

## ETHICS BULLETIN

*Office of the Conflict of Interest Commissioner  
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**To:** Members of the Legislative Assembly

**From:** The Honourable H.A.D. Oliver, Q.C.  
Commissioner

This is the first of what I hope will be a series of bulletins dealing with a variety of topical issues arising under or in connection with the *Members' Conflict of Interest Act*.

I will welcome Members' comments and input on topics which they believe may usefully be included in future bulletins.

### **POST-EMPLOYMENT**

A number of Members of the Legislative Assembly having publicly announced that it is not their intention to seek re-election at the forthcoming general election, we take this opportunity to answer some of the more commonly asked questions concerning what Members can and cannot do once they leave the Legislature.

#### **Members of Executive Council and Parliamentary Secretaries**

The *Members' Conflict of Interest Act* addresses various aspects of relationship between government and former Members of Executive Council and former Parliamentary Secretaries relating to employment, contractual relationships, or the extension of benefits by government to retired Ministers or Parliamentary Secretaries. The *Members' Conflict of Interest Act* does not set any statutory restrictions on what private members may do once they leave elected office. The restrictions apply solely to Members of Executive Council and Parliamentary Secretaries.

#### **The Law**

##### ***Former members of Executive Council and former parliamentary secretaries***

**8 (1)** *The Executive Council, a member of the Executive Council or an employee of a ministry other than an employee of an agency, board or commission, must not knowingly*

*(a) award or approve a contract with, or grant a benefit to, a former member of the Executive Council or former parliamentary secretary, until 24 months have expired*

*after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office,*

*(b) award or approve a contract with, or grant a benefit to, a former member of the Executive Council or former parliamentary secretary who has, during the 24 months after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office, made representations in respect of the contract or benefit, or*

*(c) award or approve a contract with, or grant a benefit to, a person on whose behalf a former member of the Executive Council or former parliamentary secretary has, during the 24 months after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office, made representations in respect of the contract or benefit.*

*(2) Subsection (1) (a) and (b) does not apply to contracts or benefits in respect of further duties in the service of the government.*

*(3) Subsection (1) does not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.*

*(4) A former member of the Executive Council or former parliamentary secretary must not, unless 24 months have expired after the date when he or she ceased to hold office,*

*(a) accept a contract or benefit that is awarded, approved or granted by the Executive Council, a member of the Executive Council or an employee of a ministry other than an employee of an agency, board or commission,*

*(b) make representations on his or her own behalf with respect to such a contract or benefit, and*

*(c) make representations on another person's behalf with respect to such a contract or benefit.*

*(5) Subsection (4) (a) and (b) does not apply to contracts or benefits in respect of further duties in the service of the government.*

*(6) Subsection (4) does not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.*

*(7) A former member of the Executive Council or a former parliamentary secretary must not make representations to the government in relation to any specific ongoing transaction or negotiation to which the government is a party and in which the former member of the Executive Council or former parliamentary secretary was directly involved if the representation would result in the conferring of a benefit not for general application.*

*(8) A person who contravenes subsection (4) or (7) commits an offence and is liable, on conviction, to a fine of not more than \$5 000.*

## **Cooling-Off Period**

The "cooling-off" period is the most stringent in Canada and is set at 24 months from the time the Member ceased to hold office.

## **Restrictions in Dealings with Government**

These may be summarized as follows:

1. Former Members of Executive Council or former Parliamentary Secretaries (hereafter collectively referred to as "Ex-Office Holders") must not, during the cooling-off period,
  - a) Accept a contract or benefit from government;
  - b) Make representations with respect to such a contract or benefit on their own behalf;
  - c) Make representations with respect to such a contract or benefit on behalf of anybody else.

Exception:

- a) and b) do not apply to contracts or benefits in respect of further duties in the service of the government.

The Commissioner has considered the meaning of the term "further duties" and is of the view that its interpretation as meaning "the carrying out of virtually identical duties as were performed by the Ex-Office Holder whilst in office" would be too narrow, and its interpretation as meaning "any and all duties in the service of the government" would be too wide: in the Commissioner's view, the correct application of this exemption might cover "services of a nature in which one's former ministerial experience would be likely to be of benefit to the Province."

- The prohibition does not apply if the conditions of the contract or benefit awarded, approved or granted are the same for all persons similarly entitled.

In the Commissioner's view this exception exists to promote equality of opportunity and to bar Members from benefiting from any improper exercise of patronage in circumstances where subsection 4 is applicable.

## **Prohibition Applicable to Ex-Office Holders who, Whilst in Office had "Direct Involvement"**

The Commissioner has considered the wording of subsection (7) and, in particular, the words "in which the former member of the Executive Council or former parliamentary secretary was directly involved." In reviewing the applicability of this subsection in determining whether an Ex-Office Holder was "directly involved" the Commissioner may consider, inter alia, the following:

1. Whether the Ex-Office Holder even if he had no personal dealings with an agency, person or entity and directed staff to take certain actions with respect to that entity. Such direction may be considered by the Commissioner to constitute "direct involvement."

2. A department's regular input into policy in a specific area in which the entity operates may be considered in determining whether there is evidence of direct involvement.
3. The preparation and presentation of matters for Lieutenant Governor in Council approval may be considered in determining whether there is evidence of direct involvement.

### **Hypothetical Problems**

The Commissioner has, in the past, been requested to provide opinions and advice in connection with hypothetical situations which might or might not arise in the future. The Commissioner is reluctant to express opinions on a hypothetical basis. Each Ex-Office Holder will have had unique responsibilities and contacts with various persons, agencies, and entities and advice must therefore be given on an individual basis.

In seeking written opinion or advice of the Commissioner, an Ex-Office Holder should outline the nature of the office of employment he or she has received or proposes to undertake and any connections, direct or indirect, that the new employer has with the Ex-Office Holder's responsibilities during the last year of the applicant's tenure of office.

### **Informal Advice**

The Commissioner continues to hold himself available to any person who wishes to discuss conflict of interest questions relating to post-employment matters and in all such cases, any advice provided is both confidential and unofficial.

### **Contraventions of Section 8 (4) or (7) of the *Members' Conflict of Interest Act* – Jurisdiction**

Members are reminded that in the case of sitting Members of the House who are Ex-Office Holders, the Commissioner has jurisdiction under the *Members' Conflict of Interest Act* to:

1. Conduct an inquiry and recommend a penalty or, alternatively,
2. Recommend the institution of a prosecution in the Provincial Court.

In the case of Ex-Office Holders who are no longer Members of the Legislative Assembly, any alleged infractions of section 8 (4) or (7) of the *Members' Conflict of Interest Act* fall outside the jurisdiction of the Commissioner as an Officer of the Legislative Assembly and within the sole jurisdiction of the Provincial Court of British Columbia. Accordingly, in the event of an Ex-Office Holder being charged under either of these sub-sections, it will be for the Provincial Court Judge to determine whether an offence has been committed. The views expressed above by the Commissioner as to the proper interpretation of the words "directly involved" whilst they may be of some persuasive value, are in no way binding on a Judge of the Provincial Court.