver or Charlottetown should have as easy access to this information as those living in Ottawa.<sup>22</sup>

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<sup>21</sup> See <http://ciec-ccie.gc.ca/PublicSearch.aspx>.

<sup>22</sup> At p. 56. Report available online at <http://sen.parl.gc.ca/seo-cse/PDF/AnnualRep0910-e.pdf>

## PART 4 – INVESTIGATION AND INQUIRY MATTERS

### 14. Preliminary/Investigation Stage

**Present section:** Section 21

**Possible change:** Include an option for the Commissioner to conduct a preliminary review or investigation before proceeding to the Inquiry stage.

**Purpose:** Clarify existing procedure.

**Discussion:**

It may be helpful to make a distinction between an investigative/information gathering stage and a formal Inquiry stage so that the process is more clearly understood.

In the *Delaney* opinion (December, 2010)<sup>23</sup> Commissioner Fraser observed:

The *Act* provides in s. 19(2) that a member of the public who has “reasonable and probable grounds to believe that there has been a contravention” of the *Act* may set out those grounds and “the nature of the contravention alleged”. Mr. Delaney has over the past several weeks set out the grounds for his belief.

The *Act* does not contemplate that the Commissioner will conduct an “*investigation*” as requested by Mr. Delaney. In fact, the word “investigation” does not appear in the *Act*. Unlike some other Statutory Officers of the Legislature, the Conflict of Interest Commissioner does not have any plenary investigatory powers. However, the *Act* does provide in s. 21(2) that the Commissioner may conduct an “*Inquiry*” with the power to order production of documentary records and to summons individuals to attend and have their evidence taken under oath. In the 20 years that the Office has been in existence, very few formal Inquiries have been conducted.

While it may seem that the different terms amount to a distinction without a difference, the juristic reality is that only the formal process contemplated by the *Act* is the traditional evidence-gathering Inquiry power. Typically, information is gathered informally by the Commissioner. If the Commissioner encounters resistance to the provision of information it may become necessary to conduct a formal Inquiry (at p. 3-4; emphasis in original).

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<sup>23</sup> Available on our website at [http://www.coibc.ca/download/opinion\\_campbell\\_14dec2010.pdf](http://www.coibc.ca/download/opinion_campbell_14dec2010.pdf)

New Brunswick's *Conflict of Interest Act* has a provision which sets out the investigation stage in simple terms:

- 37(1)** On receiving a request under section 36, the Commissioner may conduct an investigation with or without conducting an inquiry.

Alberta's *Conflicts of Interest Act* also allows the Commissioner to conduct an investigation as well as an inquiry:

### **Investigation and Inquiry**

- 25(1)** On receiving a request under section 24 or where the Ethics Commissioner has reason to believe that a Member, former Minister or former political staff member has acted or is acting in contravention of advice, recommendations or directions or any conditions of any approval or exemption given by the Ethics Commissioner to the Member, former Minister or former political staff member under this Act, and on giving the Member, former Minister or former political staff member concerned reasonable notice, the Ethics Commissioner may conduct an investigation with or without conducting an inquiry.

The "investigation" stage in Alberta is similar to our "information-gathering" stage.<sup>24</sup>

In Quebec, there is a "verification" stage:

- 95** If, after a verification, the Ethics Commissioner is of the opinion that there are no grounds for a request for an inquiry, the Ethics Commissioner terminates the inquiry process and records that fact in the report on the matter. Section 98 applies, with the necessary modifications, to the report.

- 96** .....

The Ethics Commissioner must not comment publicly on a verification or inquiry but may confirm that a request for a verification or an inquiry has been received or that a verification or inquiry is under way or has been completed. The Ethics Commissioner may also state why, after a verification, the Ethics Commissioner decided not to conduct an inquiry.

In NWT, the Commissioner conducts an investigation to determine if an inquiry by a Sole Adjudicator is warranted.

The Senate Ethics Officer conducts a "preliminary review" before proceeding to an inquiry:

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<sup>24</sup> Email from Glen Resler, Office of the Alberta Ethics Commissioner, November 10, 2011.

- 44(5)** After a preliminary review to determine whether or not an inquiry is warranted, the Senate Ethics Officer shall notify both the requesting Senator and the Senator who is the subject of the request of his or her decision.

➔ **Similar:** Canada (Code) s. 27(3.1)

Similarly the following provision was proposed in Bill M 202, which sets out the circumstances under which the Commissioner may discontinue an “examination”:

- 34(2)** If the commissioner determines that the request under section 30.1 is frivolous or vexatious or made in bad faith, he or she may decline to examine the matter. Otherwise, he or she shall examine the matter described in the request and, having regard to all the circumstances of the case, may discontinue the examination.
- (3) The commissioner shall prepare a report of the inquiry, including the findings, conclusions and reasons for the commissioner’s conclusions, or if the inquiry is discontinued, the reasons for the discontinuance.

➔ **Similar:** Canada (Act) s. 44(3)

## 15. Allegations Supported by Affidavit

<b>Present section:</b>	Section 19
<b>Possible change:</b>	Require that allegations of a breach of the <i>Act</i> be supported by an affidavit (or be made under oath).
<b>Purpose:</b>	Ensure that allegations are made with serious intent and deliberation.

### **Discussion:**

Section 19 only requires that requests for the Commissioner to give an opinion on an alleged contravention of the *Act* be in writing. In some jurisdictions (i.e. Nova Scotia, New Brunswick, PEI, Nunavut and Manitoba) such requests must be supported by an affidavit or be made under oath.

The advantage of this type of provision is that it may reduce the number of politically motivated and frivolous complaints. However the legal formality of such a requirement may be too onerous, and thus discourage many legitimate concerns from being brought forward.

### **Nova Scotia**

- 28(1)** Upon the application of a person who states under oath that that person has reasonable and probable grounds to believe a member, an electoral district association, recognized party or public employee is in contravention of this Act or the regulations and who produces sufficient evidence in support of the allegation to satisfy the designated person that there is a reasonable probability that the contravention has occurred, the designated person shall inquire into the allegation.
- (2)** The designated person may inquire into a possible contravention of the Act or the regulations where evidence of an essential element of the possible contravention can be found in the information disclosed to the designated person but which is not available to be examined by the public pursuant to this Act.

### **New Brunswick**

- 36(1)** Any person may request in writing that the Commissioner investigate an alleged breach of this Act by a member.
- (2)** A request under subsection (1) shall be in the form of an affidavit and shall set out the grounds for the belief and the nature of the alleged breach.

→ **Similar:** PEI s. 28(2)



## Nunavut

- 36(1)** Any person, including a member, who believes on reasonable grounds that a member has contravened this Act may request that the Integrity Commissioner review the facts and give a written report on the matter.
- (2) A request under subsection (1) must be in writing and must set out the alleged contravention and the grounds for believing that the contravention occurred.
- (3) A request under subsection (1) must be supported by an affidavit of the person making the request attesting to the belief of the person that the contravention occurred and to the grounds for that belief.

## Manitoba

- 20** Any voter may, by filing an affidavit showing details of an alleged violation of this Act by a member or minister and by paying into court \$300 as security for costs, apply ex parte to a judge of the Court of Queen's Bench for authorization to have a hearing before another judge of the court to determine whether the member or minister has violated this Act and upon hearing the application, the judge may grant the authorization, subject to section 21.1 [i.e. judge shall give due regard to any written opinion and recommendations the commissioner has made], or dismiss the application and order forfeiture of all or a part of the security.

## 16. Confidentiality/Applicability of FOIPPA

<b>Present section:</b>	No general provision, but confidentiality is mentioned in s. 18(4) re opinions and recommendations provided to a member.
<b>Possible change:</b>	Include section stipulating that information brought to the Commissioner's office must remain confidential, and clarify the relationship between the <i>Act</i> and <i>FOIPPA</i> .
<b>Purpose:</b>	Reinforce the obligation to protect the confidentiality of information provided to the Commissioner's office and the circumstances under which it is appropriate to share that information; address ambiguity between the <i>Act</i> and <i>FOIPPA</i> .

### **Discussion:**

It is not clear under *Freedom of Information and Protection of Privacy Act (FOIPPA)* what the status of the Conflict of Interest Commissioner is and whether s/he is subject to *FOIPPA*. The Conflict of Interest Commissioner is designated under s. 14 of the *Act* as an Officer of the Legislative Assembly (rather than an Office of the Legislature).

When the issue arose in 2000, former Information and Privacy Commissioner, David Loukidelis, ruled that whilst the Conflict of Interest Commissioner might be an Officer of the Legislative Assembly for the purposes of the *Members' Conflict of Interest Act*, he was not an Officer of the Legislative Assembly under *FOIPPA* (Order 00-29 dated July 31, 2000).

According to then Commissioner Loukidelis, our Office falls under the scope of the *FOIPPA* but, because of section 3(1)(c), and subject to subsection (3), any record that "relates to" the exercise of our statutory function is excluded from the scope of *FOIPPA*. However, records that are not case-specific and are administrative in nature remain subject to *FOIPPA*. However it is our position that as an Officer of the Legislative Assembly, the Commissioner exercises the jurisdiction of the House itself and his/her functions are covered by legislative privilege.<sup>25</sup>

One option is to amend *FOIPPA* to rectify this situation, as well as including a provision in the *Act* similar to s. 29 of Ontario's Act:

- 29(1)** Information disclosed to the Commissioner under this Act is confidential and shall not be disclosed to any person, except,
- (a) by the member, or with his or her consent;
  - (b) in a criminal proceeding, as required by law; or
  - (c) otherwise in accordance with this Act.

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<sup>25</sup> See *Tafler v. Hughes*, available online at <http://www.courts.gov.bc.ca/jdb-txt/sc/95/05/s95-0582.htm>

- (2) Subsection (1) prevails over the *Freedom of Information and Protection of Privacy Act*, 1994, c. 38, s. 29(2).

Examples from other jurisdictions relating to confidentiality are also included below for consideration.

#### Canada (Code)

- 27(5.1)** Other than to confirm that a request for an inquiry has been received, or that a preliminary review or inquiry has commenced, or been completed, the Commissioner shall make no public comments relating to any preliminary review or inquiry.
- 31.1** Except as otherwise ordered by the House or a court, or as required for the purposes of this Code, the Commissioner shall keep confidential documents and information received pursuant to this Code, including documents and information received in the course of an inquiry that the Commissioner suspended in accordance to paragraph 29(1)(a) [i.e. suspension of inquiry due to offence being committed] or documents and information referred to in section 31 [i.e. 12 month document retention period].

#### Canada (Act)

- 48(5)** Unless otherwise required by law, the Commissioner, and every person acting on behalf or under the direction of the Commissioner, may not disclose any information that comes to their knowledge in the performance of their duties and functions under this section, unless
- (a) the disclosure is, in the opinion of the Commissioner, essential for the purposes of carrying out his or her powers under section (1) or establishing the grounds for any conclusion contained in a report under section 44 of 45; or
  - (b) the information is disclosed in a report referred to in paragraph (a) or in the course of a prosecution for an offence under section 131 of the *Criminal Code* (perjury) in respect of a statement made to the Commissioner.

➔ **Similar:** Bill M 202, proposed s. 34(10)

#### Alberta

- 26(1)** Except as provided in this section, the Ethics Commissioner or any former Ethics Commissioner or a person who is or was employed 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 Member, former Minister or former political staff member whose conduct is the subject of proceedings under this Part;
  - (b) disclosed by a person conducting an investigation to the extent necessary to enable that person to obtain information from another person;
  - (c) adduced in evidence in an inquiry under this Part;
  - (d) disclosed in a report made by the Ethics Commissioner under this Part;
  - (e) disclosed where the Ethics Commissioner believes on reasonable grounds that the disclosure is necessary for the purpose of advising the Minister of Justice and Attorney General 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.

## 17. Release of Opinions to Members of the Public

<b>Present section:</b>	Section 21
<b>Possible change:</b>	Include a provision relating to the release of opinions provided to members of the public.
<b>Purpose:</b>	To clarify how, and under what conditions, opinions provided to members of the public will be released.

### **Discussion:**

If a Member makes a request for the Commissioner to provide an opinion on another Member's compliance with the Act under s. 19(1), s. 21(3) requires the Commissioner to report his opinion to the Speaker. Similarly, if the Executive Council requests an opinion under s. 19(3), under s. 21(6) the Commissioner must report his opinion to the Secretary of the Executive Council. The *Act* is silent on how opinions requested by the public under s. 19(2) are to be released. Accordingly it is not clear what obligations the Commissioner has to keep the allegations and his opinion confidential, and how the opinion should be reported.

In most other jurisdictions that allow members of the public to request the Commissioner's opinion on a matter involving a Member, the Commissioner must submit his/her report to the Speaker. For example:

#### Alberta

**25(7)** Where a request is made under section 24(1)<sup>26</sup>, (3) or (4), the Ethics Commissioner shall report the Ethics Commissioner's findings to the Speaker of the Legislative Assembly.

➔ **Similar:** Nunavut, s. 44(1)

#### New Brunswick

**40(1)** Where a request is made under section 36 [i.e. request from "any person" to investigate an alleged breach] and the Commissioner has determined that the request does not fall within the scope of subsection 37(4) [i.e. it is not frivolous or vexatious], the Commissioner shall, upon completion of an investigation, report to

- (a) the Speaker,
- (b) the member who is the subject of the investigation,
- (c) the leader in the Assembly of the registered political party to which the member belongs, and
- (d) if the request was made by a member under subsection 36(1), that member.

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<sup>26</sup> This section allows "any person" to request in writing that the Ethics Commissioner investigate any matter respecting an alleged breach of the Act by a Member, former Minister or former political staff member.

If the Commissioner decides not to investigate or ceases an investigation in accordance with subsection 37(4), the Commissioner must inform the member and the person who made the request (s. 37(5)).

In British Columbia, the practice of the Commissioner has been to treat requests from the public as confidential if the matter does not proceed past the preliminary stage. However, the person requesting the opinion is advised that if they make public reference to the opinion, the Commissioner considers confidentiality to have been waived and reserves the right to post the opinion on the COI website in its entirety.

Often, members of the public requesting opinions do so with accompanying publicity they have arranged. When this happens, the Commissioner considers the request to be in the public domain and the opinion is posted on the COI website at the same time as it is given to the person who requested it.

In either case, the Commissioner does not formally deliver the opinion to the Speaker.

## 18. Suspension of Inquiry

<b>Present section:</b>	None
<b>Possible change:</b>	Suspension of Commissioner's Inquiry in the event that the same matter is the subject of a criminal or other investigation.
<b>Purpose:</b>	To avoid compromising ongoing criminal or quasi-criminal investigations, and the rights of the parties to a fair trial. Potential jurors especially may be influenced by the findings of the Commissioner.

### **Discussion:**

In 1999, at the request of the Executive Council, Commissioner Oliver commenced an Inquiry to determine whether then Premier Glen Clark had breached the *Act* in connection with the granting of approval-in-principle of a gaming licence. Subsequently, criminal charges were laid against Mr. Clark in relation to the same matter. Commissioner Oliver considered whether to suspend his Inquiry in light of the criminal investigation, but decided to proceed on the basis that "the citizens of the Province are entitled to know whether or not the former Premier conducted himself in a manner prohibited by the *Act*" (*Clark Opinion*, at p. 2<sup>27</sup>). However Commissioner Oliver's report was sealed, by court order, until the criminal matter was completed, to avoid potential prejudice the report might have either to the Crown or to the defence (see 2002 Annual Report at p. 6).

It may be preferable to stipulate in the *Act* that the Commissioner must suspend an investigation/inquiry if the same matter is the subject of a criminal investigation, rather than leave that decision to the Commissioner's discretion. New Brunswick, Alberta and Canada (HOC and Senate) have such provisions in their legislation, as set out below.

### **New Brunswick**

- 39** If the Commissioner, when conducting an investigation, discovers that the subject matter of the investigation is being investigated by police or that a charge has been laid, the Commissioner shall suspend the investigation until the police investigation or charge has been finally disposed of, and shall report the suspension to the Speaker.

### **Alberta**

- 25(4.1)** The Ethics Commissioner shall immediately suspend an investigation or inquiry under this section if the Ethics Commissioner discovers that the subject-matter of the investigation or inquiry is also the subject-matter of an investigation by a law enforcement agency to determine whether an offence under this Act or any other

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<sup>27</sup> Available on our website at <http://www.coibc.ca/download/clark.pdf>

enactment of Alberta or under an Act of the Parliament of Canada has been committed or that a charge has been laid with respect to that subject-matter.

PEI

- 30.** If the Commissioner, when conducting an inquiry, discovers that the subject matter of the inquiry is being investigated by police or that a charge has been laid, the Commissioner shall
- (a) suspend the inquiry until the police investigation or charge has been finally disposed of; and
  - (b) shall report the suspension of the inquiry to the Speaker.
- 31.** If the Commissioner, when conducting an inquiry, determines that there are reasonable grounds to believe that there has been a contravention of any other Act or of the *Criminal Code* (Canada), the Commissioner shall
- (a) immediately refer the matter to the appropriate authorities;
  - (b) suspend the inquiry until any resulting police investigation or charge has been finally disposed of; and
  - (c) report the suspension of the inquiry to the Speaker.

→ **Similar:** Canada (Senate) s. 47; (Act) s. 49; (Code) s. 29



## 19. Limitation Period

<b>Present section:</b>	None
<b>Possible change:</b>	Impose time restriction on investigating alleged past breaches.
<b>Purpose:</b>	To ensure that allegations are brought forth in a timely manner and avoid the difficulty of trying to gather evidence that is no longer fresh.

### **Discussion:**

There are pros and cons to adopting such a provision. On the one hand, the farther back an alleged infraction occurred, the more difficult it is to gather evidence and piece together all the relevant information so a reasonable time limit may make sense. On the other hand, a breach is a breach no matter when it occurred and arguably should not be ignored.

Here are some examples of limitation periods from other jurisdictions for consideration:

#### Alberta

**25(12)** An investigation or inquiry under this section shall not be commenced more than 2 years after the date on which the alleged breach occurred.

Similarly PEI's *Conflict of Interest Act* imposes a two year time limit (s. 28(7)).

#### Manitoba

**30(1)** No application under section 20 [i.e. application for hearing into violation of the Act] shall be brought more than six years after the date of the alleged violation in respect of which the application is made.

#### Canada (Act)

**65.** Proceedings under this Act may be taken at any time within but not later than five years after the day on which the Commissioner became aware of the subject-matter of the proceedings and, in any case, not later than ten years after the day on which the subject matter of the proceedings arose.

## 20. Power to Reinvestigate

**Present section:** None

**Possible change:** Include power for Commissioner to reinvestigate an alleged breach if new facts arise.

**Purpose:** To ensure fairness and accuracy if new information becomes available that might change the outcome of an investigation.

### **Discussion:**

In Alberta, the Commissioner can reinvestigate an alleged breach if new facts come to light:

**25(5)** 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.

Although this power would likely be used very rarely, it gives the Commissioner flexibility to respond in appropriate situations. If there is new information that might change the outcome of an investigation or Inquiry, it serves the public interest for the Commissioner to be able to consider that new information in order to preserve confidence in the Commissioner to fulfil his or her mandate.

## 21. Right to Respond to Commissioner's Report

**Present section:** None

**Possible change:** Include a provision to give a person who is the subject of a report issued by the Commissioner a formal opportunity to respond.

**Purpose:** Greater procedural fairness.

### **Discussion:**

Under s. 21(4) of the *Act*, if it appears that there will be adverse findings against a Member in the Commissioner's report, the Commissioner must allow the Member to make representations before finalizing the report. In some other jurisdictions, Members also have the opportunity to respond publicly after the report has been tabled.

For example:

### **Quebec**

**102.** A person who is the subject of a report of the Ethics Commissioner and is a Member at that time has the right to reply to the report, within five sitting days after the tabling of the report in the National Assembly, by making a statement not exceeding 20 minutes at the time set aside during Routine Proceedings for complaints of breach of privilege or contempt and personal explanations.

If the person who is the subject of the report is not a Member, he or she may address a written notice to the President of National Assembly within the time set out in the first paragraph asking to be heard by the Assembly. The President convenes the appropriate committee without delay to hear the person's statement, which must not exceed 20 minutes. The report of the committee is then laid before the National Assembly.

### **Canada (Code)**

**28(9)** Within 10 sitting days after the tabling of the report of the Commissioner in the House of Commons, the Member who is the subject of the report shall have a right to make a statement in the House immediately following Question Period, provided that he or she shall not speak for more than 20 minutes.

## 22. Penalties and Enforcement

**Present section:** Section 22

**Possible changes:**

- (a) Increase amount of penalty (currently \$5,000)
- (b) Miscellaneous enforcement provisions from other jurisdictions for consideration

**Purpose:** Add more “teeth” to enforcement of obligations.

### **Discussion:**

#### **(a) Increase amount of penalty (currently \$5,000)**

Commissioner Oliver argued that the current \$5,000 penalty seems “totally inadequate” (see 2007 Annual Report, at p. 13) as a maximum alternative to suspension for serious infractions and recommended a considerable increase (eg. \$20,000). Bill M 202 proposed raising the maximum fine to \$50,000. The limit is \$10,000 in the NWT (s. 106)(1)(b)(ii), Nunavut (s. 46(1)(e)) and Nova Scotia (s. 29(1)(d)).

In Alberta, former Ministers who are no longer members and former political staff members are subject to a maximum fine of \$50,000 for breaching provisions related to dealings with government (s. 31, 32). Otherwise, no upper limit is specified for contraventions of the Act. Under section 27(2)(b), the Commissioner may recommend a penalty be imposed “in an amount recommended by the Ethics Commissioner”.

Similarly, in Saskatchewan, the amount of the fine/penalty is open-ended. Under s. 31(1)(c) of the *Members’ Conflict of Interest Act* the commissioner may recommend “that the Assembly impose a fine on a member in an amount determined by order of the Assembly”. Similar provisions are found in Quebec (s. 99) and New Brunswick’s legislation. (s. 41(1)(b)) but in those jurisdictions the Commissioner may recommend the amount.

#### **(b) Other options re penalties/enforcement to consider from other jurisdictions**

Examples of penalties and enforcement provisions from other jurisdictions are highlighted below for consideration.

#### **Alberta**

The Commissioner may recommend the alternative of a lesser sanction or no sanction if the Member carries out recommendation in the report for the rectification of the breach. (s. 27(2)) or that no sanction be imposed (s. 27(3)).

- ➔ **Similar:** Manitoba, s. 22; Ontario, s. 31(6); New Brunswick, s. 41(2)(3); PEI s. 29(6) and (7); Canada (Senate) s. 45(4)

### Saskatchewan

The Commissioner may make an order that the member comply with conditions:

- 31(1)** Where the commissioner conducts an inquiry for the purposes of subsection 30(1) and finds that the member has contravened any provision of this Act, the commissioner may recommend in the report that is laid before the Assembly:
- (a) that the member be ordered to comply with the Act on those terms and conditions the Assembly considers appropriate;

### Manitoba

- 24** A member who is suspended pursuant to clause 21(1)(b) or subsection 23(1) is, in respect of the period covered by the suspension, not entitled to receive any indemnity, allowance or expense otherwise payable to the member under *The Legislative Assembly Act*, *The Legislative Assembly Management Commission Act* or under the terms of appointment to any Crown agency on which the member serves.

### Canada (Act)

Public office holders who contravene certain provisions of the federal Act are liable to administrative penalties not exceeding \$500.<sup>28</sup>

### Quebec

- 41.** A Member acts contrary to this Code if he or she
- (1) refuses or fails to respond to a written request of the Ethics Commissioner within a reasonable time;
- (2) refuses or fails to provide within a reasonable time information or a document the Ethics Commissioner has required in writing;
- (3) misleads or attempts to mislead the Ethics Commissioner in the exercise of the Ethics Commissioner's functions; or
- (4) in any way hinders the Commissioner in the exercise of the Ethics Commissioner's functions.
- 99** If the Ethics Commissioner concludes that the Member has violated this Code, the Ethics Commissioner so states in the report and, according to the circumstances, may recommend that no sanction or one or more of the following sanctions be imposed:

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<sup>28</sup> See Schedule I for relevant provisions.

- (1) a reprimand;
- (2) a penalty, specifying the amount;
- (3) the return to the donor, delivery to the State or reimbursement of the value of the gift, hospitality or benefit received;
- (4) the reimbursement of any unlawful profit;
- (5) the reimbursement of the indemnities, allowances or other sums received as a Member or a Cabinet Minister while the violation of this Code continued;
- (6) a suspension of the Member's right to sit in the National Assembly, together with a suspension of any indemnity or allowance, until the Member complies with a condition imposed by the Ethics Commissioner;
- (7) the loss of his or her seat as a Member;
- (8) the loss of his or her position as a Cabinet Minister, if applicable.

**104** Any sanction recommended in a report of the Ethics Commissioner is applicable on adoption of the report by the National Assembly by the vote of two thirds of the Members.

#### Newfoundland

Suspension may be recommended without pay for a specified period (HOA s. 45(1)(c)).

#### NWT

Suspension of member is limited to 30 days (s. 106(1)(b)(v)).

#### Nunavut

The Commissioner may recommend that the member publicly acknowledge his or her conduct (s. 46(1)(c)); or impose any other sanction the Commissioner considers appropriate (s. 46(1)(h)).

#### Bill M 202

- 37(1)** If the commissioner finds after an inquiry under section 34 that a person has contravened a provision of this Act, that person commits an offence under this Act.
- (2) A person who supplies false or misleading information in a return or other document submitted to the commissioner under this Act commits an offence.
- (3) A person does not commit an offence under subsection (2) if, at the time the information was supplied, the person did not know that it was false or misleading and, with the exercise of reasonable diligence, could not have known that it was false or misleading.
- (4) A person who commits an offence under subsection (1) or (2) is liable to a fine of not more than \$50,000.

- (5) Section 5<sup>29</sup> of the *Offence Act* does not apply in respect of this Act or the regulations.
- 38(1)** If a public office holder is found to have committed an offence under this Act, the commissioner may – if satisfied that it is in the public interest, taking into account the gravity of the offence and whether the offence was a second or subsequent offence under this Act recommend the suspension from public office of that person for a period of not more than two years.
- (2) Any recommendation of suspension made by the commissioner is to be made in a report laid before the Legislative Assembly pursuant to section 34(5).
- (3) The Legislative Assembly must consider the commissioner’s recommendation and respond to it.

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<sup>29</sup> Section 5 reads: “A person who contravenes an enactment by doing an act that it forbids, or omitting to do an act that it requires to be done, commits an offence against the enactment.”

## 23. Protection of Commissioner

**Present section:** Section 23

- 23** No action of any kind lies against the commissioner for anything he or she does under this Act.

**Possible change:**

- 23** No proceedings lie against the Commissioner or against any person acting on behalf of, or under the direction of the Commissioner for anything done, reported or said in good faith in the exercise of performance or the intended exercise of the performance of a duty, power or function under this Act.

**Purpose:** To extend immunity to others working under the direction of the Commissioner.

### **Discussion:**

The proposed amendment above is similar to provisions in other jurisdictions, for example:

#### **Ontario**

- 25** No proceeding shall be commenced against the Commissioner or an employee in his or her office for any act done or omitted in good faith in the execution or intended execution of the Commissioner's or employee's duties under this Act or any other Act.

→ **Similar:** Saskatchewan s. 28; Quebec, s. 83; Yukon, s. 25

Another option is to include a provision similar to Alberta's, which includes former Commissioners and others, those who formerly worked for the Office, and those who provide information to the Commissioner:

#### **Alberta:**

- 45(1)** No action lies against the Ethics Commissioner or any former Ethics Commissioner or any other person who is or was employed or engaged by the Office of the Ethics Commissioner for anything done in good faith under this Act.
- (2)** No action lies against a person who in good faith provides information or gives evidence in a proceeding under Part 5 to the Ethics Commissioner or to a person employed or engaged by the Office of the Ethics Commissioner.

→ **Similar:** New Brunswick, s. 34; Bill M 202 proposed s. 35.



## 24. Compellability

<b>Present section:</b>	None
<b>Possible change:</b>	Include a provision stipulating that the Commissioner is not a compellable witness in civil proceedings.
<b>Purpose:</b>	To further protect the integrity of the Commissioner's work (in addition to proposed amendment re actions against the Commissioner, above)

### **Discussion:**

Some other jurisdictions include provisions addressing compellability, for example:

#### Saskatchewan

- 26(1)** The Commissioner is neither competent nor compellable to:
- (a) give evidence in any civil proceeding concerning any information that comes to the knowledge of the commissioner in the exercise of the powers, performance of the duties of carrying out of the functions of the commissioner pursuant to this Act; or
  - (b) produce any files, papers, information, reports, correspondence or other documents relating to the business or activities of the commissioner.
- (2) Subsection (1) applies, with any necessary modifications, to the staff of the commissioner.

#### PEI

- 5** Neither the Commissioner nor an employee of the Legislative Assembly is a competent or compellable witness in a civil proceeding outside the Legislative Assembly in connection with anything done pursuant to this Act.

#### Quebec

- 85.** The Ethics Commissioner and the person the Ethics Commissioner has authorized to conduct an inquiry may not be compelled to give testimony relating to information obtained in the exercise of their functions or to produce a document containing such information.

## 25. Legal Fees/Costs

**Present section:** None

**Possible change:** The Commissioner may recommend that a person who was the subject of an investigation or Inquiry under the *Act* be reimbursed in an amount approved by the Commissioner for his or her legal costs in respect of such investigation or Inquiry.

**Purpose:** Indemnify Members in appropriate circumstances for legal costs related to responding to an investigation or Inquiry.

### **Discussion:**

Commissioner Oliver noted that an Inquiry under the *Act* is likely to result in the Member having to retain legal counsel, given the impact on the Member's political future. He suggested that the *Act* might be amended to provide that the Commissioner may, at his or her discretion, recommend that a Member who is the subject of an investigation or Inquiry be reimbursed in an amount approved by the Commissioner for his or her legal costs (see 2007 Annual Report, at p. 15).

A provision similar to Alberta's could be considered:

**27(3.1)** Where the Ethics Commissioner considers it appropriate in the circumstances, the Ethics Commissioner may recommend that the Member, former Minister or former political staff member be reimbursed, in an amount approved by the Ethics Commissioner, for his or her legal expenses incurred in respect of an investigation or inquiry.

In Nunavut, the Commissioner's authority extends even further:

**46(2)** The Integrity Commissioner may also, in his or her report, recommend that costs, in an amount determined by the Integrity Commissioner, be paid by or to, any of the following:

- (a) the member;
- (b) the person who made the request for a review;
- (c) the Government (*emphasis added*).

The Northwest Territories' *Legislative Assembly and Executive Council Act* contains the following provision in relation to costs:

**108(1)** The reasonable costs of a member complained of pertaining to a complaint under this Part shall be paid in the circumstances and to the extent provided for in a policy established by the Board of Management.

- (2) The Speaker shall cause any policy established by the Board of Management under subsection (1) to be laid before the Legislative Assembly as soon as is reasonably practicable.
- (3) No payment shall be made from the Consolidated Revenue Fund to pay costs of a complainant.

## 26. Investigations/Inquiries Concerning Former Members

**Present section:** None

**Possible change:** Add a section detailing how investigations concerning former Members are to be commenced and/or continued.

**Purpose:** Address the issue of lack of jurisdiction in the case of commencing or continuing an investigation against a Member who resigns or is defeated in an election.

### **Discussion:**

It would be beneficial to extend the Commissioner's jurisdiction over former Members in certain circumstances. It is clear that under the current *Act*, the Commissioner does not have jurisdiction to commence an investigation or Inquiry into the conduct of a former Member. The *Act* is silent on whether the Commissioner has jurisdiction to *continue* an investigation against a person who resigns or is defeated in an election once the process has started. If such a situation arose, we would likely seek consent to continue from the parties but if one of the parties objected, then we would likely not have jurisdiction to continue.

In the case of continuing an investigation or Inquiry, it is in the public interest that a Member not be able to "resign out" of his or her accountability. It should also be open to a Member who has lost his or her seat to have an opportunity to exonerate him or herself. Similarly, there is a case to be made that it is in the public interest to commence an examination into the conduct of a former Member after he or she ceases to be a Member, if allegations only come to light after the Member leaves office. Some examples of how this issue is dealt with in other jurisdictions are included below.

### **Ontario**

Ontario resolved the issue in the most recent amendment to its *Act*, which now says that either party can ask the Commissioner to continue the inquiry in the event that the member resigns. Similarly, the inquiry can be continued upon request by either party in the event of an election being called:

### **Effect of election, resignation on matter referred by member**

**31 (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.

(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.

(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 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.

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

(4.5) If an inquiry is suspended under subsection (4.1) and is not continued under subsection (4.2) or (4.3), the Commissioner shall terminate the inquiry and shall give written notice of the termination to the member or former member whose conduct is concerned, the member who referred that matter and the speaker.

#### **Effect of election, resignation on matter referred by Executive Council**

(4.6) The Commissioner shall suspend an inquiry respecting a matter referred by the Executive Council if the member of the Executive Council whose conduct is concerned resigns his or her office.

(4.7) The Commissioner shall continue an inquiry suspended under subsection (4.6) if, within 30 days after the date of the resignation, the Executive Council submits a written request to the Commissioner that the inquiry be continued.

(4.8) The Commissioner shall terminate an inquiry respecting a matter referred by the Executive Council in the following circumstances:

1. An inquiry is suspended under subsection (4.6) and is not continued under subsection (4.7).
2. A writ is issued under the *Election Act* for a general election.

#### Quebec

The *Code* sets out the circumstances under which former members continue to be subject to the Commissioner's jurisdiction:

**2** ...For the purposes of this Code,

...

(2) as far as the imposition of a sanction for a violation of this Code is concerned, a person who has ceased to be a Member is deemed to be a Member.

- 81** The Ethics Commissioner retains his or her authority in respect of a former Member for a period of five years after the end of the person's term. Even after the expiry of that period, the Ethics Commissioner may continue an inquiry that had already begun.

#### Canada (Act)

Under the federal *Conflict of Interest Act*, former public office holders remain subject to the Commissioner's jurisdiction:

- 44.(1)** A member of the Senate or the House of Commons who has reasonable grounds to believe that a public office holder or former public office holder has contravened this Act may, in writing, request that the Commissioner examine the matter.
- 45.(1)** If the Commissioner has reason to believe that a public office holder or former public office holder has contravened this Act, the Commissioner may examine the matter on his or her own initiative.

There does not appear to be a time limit applicable to former public office holders.

However the situation is not clear under the federal Code, but it is likely that the investigation would be discontinued if the Member ceased to be a Member.

#### Manitoba

In certain sections (e.g. insider information (s. 18), use of influence (s. 19)) the terms "member", "minister" and "senior public servant" apply to former members, ministers and senior public servants.

#### Senate

The Code establishes a Committee which is responsible for all matters relating to the Code (articles 35-37). In the case of a former Senator, the Committee decides whether to continue an investigation or inquiry that has already commenced, but cannot commence an investigation/inquiry after the Senator has ceased to be a Senator:

- 49(1)** An investigation or inquiry of a Senator who ceases to be a Senator is permanently suspended unless the Committee directs that the investigation or inquiry be completed.
- (2) In considering whether to issue a direction under subsection (1), the Committee shall consider any request from the former Senator or from the Senator who requested the Inquiry, and any representations made by the Senate Ethics Officer.

#### Nova Scotia

Former members may be the subject of an inquiry in the two years after ceasing to be a member:

- 28(4)** The designated person has jurisdiction to inquire into actions or omissions by a former member or former public employee if the application or the inquiry by the designated

person commences within two years after the former member or former public employee ceases to be a member or public employee.

### New Brunswick

In New Brunswick, only the period of time between elections is covered:

- 2 For the purposes of this Act, other than subsection 18(3), where a person who ceases to be a member of the Assembly by reason of the dissolution of the Assembly again becomes a member as a result of the next following election, that member is deemed to have been a member of the Assembly during the period of time the person ceased to be a member to the time the person again became a member.

→ **Similar:** Alberta, s. 10

In the recently released “Miles Report”<sup>30</sup>, the Conflict of Interest Commissioner for New Brunswick recommended that their Act “be amended to provide that a former defeated member who is under investigation as a result of allegation of having committed a breach of the *Members’ Conflict of Interest Act* be accorded the right to promptly and unilaterally request that the investigation continue notwithstanding that he or she is no longer a Member of the Legislative Assembly of New Brunswick” (at para. 53).

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<sup>30</sup> Report to the Speaker of the Legislative Assembly of New Brunswick of the Investigation by the Hon. Patrick A.A. Ryan Q.C., Conflict of Interest Commissioner, into Allegations by Mr. Bruce Fitch, MLA for Riverview of violations of the *Members’ Conflict of Interest Act* by Minister Richard Miles, MLA for Fredericton-Silverwood and Minister of Environment; filed with the Speaker February 20, 2012. Available online at <http://www.gnb.ca/legis/business/currentsession/57/57-2/LegDocs/2/en/MilesDecision-e.pdf>

## PART 5 – MISCELLANEOUS

### 27. Definitions

**Present section:** Section 1

**Possible change:** See chart below

**Purpose:** Updating definitions for increased clarity

**Discussion:**

The following are some suggestions proposed by former Commissioners or included in other jurisdictions' legislation.

Defined term	Current definition	Proposed definition
<b>Child</b>	includes a person to whom a member has demonstrated a settled intention to treat as a child of his or her family	"dependent child" means a child of a member or his or her spouse who has not reached the age of 18 years or who has reached that age but is primarily dependent on the member or the member's spouse for financial support. <sup>31</sup>
<b>Family/family member</b>	n/a	<ul style="list-style-type: none"><li>• with respect to a member, means the member's spouse and dependent children (Sask, Quebec, Bill M-202)</li><li>• when used with reference to a person, means (a) his or her spouse and minor children; and (b) any other adult who is related to the person or his or her spouse, shares a residence with the person and is primarily dependent on the person or spouse for financial support (Ont, Newfnd, Nunavut)</li><li>• (a) the Member's spouse or common-law partner; and (b) a son or daughter of the Member or the Member's spouse or common-law partner, who has not reached the age of 18 years or who has reached that age but it primarily dependent on the Member or the Member's spouse or common-law partner for financial support (Can (Code, Senate))</li></ul>
<b>Gift or other advantage</b>	n/a	<ul style="list-style-type: none"><li>(a) an amount of money if there is no obligation to repay it; and</li><li>(b) a service or property, or the use of property or money that is provided without charge or at less than its commercial value. (Bill M-202)</li></ul>

<sup>31</sup> This definition adapted from the federal *Conflict of Interest Act*. Also similar to definition proposed in Bill M-202.



<b>Private interest</b> <sup>32</sup>	does not include an interest arising from the exercise of an official power or the performance of an official duty or function that (a) applies to the general public, (b) affects a member as one of a broad class of electors, or (c) concerns the remuneration and benefits of a member or an officer or employee of the Legislative Assembly;	<p>does not include the following:</p> <ul style="list-style-type: none"> <li>a) an interest in a matter that <ul style="list-style-type: none"> <li>i. is of general application;</li> <li>ii. affects a person as one of a broad class of the public; or</li> <li>iii. concerns the remuneration and benefits of a member;</li> </ul> </li> <li>b) an interest that is trivial; or</li> <li>c) an interest of a Member relating to publicly-traded securities in the Member's blind trust.<sup>33</sup></li> </ul> <p>Includes any pecuniary or non-pecuniary interest that directly or indirectly confers a real and tangible personal benefit on a person, regardless of whether the benefit is conferred before or after a decision, but does not include an interest in a decision,</p> <ul style="list-style-type: none"> <li>a) that is of general application,</li> <li>b) that affects a member as one of a broad class of persons,</li> <li>c) that concerns the remuneration or benefits of a member or of an officer or employee of the Legislative Assembly, or</li> <li>d) where the interest is so insignificant in its nature that a decision affecting the interest cannot reasonably be regarded as likely to influence the member.<sup>34</sup></li> </ul>
<b>Private corporation</b>	means a corporation, all of whose issued and outstanding securities are subject to restrictions on transfer and are beneficially owned directly or indirectly by not more than 50 persons;	means a corporation none of whose shares are publicly traded securities <sup>35</sup>
<b>Public Office Holder</b>	n/a	<ol style="list-style-type: none"> <li>1. a minister of the Crown, a minister of state or a parliamentary secretary;</li> <li>2. a member of ministerial staff;</li> <li>3. a ministerial adviser; and</li> <li>4. an appointee as defined in this Act.</li> </ol>

<sup>32</sup> The 1999 Committee recommended keeping the negative definition of “private interest” rather than adopting a positive definition. They agreed that the negative definition, supplemented by the growing body of rulings by commissioners, provides enough clarity to the definition in terms of what is and what is not covered by the term “private interest” (at p. 20).

<sup>33</sup> Similar to Alberta and Senate.

<sup>34</sup> “The Legislative Assembly and Conflict of Interest”, Manitoba Law Reform Commission Report #106, December 2000. Available online at <http://www.gov.mb.ca/justice/mlrc/reports/106.pdf> (Manitoba Law Commission Report”). See draft *Conflict of Interest Act*, p. 102.

<sup>35</sup> From New Brunswick's *Members' Conflict of Interest Act*.

## 28. Terms, Appointment and Reappointment of Commissioner

**Present section:** Section 14

**Possible changes:**

- (a) Appointment and reappointment process
- (b) Length of term
- (c) Remuneration
- (d) Suspension/Removal process
- (e) *ad hoc* Commissioner

**Purpose:** Ensure terms of Commissioner's appointment are appropriate.

### **Discussion:**

#### ***a. Appointment and reappointment process***

When the Act was last reviewed in 1999, the Select Standing Committee on Parliamentary Reform, Ethical Conduct, Standing Orders and Private Bills (hereinafter the "1999 Committee") recommended that the appointment of a Conflict of Interest Commissioner require the unanimous recommendation of the Special Committee to Appoint a Conflict of Interest Commissioner (rather than a majority committee decision), followed by the existing requirement of ratification by two-thirds of the Legislative Assembly.<sup>36</sup>

#### ***b. Length of term***

Commissioner Hughes suggested an appropriate term for the Commissioner would be 7-8 years (see 1995-1996 Annual Report, at p. 28). The 1999 Committee recommended a non-renewable term of six years.

In most other jurisdictions the Commissioner's term is five years (Alberta, New Brunswick, Nunavut, Ontario, PEI, Quebec and Saskatchewan). The federal Conflict of Interest and Ethics Commissioner has the longest term at 7 years,<sup>37</sup> as does the Senate Ethics Officer. The terms for the Yukon and NWT are 3 and 4 years respectively. In all jurisdictions the terms are renewable.<sup>38</sup> See comparative chart in Appendix 28-A.

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<sup>36</sup> See the 1999 Committee's Report at p. 23.

<sup>37</sup> Under s. 82(1) of the *Parliament of Canada Act*.

<sup>38</sup> No term specified in Manitoba and Nova Scotia.

### **c. Remuneration**

The Commissioner's appearance of independence may be impaired by the present wording of subsection 14(5) (i.e. that compensation may be set by the Lieutenant Governor in Council). It may be preferable for the Commissioner's compensation to be linked by statute to that of the Chief Judge of the Provincial Court in the same manner as the Auditor General.

The process for determining the Commissioner's compensation varies from jurisdiction to jurisdiction:

- determined by the Standing Committee on Legislative Offices, reviewed at least once a year (Alberta)
- fixed by the Board of Internal Economy (Saskatchewan)
- fixed by the Lieutenant Governor in Council (Ontario, New Brunswick)
- fixed by the Standing Committee on Legislative Management (PEI)
- fixed by the House of Assembly Management Commission (Newfoundland)

### **d. Suspension/Removal Process**

Under the current provision, the Commissioner may be removed or suspended before the end of the term of office by the Lieutenant Governor in Council for cause on the recommendation of the Legislative Assembly (s. 14(4)). Most other jurisdictions have provisions similar to BC's.<sup>39</sup>

The wording of this sub-section may be perceived as allowing government interference with the independence of the Commissioner. One option is to amend the existing provision so that 2/3 rather than a simple majority of the Legislative Assembly is required to remove the Commissioner, as is the case in PEI:

#### PEI

- 2(5) The Commissioner may be removed for cause, before the expiry of the term of office, by a resolution of the Legislative Assembly supported by at least two-thirds of the members present.

➔ **Similar:** Quebec, s. 66

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<sup>39</sup> See Alberta (s. 36); NB (s. 24); Nfld (HOAA s. 34(4)); Yukon (s. 18(2)); NWT (s. 92(2)); Nunavut (s. 24(5)). Similarly the Commissioner may be removed on the "resolution" or "address" of Legislative Assembly (Sask, s. 19; Ontario, s. 19; Canada (HOC) s. 82(1) of *Parliament of Canada Act*; Canada (Senate), s. 20.2 of the *Parliament of Canada Act*.) In other jurisdictions there is no removal procedure (Manitoba, Nova Scotia).

***e. Ad hoc Commissioner***

Under Quebec’s Code, an *ad hoc* Commissioner may be appointed in the event that the Commissioner himself or herself is in a conflict:

- 72.** If, in a specific case, the Ethics Commissioner finds that he or she cannot act in particular because of a conflict of interest situation or because his or her impartiality could be questioned, the Ethics Commissioner, after consulting with the Leaders of the authorized parties that are represented in the National Assembly, refers the case to an *ad hoc* commissioner.

Similarly, NWT’s legislation allows for a “special Conflict of Interest Commissioner” (s. 94).

## **Appendix 28-A: Jurisdictional Comparison Summary: Commissioner’s Length of Term**

<b>3 years</b>	<b>4 years</b>	<b>5 years</b>	<b>7 years</b>	<b>Renewable</b>
YK	NWT	AB, BC, SK, ON, NB, PEI, QB, NU,	CAN (HOC, SEN)	All

## 29. Contracts with the Government

<b>Present section:</b>	Section 18 by reference to s. 25 of the <i>Constitution Act</i>
<b>Possible change:</b>	Incorporate s. 25 through 27 of the <i>Constitution Act</i> into the <i>Act</i> , with possible exceptions as described below.
<b>Purpose:</b>	This would be more straightforward and less confusing than having to refer to other pieces of legislation.

### **Discussion:**

Sections 25 to 27 of the *Constitution Act*,<sup>40</sup> which proscribe the Members' remuneration from government for the provision of goods, services and work and lists exceptions and the procedure for applying the prohibition, applied to Members prior to the adoption of the *Act*.

In his 1993-94 Annual Report, Commissioner Hughes recommended incorporating s. 25 and s. 26, and possibly s. 27 of the *Constitution Act* into the *Act*. He commented that there are situations where a Member is the only qualified and available person in a community to provide a service or goods to a ministry of government. In such situations he would give advice based on "common sense" but suggested that a legislative change ought to be considered (at p. 18). The 1999 Committee also recommended consolidating the conflict of interest provisions in the *Constitution Act* in the *Act* (at p. 20).

Another matter that requires attention is to clarify the procedure in the event that an allegation is made that a Member has breached s. 25 of the *Constitution Act*. As it stands, an allegation of such a breach may be made under both s. 19 of the *Act* and s. 27 of the *Constitution Act*. If made under the latter provision, the Member making the allegation must table a notice of motion and move that the matter referred to a committee of the Legislative Assembly. The committee must inquire into the matter and report its findings to the Legislative Committee. If the Member is found in contravention of s. 25, the Member's seat is declared vacant. Presumably it is possible for the same matter to be brought to the Commissioner under s. 19 of the *Act*, who may arrive at a different conclusion than the Legislative Assembly. For consistency, it would be preferable for the Commissioner to have sole jurisdiction in this area. This would avoid confusion and be in keeping with the procedure in other jurisdictions.

Another option is to integrate s. 25 of the *Constitution Act* by revising and rewording its contents somewhat, for greater clarity and to be more consistent with other jurisdictions. For example, New Brunswick's *Act* contains the following section which may provide a good starting point<sup>41</sup>:

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<sup>40</sup> See text in Schedule II.

<sup>41</sup> For legislative provisions from other jurisdictions, see Schedule III.

## New Brunswick

- 9(1) No member shall be a party to a contract with the Crown under which the member receives a benefit.
- (2) No member shall have an interest in a partnership or private corporation or be the officer or director of a corporation that is a party to a contract with the Crown under which the partnership or corporation receives a benefit.
- (3) Subsections (1) and (2) do not apply to a contract that existed before the member's election to the Assembly, or before the member's appointment to the Executive Council if the member is not elected to the Assembly, but do apply to its renewal or extension.
- (4) Subsection (2) does not apply if the Commissioner is of the opinion that the interest or position of the member will not create a conflict between the member's private interests and public duty.
- (5) Subsection (2) does not apply if the member has entrusted his or her interest in the partnership or corporation to one or more trustees in a blind trust.
- (6) Subsection (1) does not prohibit a member from receiving benefits under any Act that provides for retirement benefits funded wholly or in part by the Province of New Brunswick.
- (7) Subsection (2) does not apply until the first anniversary of the acquisition if the member's interest in the partnership or corporation was acquired by inheritance.

For comparative chart summarizing key features from other jurisdictions in relation to contracts with the government etc, see Appendix 29-A.

## Appendix 29-A: Jurisdictional Comparison Summary: Contracts with the Government

Issue	Jurisdiction
<b>Prohibition applies to:</b>	
Interest in a partnership or private company that has a contract with the government	ON, NB, PEI, NU; CAN (Act)
Renewal of existing contract	ON, NB, PEI, NU, CAN (Code)
Indirect contract or sub-contract	QB, CAN (Code and Senate)
Only applies to Ministers, not all Members	YK
<b>Prohibition does not apply to:</b>	
Contracts that existed before the Member was elected	ON, QB, NB, NFLD, PEI, NU, CAN (Code)
Contracts that are not likely to create a conflict or are trivial	AB, ON, NB, NFLD, PEI, NU
Contracts that are not subject to the discretion of the individual/no special benefit or preference/same terms and conditions offered to general public	SK, YK, CAN (Act, Code)
Interests held in a trust/blind trust	ON, NB, NFLD, PEI, NU, NWT, CAN (Code)
Pension/retirement benefits	ON, NU, CAN (Act)
Professional services (e.g. physician) paid for by govt but not provided to govt	QB, YK
Inherited interest for one year	ON, NB, NU, YK, CAN (Code)
Contract providing goods and services made in an emergency	NFLD, YK
Contract where no other person available or qualified	NFLD
<b>Other:</b>	
Commissioner may approve contracts if terms are fair and reasonable and it is not contrary to the public interest	SK
Commissioner may impose terms and conditions	SK, QB, CAN (Senate)
Public office holder may not enter into contract or employment relationship with his or her spouse, common-law partner, child, sibling or parent	CAN (Act)
Time period to arrange private affairs to ensure compliance	NWT, YK

### 30. Periodic Review of the Act

**Present section:** None

**Possible change:** Include a provision providing for mandatory review of the *Act*.

**Purpose:** A regularly scheduled review of the *Act* would help to ensure that the *Act* stays up to date and responsive to emerging issues.

#### **Discussion:**

Given that it has been more than a decade since the last substantive review of the *Act* took place, more frequent reviews are clearly needed. This was the recommendation in the 1999 Report, which proposed that there be a mandatory review every 5 to 6 years (at p. 20). Commissioner Oliver also recommended that the *Act* be reviewed every 5 years (see 2007 Annual Report, at p. 11).

Several jurisdictions now have such provisions in their legislation. See comparative chart in Appendix 30-A.

In most jurisdictions, the responsibility for initiating the review lies with the Assembly:

#### **Alberta**

- 48** By December 1, 2012 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.

#### **Nunavut**

- 58(1)** Within five years from the day this section comes into force, and every five years after that, the Legislative Assembly shall commence a review of this Act.

#### **Canada (Act)**

- 67(1)** Within five years after this section comes into force, a comprehensive review of the provisions and operations of this Act shall be undertaken by such committee of the Senate, of the House of Commons or of both Houses of Parliament as may be designated or established by the Senate or the House of Commons, or by both Houses of Parliament, as the case may be, for that purpose.
- (2) The committee referred to in subsection (1) shall, within a year after a review is undertaken pursuant to that subsection or within such further time as may be authorized by the Senate, the House of Commons, or by both Houses of Parliament, as



the case may be, submit a report on the review to Parliament, including a statement of any changes that the committee recommends.

Canada (Code)

- 33** The Standing Committee on Procedure and House Affairs shall, within every five-year period following the preceding comprehensive review, undertake a comprehensive review of the provisions and operations of this Code, and shall submit a report thereon, including a statement of any changes the Committee recommends.

→ **Similar:** Canada (Senate) s. 53

However in New Brunswick, the process is initiated by the Commissioner:

- 43.1(1)** The Commissioner shall initiate a review of this Act within five years after the coming into force of this section and subsequently within five years after each time the committee submits a report under subsection (3).
- (2) When the Commissioner has completed a review under subsection (1), the Commissioner shall prepare a report on the review and submit it to the Legislative Administration Committee or to such other committee of the Assembly as may be determined by a resolution of the Assembly.
- (3) The committee which has received the Commissioner's report under subsection (2) shall review it and then prepare and submit a report on its review, including any recommendations for amendments to this Act, to the Assembly within one year after the committee has received the Commissioner's report.

## Appendix 30-A: Jurisdictional Comparison Summary: Mandatory Review of COI Legislation

Jurisdiction	Mandatory 5 year review	Reviewed by	Other features
British Columbia	n/a		
Alberta	✓	Special committee established by the Legislative Assembly	Report must be submitted to the Assembly within one year
Saskatchewan	n/a		
Manitoba	n/a		
Ontario	n/a		
Quebec	n/a		
Nova Scotia	n/a		
New Brunswick	✓	Legislative Administration Committee	Commissioner initiates review and prepares report for the committee; Committee's report must be submitted to the Assembly within one year
Newfoundland	n/a		
PEI	n/a		
Nunavut	✓		
NWT	n/a		
Yukon	n/a		
Canada (Act)	✓	Special committee established by the Senate, HOC or both	Report must be submitted to the Parliament within one year or other timeframe as authorized
Canada (Code)	✓	Standing Committee on Procedure and House Affairs	
Canada (Senate)	✓	Committee established under the Conflict of Interest Code for Senators	

## 31. Retention and Destruction of Documents

<b>Present section:</b>	None
<b>Possible change:</b>	Include a provision that sets out the retention and destruction periods for documents related to Members.
<b>Purpose:</b>	Clarify the document retention and destruction schedule.

### **Discussion:**

1999 Committee recommended that the Commissioner's Office be empowered to dispose of documents relating to Members after a period of seven years following the end of a Commissioner's term of office (at p. 24). In 2002, the Select Standing Committee on Finance and Government Services, in their December 2002 Report entitled *Financial Review of the Independent Offices of the Legislative Assembly*, recommended

*"That the private and confidential Member's Disclosure Statement received by the Conflict of Interest Commissioner be retained for a period of five years following the vacating of a Member's seat, and can then be disposed of, unless the affairs of the former MLA are under review by the Commissioner or some other public authority, in which case such records shall be retained until the completion of said review."*

*"This procedure would also be in line with current practice in other Canadian jurisdictions."<sup>42</sup>*

In the absence of a formal amendment, our Office has adopted the Committee's recommendations in policy and practice. However the procedure should be formalized in legislation.

Several jurisdictions have provisions in their legislation governing the retention and destruction of records. The retention period varies from one year (Newfoundland) to ten years (Ontario) after various trigger points, as set out in the comparative chart in Appendix 31-A. Legislative references are included in Schedule IV.

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<sup>42</sup> Report available online at <http://www.leg.bc.ca/cmt/37thparl/session-3/fgs/reports/Rpt-FGS-StatOfficers-Final.htm>

## Appendix 31-A: Jurisdictional Comparison Summary: Retention and Destruction of Documents

Jurisdiction	Retention period	Applies to	Features
British Columbia	n/a		
Alberta	2 years after ceasing to hold office	Members, ministers and former political staff members	Immediate destruction of records unless the records may relate to another investigation
Saskatchewan	n/a		
Manitoba	n/a		
Ontario	10 years after record created	Records relating to members, former members and members' family	Disclosure statements must be destroyed during 12 month period following retention period; other records may be destroyed any time after the retention period
Quebec	60 months after ceasing to be a member	Members	Documents to be destroyed after retention period unless inquiry under the Code or charge laid under another Act
Nova Scotia	n/a		
New Brunswick	1 year after ceasing to be a member or member of Executive Council	Records relating to former member, spouse or minor child of former member	Delay destruction of records if they may relate to investigation under the <i>COI Act</i> or charge under <i>Criminal Code</i>
Newfoundland	1 year after ceasing to be a member	Records relating to members and member's family	Delay destruction of records if they may relate to investigation under the <i>COI Act</i> or charge under <i>Criminal Code</i>
PEI	10 years after record created	Documents relating to members and member's family	Destroy documents within one year after retention period; delay destruction of records if they may relate to investigation under the <i>COI Act</i> or charge under <i>Criminal Code</i>
Nunavut	6 years after ceasing to be a member	Former member or family member of former member	Destroy documents during the 12 month period following retention period; delay destruction of records if review under the <i>Act</i> or if documents may relate to

			charge under another Act
NWT	n/a		
Yukon	n/a		
Canada (Act) <sup>43</sup>	n/a		
Canada (Code)	12 months after ceasing to be a Member		Delay destruction of records if investigation under the Code or if documents may relate to charge under another Act
Canada (Senate)	12 months after ceasing to be a Senator	Senators	Delay destruction if investigation or inquiry in progress; Senator may request return of documents rather than destruction; public documents forwarded to archives

<sup>43</sup> Although the Act is silent on retention and destruction, section 65 provides that “proceedings under this Act may be taken at any time within but not later than five years after the day on which the Commissioner became aware of the subject-matter of the proceedings and, in any case, not later than ten years after the day on which the subject-matter of the proceedings arose.” Because of this section, in practice the federal Commissioner’s office keeps the files of public office holders for at least 10 years from the time the Act no longer applies to them. Information provided by Nancy Belanger, Legal Counsel for the federal Commissioner.

## 32. Application for Restitution

**Present section:** Section 13

**Possible change:** Allow the Commissioner to recommend restitution.

**Purpose:** To have a more accessible remedy (i.e. rather than requiring the person harmed to have to go to court).

### **Discussion:**

In some jurisdictions, the Commissioner has the authority to recommend restitution:

#### Nunavut

**46(1)** If, after a review, the Integrity Commissioner finds that the member has contravened this Act, the Integrity Commissioner shall, in his or her report, recommend one or more of the following:

...

(d) that the member undertake such remedial action as may be directed, including paying compensation to any person or paying to the government, the amount of any gain realized by the member or any other person;

#### Newfoundland (HOA)

**45(1)** Where the commissioner determines that a member has failed to fulfil an obligation under this Part or a code of conduct, the commissioner may recommend in the report under section 44

...

(b) that the member make restitution or pay compensation;

## Schedule I: Administrative Penalties (Canada: *Conflict of Interest Act*)

- 52.** Every public office holder who contravenes one of the following provisions commits a violation and is liable to an administrative penalty not exceeding \$500:
- (a) subsections 22(1), (2) and (3); [disclosure report]
  - (b) section 23; [gifts disclosure]
  - (c) subsections 24(1) and (2); [disclosure of employment offers]
  - (d) subsections 25(1) to (6); [public declarations]
  - (e) subsections 26(1) and (2); [summary statement] and
  - (f) subsection 27(7) [confirmation of sale or trust].
- 53(1)** If the Commissioner believes on reasonable grounds that a public office holder has committed a violation, the Commissioner may issue, and shall cause to be served on the public office holder, a notice of violation.
- (2) A notice of violation must
- (a) set out the name of the public office holder believed to have committed a violation;
  - (b) identify the violation;
  - (c) set out the penalty that the Commissioner proposes to impose;
  - (d) inform the public office holder that he or she may, within 30 days after the notice is served or within any longer period set out in the notice or make representations to the Commissioner with respect to the alleged violation or proposed penalty and set out the manner for doing so; and
  - (e) inform the public office holder that, if he or she does not pay the penalty or make representations in accordance with the notice, he or she will be considered to have committed the violation and the Commissioner may impose a penalty in respect of it.
- (3) the amount of a proposed penalty is, in each case, to be determined taking into account the following matters:
- (a) the fact that penalties have as their purpose to encourage compliance with this Act rather than to punish;
  - (b) the public office holder's history of prior violations under this Act during the five-year period immediately before the violations; and
  - (c) any other relevant matter.
- 54.** The Governor in Council may make regulations respecting the service of documents required or authorized to be served under sections 53 to 57, including the manner and

proof of service and the circumstances under which documents are deemed to be served.

- 55.** If the public office holder pays the penalty imposed in the notice of violation, he or she is considered to have committed the violation and proceedings in respect of it are ended.
- 56(1)** If the public office holder makes representations to the Commissioner in accordance with the notice of violation, the Commissioner shall decide, on a balance of probabilities, whether the public office holder committed the violation and if so, may impose the penalty proposed, a lesser penalty or no penalty.
- (2)** The Commissioner shall cause notice of any decision made under subsection (1) to be served on the public office holder.
- 57.** A public office holder who neither pays the penalty nor makes representations in accordance with the notice of violation is deemed to have committed the violation. The Commissioner shall impose the penalty proposed and notify the public office holder of the penalty imposed.
- 58(1)** Due diligence is a defence in a proceeding in relation to a violation.
- (2)** Every rule and principle of the common law that renders any circumstance a justification or excuse in relation to a charge for an offence applies in respect of a violation to the extent that it is not inconsistent with this Act.
- 59** In any proceeding, a notice appearing to have been issued under subsection 53(1) or 56(2) is admissible in evidence without proof of the signature or official character of the person appearing to have signed it.
- 60(1)** Proceedings in respect of a violation may be commenced at any time within but not later than five years after the day on which the Commissioner became aware of the subject matter of the proceedings.
- (2)** A document appearing to have been issued by the Commissioner, certifying the day on which the subject-matter of any proceedings became known to the Commissioner, is admissible in evidence without proof of the signature or official character of the person appearing to have signed the document and is, in the absence of evidence to the contrary, proof of the matter asserted in it.
- 61.** Any administrative monetary penalty required to be paid by a public office holder constitutes a debt due to Her Majesty and may be recovered as a debt from the public office holder in the Federal Court or any other court of competent jurisdiction.



- 62.** If an administrative monetary penalty is imposed on a public office holder in respect of a violation, the Commissioner shall make public the nature of the violation, the name of the public office holder who committed it and the amount of the penalty imposed.

## Schedule II: Constitution Act Excerpts

*Constitution Act* [RSBC] C. 66

### Prohibited office or contract

**25** A member of the Legislative Assembly must not

- (a) accept from the government
  - (i) money for the supply to the government of any goods, service or work, or
  - (ii) money from an office or employment to which the government has appointed the member, or
- (b) be, in respect of a corporation that accepts money from the government for the supply to the government of any goods, service or work, or be, in respect of that corporation's affiliate,
  - (i) a director or senior officer as defined in the *Business Corporations Act*, or
  - (ii) a person to whom, as a shareholder, section 5 (1) of the *Financial Disclosure Act* would apply, if that section applied to the member.

### Exceptions to prohibitions

**26** (1) Section 25 does not apply in any of the following circumstances:

- (a) if the money accepted by a member of the Legislative Assembly is
  - (i) basic compensation, as defined in the *Members' Remuneration and Pensions Act*, or any salary payable under section 4 (1) or (6) of that Act, or
  - (ii) the Capital City allowance under section 3 (1) (d.1) of the *Legislative Assembly Management Committee Act* or any other payment that is authorized by the Legislative Assembly Management Committee and required to be provided or paid by the government pursuant to section 3 of that Act;
- (b) if the money accepted is for the reasonable out of pocket, travelling and other expenses incurred by a member in the discharge of the member's duties
  - (i) as a member of the Legislative Assembly or of its committees,
  - (ii) as a member of the Executive Council,
  - (iii) as a member of a board, council, commission, body or other entity created or established by an Act, by the Executive Council or by the Legislative Assembly, or

- (iv) in attending or acting in an official capacity at any meeting, conference, task force, committee, visitation or function or working on a project to which the member has been designated by the Speaker on behalf of the Legislative Assembly, or by the Provincial Secretary on behalf of the Executive Council;
  - (c) if the money is accepted or authorized under an enactment or an order of the Legislative Assembly or for the performance of a statutory duty;
  - (d) if the money is accepted as an allowance for expenses incurred by a member in the discharge of the member's duties for office space, office equipment and telephone service, stenographic, secretarial and research assistance, transportation, stationery, office supplies and mail service, or any other facility or service;
  - (e) if the money is accepted as an indemnity under a scheme of insurance or in satisfaction of a judgment for damages;
  - (f) if the money that is accepted arises out of a contract or benefit available under an enactment or a program of the government without competition to any person or corporation meeting the qualifications set out in the enactment or program, as long as the contract or benefit is associated with a business in respect of which the member is required to disclose his or her interest under the *Members' Conflict of Interest Act*, and he or she has made that disclosure.
- (2) Section 25 does not apply if the corporation referred to in section 25 (b) is an agent of the Crown.
- (3) Subsection (1) (b) also applies to payments of the expenses mentioned in that subsection to a member of the Legislative Assembly elected, appointed or otherwise properly chosen to attend, as a representative of the British Columbia branch of the Commonwealth Parliamentary Association, an area, regional or other meeting or conference of that association or one of its components.

### **Use of vehicles by Cabinet members**

**26.1** (1) A member of the Legislative Assembly who is a member of the Executive Council may accept for personal as well as official use a vehicle provided by the government.

(2) This section applies to the acceptance or use of a vehicle on or after April 1, 2001.

### **Procedure on prohibition**

**27** (1) If a member of the Legislative Assembly alleges that another member has contravened section 25 and that the money was accepted with the approval of the contravening member, the alleging member must

(a) table a notice of motion in accordance with the standing orders of the Legislative Assembly setting out the particulars of the allegations, and

(b) move without leave under routine proceedings of the Legislative Assembly that the matter be referred forthwith to a committee to be forthwith named by the special committee appointed under Standing Order 68 (1).

(2) A committee named under subsection (1) (b)

(a) has all the powers necessary to inquire into and consider the matter, and

(b) must report its finding to the Legislative Assembly.

(3) If the committee reports to the Legislative Assembly that the member has contravened section 25 and the Legislative Assembly adopts the report, the member ceases to be a member and the seat of the member is vacant.

## Schedule III: “Contracts with the Government/Crown” Provisions in Other Jurisdictions

### Alberta

#### **Contracts with the Crown**

8(1) A Member breaches this Act if, while being a Member, the Member or a person directly associated with the Member or with the Member’s spouse or adult interdependent partner 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 or with the Member’s spouse or adult interdependent partner borrows money from a treasury branch;
  - (b) a contract under which the Member or the person directly associated with the Member or with the Member’s spouse or adult interdependent partner 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 or with the Member’s spouse or adult interdependent partner;
  - (e) repealed 2007 c28 s10;
  - (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 or with the Member’s spouse or adult interdependent partner 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 or with the Member’s spouse or adult interdependent partner 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).
- (3) 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 or with the Member’s spouse or adult interdependent partner 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 or with the Member's spouse or adult interdependent partner 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.
- (4) 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 or with the Member's spouse or adult interdependent partner was a party to the contract, and
  - (b) repealed 2007 c28 s10,
  - (c) the Ethics Commissioner, before the renewal is made by the Member or the person directly associated with the Member or with the Member's spouse or adult interdependent partner, 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
    - (iii) the Member or the person directly associated with the Member or with the Member's spouse or adult interdependent partner 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.
- (5) A Member does not breach subsection (1) in respect of a contract to which subsection (1) would otherwise apply if, in the Ethics Commissioner's opinion,
- (a) the contract will not create a conflict between the person contracting with the Crown and the public interest, or
  - (b) the contract is trivial.
- (6) In addition to section 1(5)(a), for the purposes of this section a person is directly associated with a Member or with a Member's spouse or adult interdependent partner if that person is
- (a) a corporation having share capital and carrying on business or activities for profit or gain of which that Member or Member's spouse or adult interdependent partner is a director or senior officer, or a subsidiary of such a corporation whether or not that

Member or Member's spouse or adult interdependent partner is a director or senior officer of the subsidiary,

- (b) a private corporation carrying on business or activities for profit or gain of which that Member or Member's spouse or adult interdependent partner owns or is the beneficial owner of shares, or a subsidiary of such a corporation whether or not that Member or Member's spouse or adult interdependent partner owns or is the beneficial owner of shares of the subsidiary,
- (c) a partnership
  - (i) of which that Member or Member's spouse or adult interdependent partner is a partner, or
  - (ii) of which one of the partners is a corporation directly associated with that Member or Member's spouse or adult interdependent partner by reason of clause (b),or
- (d) a person or group of persons acting with the express or implied consent of that Member or Member's spouse or adult interdependent partner.

(7) Section 1(6) applies in respect of subsection (6)(b).

(8) Sections 3(b) and (d) and 10(a) of the *Conflicts of Interest Amendment Act, 2007* do not apply in respect of contracts entered into before those sections come into force, but subsection (4) of this section applies in respect of a renewal of those contracts.

### **Payments from the Crown**

- 9(1) A Member breaches this Act if, while being a Member, the Member or a person directly associated with the Member accepts a payment of public money from the Crown or a person acting on behalf of the Crown otherwise than as permitted by subsection (2).
- (2) A Member or a person directly associated with the Member may accept a payment of public money from the Crown or a person acting on behalf of the Crown if
- (a) the payment is made to the Member pursuant to Part 3 or 4 of the *Legislative Assembly Act* or otherwise in the Member's capacity as a Member of the Legislative Assembly, as a member of the Executive Council or as the holder of an office to which the Member is elected by the Legislative Assembly or appointed by or at the nomination of the Lieutenant Governor in Council or a Minister of the Crown in right of Alberta, and the payment is authorized by or pursuant to
    - (i) the *Legislative Assembly Act* or any other enactment,
    - (ii) a resolution or order of the Legislative Assembly, or
    - (iii) a supply vote,

- (b) the recipient is, 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,
- (c) the recipient of the payment
  - (i) is, according to the enactment under which the payment is authorized, eligible to apply for the payment and complies with the requirements of that enactment that are conditions precedent to the payment,
  - (ii) in respect of the recipient's application is given no preference not available to others, and
  - (iii) receives no special benefit in relation to the recipient's application or the payment,
 or
- (d) the payment is made under a contract that may be entered into without the Member being in breach of section 8.

#### Saskatchewan

**15(1)** In this section and in sections 16 and 17, "government contract" means a contract entered into with the Crown for any purpose, and includes any contract for:

- (a) the supply to or by the Crown of any goods or services;
- (b) the sale, lease or other disposition of any real property to or by the Crown;
- (c) the construction of any public work for the Crown;
- (d) the determination of compensation or damages with respect to real property taken, damaged or purchased by the Crown;
- (e) the determination of compensation or damages to be paid by the Crown in cases not provided for in clause (d); or
- (f) the lending of moneys to or by the Crown.

(2) Notwithstanding subsection (1), a government contract does not include any contract that gives rise to the status of those persons described in section 14 of The Legislative Assembly and Executive Council Act, 2007.

(3) In this section and in sections 16 and 17, a member participates in a government contract where the member:

- (a) is, or has a right to become, in the member's personal capacity, a party to or beneficially interested in the contract; or
- (b) is a shareholder, partner, director, manager or officer of, or has an interest in, a business that:
  - (i) is, or has a right to become, a party to or beneficially interested in the contract; or
  - (ii) has a subsidiary which is, or has a right to become, a party to or beneficially interested in the contract.



(4) For the purpose of this section, a creditor of a business whose indebtedness was incurred other than in the ordinary course of trade has an interest in that business to the extent of that indebtedness.

(5) Except as specifically provided in this or any other Act, no member shall participate in a government contract.

(6) The prohibition in subsection (5) does not apply to:

- (a) a government contract that is not subject to the discretion of any individual, where the standard terms and conditions of eligibility are objective in nature and are prescribed in an Act or regulation; or
- (b) a government contract that is exempted by the regulations from the application of this section.

**16(1)** A member may apply to the commissioner for approval to participate in a government contract.

(2) The commissioner may approve a member's participation in a government contract, if, in the opinion of the commissioner:

- (a) the consideration and terms of the government contract are fair and reasonable; and
- (b) it is not contrary to the public interest to allow the member to participate.

(3) The commissioner may impose any terms and conditions that the commissioner considers appropriate on an approval given pursuant to subsection (2).

(4) Notwithstanding section 15, a member may participate in a government contract if:

- (a) the commissioner has given his or her approval pursuant to this section; and
- (b) the member complies with the terms and conditions, if any, imposed by the commissioner on the approval.

**17(1)** A member does not contravene section 11 or 15 if the member:

- (a) was not aware of the existence of the government contract; and
- (b) cannot be reasonably expected to have been aware of the existence of the government contract.

(2) Within 90 days after becoming aware of the member's participation in a government contract, the member shall comply with sections 11 and 15.

#### Manitoba

19(1) No member, minister or senior public servant shall communicate, either directly or indirectly, with another member, minister or senior public servant or with an officer or employee of the government or of a Crown agency for the purpose of influencing the government or a Crown agency to enter into a contract, or to confer a benefit, in which the member, minister or senior public servant, or in which a dependant (*sic*) of the member, minister or senior public servant, has a pecuniary interest.

## Ontario

### **Government contracts with members**

7. (1) No member of the Assembly shall knowingly be a party to a contract with the Government of Ontario under which the member receives a benefit.

(2) No member shall have an interest in a partnership or in a private company that is a party to a contract with the Government of Ontario under which the partnership or company receives a benefit.

(3) Subsections (1) and (2) do not apply to a contract that existed before the member's election to the Assembly, but they do apply to its renewal or extension.

(4) Subsection (2) does not apply if the Commissioner is of the opinion that the interest is unlikely to affect the member's performance of his or her duties.

(5) Subsection (2) does not apply if the member has entrusted his or her interest to one or more trustees on the following terms: [trust terms]

...

(6) Subsection (1) does not prohibit a member from receiving benefits under the *Legislative Assembly Retirement Allowances Act*, the *Public Service of Ontario Act, 2006*, the *Public Service Pension Act*, the *Teachers' Pension Act* or any other Act that provides for retirement benefits funded wholly or partly by the Government of Ontario.

(7) Subsection (2) does not apply until the first anniversary of the acquisition if the interest in the partnership or private company was acquired by inheritance.

## Quebec

**18.** No Member may, directly or indirectly, be party to a contract with the Government or a department or public body.

However, a Member may

(1) have interests in an enterprise that is party to such a contract, subject

(a) in the case of an enterprise whose securities are not listed on an exchange and for which there is no published market, to informing the Ethics Commissioner as soon as the Member becomes aware of the contract and to the Ethics Commissioner authorizing the Member to retain the interest, on the conditions specified by the Commissioner, such as the creation of a blind trust managed by an independent trustee or the establishment of a blind management agreement with an independent mandatory; and

(b) in the case of any other enterprise, to collusion or undue influence being unlikely given the extent of the interests or the circumstances in which the contract is made;

(2) receive a loan, a reimbursement, a grant, an indemnity or any other benefit from the Government or a department or public body under any Act, regulation or program; and

(3) hold securities issued by the Government or a public body on the same terms as are applicable to all.

**19.** A Member may claim and receive remuneration or a benefit resulting from a contract mentioned in the first paragraph of section 18 if the contract was entered into and carried out before the Member's election.

**20.** If the Government or a department or public body acquires property belonging in whole or in part to a Member, or a real right affecting such property, the purchase price or indemnity must be set by the Administrative Tribunal of Québec. The Member informs the Ethics Commissioner within 30 days.

**21.** A Member may, in the course of professional or similar activities, receive remuneration to which he or she is entitled even if it is paid in whole or in part by the Government or a department or public body, provided that the service recipient is not the Government or a department or public body.

This section does not prohibit engaging in remunerated teaching activities or practising a profession within a body referred to in subparagraph *b* of paragraph 1 of section 5, subject to the Member having informed, and obtained permission from, the Ethics Commissioner.

#### New Brunswick

9(1) No member shall be a party to a contract with the Crown under which the Member receives a benefit.

(2) No member shall have an interest in a partnership or private corporation or be the officer or director of a corporation that is a party to a contract with the Crown under which the partnership or corporation receives a benefit.

(3) Subsections (1) and (2) do not apply to a contract that existed before the member's election to the Assembly, or before the member's appointment to the Executive Council if the member is not elected to the Assembly, but do apply to its renewal or extension.

(4) Subsection (2) does not apply if the Commissioner is of the opinion that the interest or position of the member will not create a conflict between the member's private interests and public duty.

(5) Subsection (2) does not apply if the member has entrusted his or her interest in the partnership or corporation to one or more trustees in a blind trust.

(6) Subsection (1) does not prohibit a member from receiving benefits under any Act that provides for retirement benefits funded wholly or in part by the Province of New Brunswick.

(7) Subsection (2) does not apply until the first anniversary of the acquisition if the member's interest in the partnership or corporation was acquired by inheritance.

**Government contracts**

**32.** (1) A member shall not knowingly, directly or indirectly, be a party to a contract with the government of the province under which the public money of the province is paid and under which the member receives a benefit.

(2) Subsection (1) does not apply to a member solely on the ground that a party to a contract with the government of the province is a corporation or partnership in which the member or the member's family has a shareholding or interest, if

- (a) the shareholding or interest is 10% or less;
  - (b) the commissioner is of the opinion that the shareholding or interest is insufficient to interfere with the member's public duties; or
  - (c) the shareholding or interest has been placed in a trust that the commissioner is satisfied will prevent the member exercising authority or control over the affairs of the corporation or partnership and will ensure the member will not receive a payment derived directly from the contract.
- (3) This section does not apply to
- (a) a contract that existed before the member became a member, or an extension of such a contract according to its terms;
  - (b) a contract awarded by public tender under which no special preference or treatment was given because of the member or the member's family having an interest in it;
  - (c) a contract that, either alone or in combination with all contracts with the government of the province in the same calendar year, in which the member or the member's family has an interest, has a value of less than \$10,000;
  - (d) a contract for goods or services made in an emergency;
  - (e) a contract for goods or services provided in a case where no other person is qualified and available to provide the goods or services;
  - (f) the completion of a contract that devolves by descent, limitation or marriage, or as devisee, legatee, executor or administrator, where less than 12 months have elapsed after the devolution;
  - (g) a benefit received or transaction entered into
    - (i) by a member or the member's family under an Act,
    - (ii) under which the member or the member's family is entitled, upon fulfilling the conditions specified in or under the Act, to receive the benefit or enter into the transaction on terms

in common with the general public or a defined class of the public to which the member belongs, and

- (iii) where the benefit or transaction is not subject to the exercise of discretion by a person;
- (h) a contract under which one of the member's family becomes an employee of or an independent contractor for personal services to the government of the province where the contract is awarded in the manner provided by law; or
- (i) the reimbursement of expenses incurred by the member or the member's family while on the business of the government of the province.

#### PEI

- 14(1)** No member shall knowingly be a party to a contract with the Government of Prince Edward Island under which the member receives a benefit.
- (2) No member shall have an interest in a partnership or in a private company that is a party to a contract with the Government of Prince Edward Island under which the partnership or company receives a benefit.
- (3) Subsections (1) and (2) do not apply to a contract that existed before the member's election to the Legislative Assembly, but they do apply to its renewal or extension.
- (4) Subsection (2) does not apply if the Commissioner is of the opinion that the interest is unlikely to affect the member's performance of the member's duties.
- (5) Subsection (2) does not apply if the member has entrusted the interest to one or more trustees on the following terms: [trust terms]

#### Nunavut

- 14.** (1) No member shall be a party to a contract with the Government under which the member receives a benefit.
- (2) No member shall have an interest in a partnership or in a private company that is a party to a contract with the Government under which the partnership or company receives a benefit.
- (3) Subsections (1) and (2) do not apply to a contract that existed before the member's election to the Legislative Assembly but do apply to its renewal or extension.
- (4) The exception in subsection (3) does not apply to a contract of personal service.

(5) Subsections (1) and (2) do not apply if the Integrity Commissioner has authorized the member to be a party to the contract or hold the interest on the basis that the contract or interest is unlikely to affect the member's performance of his or her duties of office.

(6) Subsection (1) does not prohibit a member from receiving retirement benefits.

(7) Subsections (1) and (2) do not apply to anything acquired by inheritance until the first anniversary of that acquisition by inheritance.

(8) Subsections (1) and (2) do not apply if the member has entrusted his or her interest in the contract or his or her interest in the partnership or private company to one or more trustees on the following terms: [trust terms]

## NWT

**79(1)** Subject to section 84, a member shall not hold or enter into any contract with the Government of the Northwest Territories or with a department.

(2) A spouse or dependent child of a member may hold or enter into a contract with the Government of the Northwest Territories or a department other than a contract for or on behalf of the member.

(3) Within 60 days after the commencement of the first sitting of the Legislative Assembly after the election of a member, he or she shall ensure that his or her personal affairs are so arranged that there is no contravention of this section.

**80(1)** A member shall file a disclosure report with the Conflict of Interest Commissioner where a contract is held or entered into between the Government of the Northwest Territories or a department and

- (a) a corporation in which the member has a controlling interest; or
- (b) a corporation in which a corporation referred to in paragraph (a) has a controlling interest singly or collectively with the member or any other corporation referred to in paragraph (a).

(2) A disclosure report filed under subsection (1) must

- (a) indicate the nature and value of the contract and the circumstances under which the contract was entered into; and
- (b) be filed
  - (i) within 60 days after the commencement of the first sitting of the Legislative Assembly after the election of the member to the Legislative Assembly, where the member holds the contract at the commencement of that sitting, or

- (ii) within 30 days after the entering into of a contract, where the contract is entered into after the commencement of the sitting referred to in subparagraph (I).

**81(2)** The Speaker or a Minister shall ensure that his or her spouse or dependent children do not hold or enter into a contract, including a contract of employment, with any department for which the Minister is responsible.

- (3) The Speaker or a Minister shall ensure that no contract is held or entered into between a department for which he or she is responsible and
  - (a) a corporation in which the Speaker or Minister, or his or her spouse and dependent children, individually or collectively have a controlling interest; or
  - (b) a corporation in which a corporation referred to in paragraph (a) has a controlling interest singly or collectively with the Speaker or Minister and his or her spouse and dependent children or any other corporation referred to in paragraph (a).
- (4) Within 60 days after being elected as Speaker or appointed as a Minister, the Speaker or Minister shall ensure that his or her personal affairs are so arranged that there is no contravention of this section.

**82(1)** The Speaker or a Minister may comply with the requirements of paragraph 81(1)(b) by entrusting his or her business to one or more trustees if

- (a) the provisions of the trust have been approved by the Conflict of Interest Commissioner;
  - (b) the trustees are persons who are at arms length from the Speaker or Minister and have been approved by the Conflict of Interest Commissioner; and
  - (c) the trustees only consult with the Speaker or Minister with respect to management of the trust property in accordance with the provisions of the trust as approved by the Conflict of Interest Commissioner or as otherwise directed by the Conflict of Interest Commissioner.
- (2) Subsection 81(3) does not apply to a contract between a department for which the Speaker or a Minister is responsible and a corporation any of the shares of which are held in a trust described in subsection (1).

Yukon (Executive Council Code of Conduct Regarding Conflict of Interest)

\*Relates only to Ministers.

- 3.(1) No member nor any of the member's family shall either directly or indirectly, by themselves or with the interposition of a third party, hold or enter into any contract with the Government of

Yukon under which any money or other benefit accrues to the member or any of the member's family.

- (2) Subsection (1) does not apply to a contract
- (a) that the member or the member's family hold or enter into in a manner and on a basis common to the general public or to a class of the general public to which the member or the member's family belong, and where no special benefit or preference is enjoyed by the member or the member's family;
  - (b) under which a member or the member's family supply normal and routine goods or services to the Government of Yukon on a local basis on terms which are the same upon which the Government of Yukon commonly purchases such goods and services in the community and where no special terms or exclusive or preferred rights of supply are granted to the member or the member's family;
  - (c) that is held or entered into by a company or other organization in which a member and the member's family together hold, directly or indirectly, a financial interest of no more than ten percent;
  - (d) under which a member or the member's family receives fees paid in whole or in part from public funds in respect of professional services rendered, other than to the Government of Yukon, in the capacity of physician, surgeon, dental surgeon, barrister or solicitor;
  - (e) under which a member or the member's family is interested as an executor, administrator or trustee only and has no beneficial interest;
  - (f) which a member or the member's family acquires by inheritance, gift, marriage, foreclosure, forfeit of security or other operation of law and which is divested within twelve months of acquisition;
  - (g) under which the member or the member's family provides goods or services to the Government of Yukon that are required in an emergency;
  - (h) under which the member's family contracts with a part of the Government of Yukon that is not under the member's administration and which contract is not directly or indirectly for or on behalf of the member; or
  - (i) in respect of which the Conflict of Interest Commission has advised in writing that any conflict of interest created would be so remote or insignificant that it should not disqualify the member or the member's family from accepting it subject to any conditions imposed by the Conflict of Interest Commission.
- (3) No person in a member's family shall take or hold a position in a part of the Government of Yukon under the administration of a member.
- (4) Except as set out in subsection (3), neither subsection (1) nor subsection 2(2) apply to prevent a person in the member's family from taking or holding a position in the employment of the Government of Yukon.



- (5) Subsection (1) does not apply to a member or the member's family until six months after the date of the member's appointment to the Executive Council. During the six-month period, the member shall use best endeavours to minimize any conflict created by a contract that the member or the member's family holds as at the date of the member's appointment, to which subsection (1) will apply. This shall include declaring the contract pursuant to paragraph 5(d), ensuring that the member or the member's family divest themselves of any interest in the contract by the end of the six-month period, and ensuring that the member's family does not enter into any such contracts during the member's term of office.

#### Canada (Act)

**13.** (1) No minister of the Crown, minister of state or parliamentary secretary shall knowingly be a party to a contract with a public sector entity under which he or she receives a benefit, other than a contract under which he or she is entitled to pension benefits.

(2) No minister of the Crown, minister of state or parliamentary secretary shall have an interest in a partnership or private corporation that is a party to a contract with a public sector entity under which the partnership or corporation receives a benefit.

(3) Subsections (1) and (2) do not apply if the Commissioner is of the opinion that the contract or interest is unlikely to affect the exercise of the official powers, duties and functions of the minister of the Crown, minister of state or parliamentary secretary.

**14.** (1) No public office holder who otherwise has the authority shall, in the exercise of his or her official powers, duties and functions, enter into a contract or employment relationship with his or her spouse, common-law partner, child, sibling or parent.

(2) No public office holder, other than a minister of the Crown, minister of state or parliamentary secretary, who otherwise has the authority shall permit the public sector entity for which he or she is responsible, or to which he or she is assigned, to enter into a contract or employment relationship with his or her spouse, common-law partner, child, sibling or parent except in accordance with an impartial administrative process in which the public office holder plays no part.

(3) No minister of the Crown, minister of state or parliamentary secretary who otherwise has the authority shall permit the public sector entity for which he or she is responsible, or to which he or she is assigned, to enter into a contract or employment relationship with his or her spouse, common-law partner, child, sibling or parent.

(4) No minister of the Crown, minister of state or parliamentary secretary who otherwise has the authority shall permit anyone acting on his or her behalf to enter into a contract or employment relationship with a spouse, common-law partner, child, sibling or parent of another minister of the Crown, minister of state or parliamentary secretary or party colleague in Parliament, except in

accordance with an impartial administrative process in which the minister of the Crown, minister of state or parliamentary secretary plays no part.

(5) Subsection (4) does not apply in respect of the appointment of a member of ministerial staff or a ministerial adviser.

(6) This section does not apply to a contract for goods or services offered by a public sector entity on the same terms and conditions as to the general public.

#### Canada (Code)

**16(1)** A Member shall not knowingly be a party, directly or indirectly or through a subcontract, to a contract with the Government of Canada or any federal agency or body under which the Member receives a benefit unless the Commissioner is of the opinion that the contract is unlikely to affect the Member's obligations under this Code.

(2) A Member may participate in a program operated or funded in whole or in part by the Government of Canada under which the Member receives a benefit if

- (a) the Member meets the eligibility requirements of the program;
- (b) the Member does not receive any preferential treatment with respect to his or her participation; and
- (c) the Member does not receive any special benefit not available to other participants.

**17(1)** A Member is not prohibited from owning securities in a public corporation that contracts with the Government of Canada unless the Commissioner is of the opinion that the size of the holding is so insignificant that it is likely to affect the Member's obligations under this Code.

(2) If the Commissioner is of the opinion that the Member's obligations under this Code are likely to be affected under the circumstances of subsection (1), the Member may comply with the Code by placing the securities in a trust under such terms established in section 19 as the Commissioner considers appropriate.

**18.** A Member shall not have an interest in a partnership or in a private corporation that is a party, directly or through a subcontract, to a contract with the Government of Canada under which the partnership or corporation receives a benefit unless the Commissioner is of the opinion that the interest is unlikely to affect the Member's obligations under this Code.

**19(1)** Sections 16 and 18 do not apply to a contract that existed before the Member's election to the House of Commons, but they do apply to its renewal or extension.

(2) Section 18 does not apply if the Member has entrusted his or her interests in a partnership or in a private corporation that is a party to a contract with the Government of Canada under which the partnership or corporation receives a benefit to one or more trustees on all of the following terms:

...

(3) Sections 16 to 18 do not apply to an interest acquired by inheritance until the first anniversary date of the acquisition.

Canada (Senate)

**20.** A Senator shall not knowingly be a party, directly or through a subcontract, to a contract or other business arrangement with the Government of Canada or any federal agency or body under which the Senator receives a benefit unless the Senate Ethics Officer provides a written opinion that

- (a) due to special circumstances the contract or other business arrangement is in the public interest; or
- (b) the contract or other business arrangement is unlikely to affect the Senator's obligations under this Code.

## Schedule IV: Jurisdictional Comparison Summary: Retention and Destruction of Documents

### Alberta

- 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 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 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, inquiry 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 not longer required under subsection 3(a) or (b).

Newfoundland (House of Assembly Act)

- 41.** The commissioner shall retain all documents in the possession of the commissioner that relate to a member or the member's family for a period of 12 months after a member ceases to be a member, after which the commissioner shall destroy all documents in his or her possession that relate to the member or the member's family, unless there is an inquiry current under this part or a charge has been laid against the member or the member's family under the *Criminal Code* to which the documents relate or may relate.

New Brunswick

- 21(1)** The Commissioner shall destroy any record in his or her possession that relates to a former member, or to the spouse or minor child of the former member, twelve months after the person ceased to be a member of the Assembly or, if the person was not a member or the Assembly, ceased to be a member of the Executive Council.
- (2) If an inquiry to which a record may relate is being conducted under this Act, or if the Commissioner is aware that a charge to which it may relate has been laid under the *Criminal Code* (Canada) against the former member or a person who belongs to his or her family, the record shall not be destroyed until the inquiry or charge has been finally disposed of.

PEI

- 27(1)** The Commissioner shall destroy any record in the Commissioner's possession that relates to a member or former member or a family member of the member or former member, during the 12 month period following the tenth anniversary of the creation of the record.
- (2) If any inquiry to which a record may relate is being conducted pursuant to this act, or if the Commissioner is aware that a charge to which it may relate has been laid pursuant to the *Criminal Code* (Canada) against the member or former member or a family member of the member or former member, the record shall not be destroyed until the inquiry or the charge has been finally disposed of.

Ontario

- 22(1)** The Commissioner,
- (a) shall destroy every private disclosure statement in his or her possession during the 12 month period that follows the 10<sup>th</sup> anniversary of the creation of the record; and

- (b) may destroy any other record in his or her possession that relates to a member or former member of the Assembly, or to a person who belongs to his or her family, at any time after the 10<sup>th</sup> anniversary of the creation of the record.
- (2) If an inquiry to which a record may relate is being conducted under this Act, or if the Commissioner is aware that a charge to which it may relate has been laid under the *Criminal Code* (Canada) against the member or former member or a person who belongs to his or her family, the record shall not be destroyed until the inquiry or the charge has been finally disposed of.

#### Quebec

- 82.** The Ethics Commissioner must retain all documentation relating to a Member for a period of 60 months after he or she ceases to be a Member. The documents are then to be destroyed unless an inquiry under this Code is in progress or has been suspended or a charge has been laid against the Member under an Act, and the documents may be relevant.

#### Nunavut

- 54(1)** The Integrity Commissioner and the Clerk shall each destroy and record any record in his or her possession that was created pursuant to this Act and that relates to a former member, or to a person who belongs to his or her family, during the 12-month period that follows the sixth anniversary of the date when the member ceased to be a member.
- (2) If a review to which a record may relate is being conducted under this Act, or if the Integrity Commissioner or Clerk is aware that a charge to which it may relate has been laid under any other Act, including the Criminal Code or any other federal Act, against the member or former member or a person who belongs to his or her family, the record shall not be destroyed until the review or the charge has been finally disposed of.

#### Canada (Code)

- 31.** The Commissioner shall retain all documents relating to a Member for a period of 12 months after he or she ceases to be a Member, after which the documents shall be destroyed unless there is an inquiry in progress under this Code concerning them or a charge has been laid against the Member under an Act of Parliament and the documents may relate to that matter.

#### Canada (Senate)

- 52(1)** The Senate Ethics Officer shall retain all documents relating to a Senator for a period of 12 months after he or she ceases to be a Senator, after which, subject to subsections (2) to (4), the documents shall be destroyed.

- (2) Where, at the time that a Senator ceases to be a Senator, there is an investigation or inquiry in progress concerning the Senator or a charge that has been laid against the Senator, the destruction of documents that relate to the matter shall be postponed until 12 months after the day of the final disposition of all related proceedings.
- (3) At a Senator's request, confidential documents relating to a Senator may be returned to the Senator instead of being destroyed.
- (4) Public documents relating to a Senator shall be forwarded to the Senate archives.