
Sixth Session, Fortieth Parliament
66 Elizabeth II, 2017
Legislative Assembly of British Columbia

BILL M 2**

MEMBERS' CONFLICT OF INTEREST AMENDMENT ACT, 2017

Mr. Gary Holman

Explanatory Note

This act amends the *Members' Conflict of Interest Act* to establish more stringent conflict of interest laws, while also broadening their scope.

The *Members' Conflict of Interest Act* is renamed the *Conflict of Interest Act*. This reflects its increased scope, which now includes non-parliamentarian public office appointees, such as ministerial staff, former deputy ministers and advisors, as well as senior executive members of Crown Corporations and government agencies. This bill establishes cooling-off periods for former public office holders, Executive Council members, and deputy ministers. It also strengthens conflict of interest rules, and establishes new rules for blind trusts.

MEMBERS' CONFLICT OF INTEREST AMENDMENT ACT, 2017

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

Title

1 The title of the Members' Conflict of Interest Act, S.B.C. 1996 c. 287 is repealed, and the following substituted:

CONFLICT OF INTEREST ACT

Definitions

2 Section 1 of the Members' Conflict of Interest Act, S.B.C. 1996 c. 287 is amended by adding the following text:

(1) **"appointee"** means

(a) a person appointed by Order In Council, Minister's Order, shareholder's resolution or other instrument of the Province of British Columbia to a public sector organization, or

(b) a person appointed by Order In Council, Minister's Order, shareholder's resolution or other instrument of the Province of British Columbia to any other body as a representative of the Province of British Columbia.

"assets" includes any trusts in respect of which a member of Executive Council or a parliamentary secretary or a member of his or her family is a beneficiary.

"common law partner" means a person who is cohabiting with a public office holder in a conjugal relationship, having so cohabited for a period of at least one year.

"controlled assets" means assets whose value could be directly or indirectly affected by government decisions or policy including, but not limited to, the following:

(a) publicly traded securities of corporations and foreign governments, whether held individually or in an investment portfolio account such as, but not limited to,

stocks, bonds, stock market indices, trust units, closed-end mutual funds, commercial papers and medium-term notes;

(b) self-administered registered retirement savings plans, self-administered registered education savings plans and registered retirement income funds composed of at least one asset that would be considered controlled if held outside the plan or fund;

(c) commodities, futures and foreign currencies held or traded for speculative purposes; and

(d) stock options, warrants, rights and similar instruments.

"dependent child" means a child of a public office holder, or a child of the public officeholder's spouse or common-law partner, who has not reached the age of 18 years or who has reached that age but is primarily dependent on the public office holder or public office holder's spouse or common-law partner for financial support.

"exempt assets" means assets and interests in assets for the private use of members of Executive Council or parliamentary secretaries and the members of their family and assets that are not of a commercial character, including the following:

(a) primary and secondary residences, recreational property and farm land and buildings used or intended for use by members of Executive Council or parliamentary secretaries or the members of their family;

(b) household goods and personal effects;

(c) works of art, antiques and collectibles;

(d) automobiles and other personal means of transportation;

(e) cash and deposits;

(f) Canada Savings Bonds and other similar investments issued or guaranteed by any level of government in Canada or agencies of those governments;

(g) registered retirement savings plans, registered education savings plans, and registered retirement income funds that are composed exclusively of assets that would be considered exempt if held outside the plan or fund;

(h) guaranteed investment certificates and similar financial instruments;

(i) public sector debt financing not guaranteed by a level of government, such as university and hospital debt financing;

- (j) annuities and life insurance policies;
- (k) pension rights;
- (l) money owed by a previous employer, client or partner;
- (m) personal loans receivable from the member of Executive Council's or parliamentary secretary's relatives, and personal loans of less than \$10,000 receivable from other persons if the member of Executive Council or parliamentary secretary has loaned the moneys receivable;
- (n) money owed under a mortgage or hypothec of less than \$10,000; and
- (o) investments in limited partnerships that are not traded publicly and whose assets are exempt assets.

"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.

"ministerial adviser" means a person, other than a public servant, who occupies a position in the office of a minister and who provides policy, program or financial advice to that person on issues relating to his or her powers, duties and functions as a minister, whether or not the advice is provided on a full-time or part-time basis and whether or not the person is entitled to any remuneration or other compensation for the advice.

"ministerial staff" means those persons, other than public servants, who work on behalf of a minister.

"private interest" does not include an interest in a decision or matter

- (a) that is of general application;
- (b) that affects a public office holder as one of a broad class of persons; or
- (c) that concerns the remuneration or benefits received by virtue of being a public office holder.

"public office holder" means

- (a) a minister of the Crown, a minister of state or a parliamentary secretary;
- (b) a member of ministerial staff;

- (c) a ministerial adviser;
- (d) an appointee as defined in this Act;
- (e) a senior executive member of a Crown Corporation; and
- (f) a senior executive member of a government agency.

"public sector organization" includes

- (a) a separate legal entity established pursuant to British Columbia legislation that is classified as being within the Government reporting entity pursuant to the *Budget Transparency and Accountability Act*; and
- (b) a corporation established under the *BC Business Corporations Act*, the *Society Act*, or other enabling statute in which the Province of British Columbia has a controlling interest.

"spouse" does not include a person from whom a public office holder is separated if all support obligations and family property or patrimony have been dealt with by a separation agreement or a court order.

(2) The following are members of a public office holder's family for the purposes of this Act:

- (a) his or her spouse or common law partner; and
- (b) his or her dependent children and the dependent children of his or her spouse or common law partner.

(3) Persons who are related to a public office holder by birth, marriage, common-law partnership, adoption or affinity are the public office holder's relatives for the purposes of this Act unless the Commissioner determines, either generally or in relation to a particular public office holder, that it is not necessary for the purposes of this Act that a person or a class of persons be considered a relative of a public office holder.

Conflict of interest

3 Section 2 (1) of the Members' Conflict of Interest Act, R.S.B. 1996, c. 287 is repealed and replaced with the following:

2 (1) For the purposes of this Act, a public office holder is in a conflict of interest when he or she exercises an official power or performs an official duty or function that provides an opportunity to further his or her private interests or those of his or her relatives or friends or to improperly further another person's private interests.

Avoidance of conflict of interest

4 Section 3 of the Members' Conflict of Interest Act, R.S.B. 1996, c. 287 is repealed and replaced with the following:

3 (1) Every public office holder shall arrange his or her private affairs in a manner that will prevent the public office holder from being in a conflict of interest.

(2) No public office holder shall make a decision or participate in making a decision related to the exercise of an official power, duty or function if the public office holder knows or reasonably should know that, in the making of the decision, he or she would be in a conflict of interest.

(3) No member of the Legislative Assembly shall debate or vote on a question that would place him or her in a conflict of interest.

Insider information

5 Section 4 of the Members' Conflict of Interest Act, R.S.B. 1996, c. 287 is repealed and replaced with the following:

4 No public office holder or former public office holder shall use information that is obtained in his or her position as a public office holder and that is not available to the public to further or seek to further the public office holder's or former public office holder's private interests or those of the public office holder's or former public office holder's relatives or friends or to improperly further or to seek to improperly further another person's private interests.

Influence

6 Section 5 of the Members' Conflict of Interest Act, R.S.B. 1996, c. 287 is repealed and replaced by the following:

5 No public office holder shall use his or her position as a public office holder to seek to influence a decision of another person so as to further the public office holder's private interests or those of the public office holder's relatives or friends or to improperly further another person's private interests.

Activities on behalf of constituents

7 Section 6 of the Members' Conflict of Interest Act, R.S.B. 1996, c. 287 is amended by striking out "normally" and replacing it with "of the Legislative Assembly properly".

Gifts and other advantages

8 Section 7 of the Members' Conflict of Interest Act, R.S.B. 1996, c. 287 is amended by:

(a) repealing subsection (1) and replacing it with the following:

No public office holder or member of his or her family shall accept any gift or other advantage, including from a trust, that might reasonably be seen to have been given to influence the public office holder in the exercise of an official power, duty or function.

(b) striking out "personal benefit" wherever it appears in subsections (2) and (3), and replacing it with "other advantage",

(c) striking out "member" in subsection (3) and replacing it with "public office holder", and

(d) adding the following subsection:

(4) No public office holder shall allow himself or herself to be influenced in the exercise of an official power, duty or function by plans for, or offers of, outside employment.

9 The Members' Conflict of Interest Act, R.S.B.C 1996, c. 287 is amended by adding the following section:

7.1 No member of the Executive Council, deputy minister or parliamentary secretary, no member of his or her family and no ministerial adviser or ministerial staff shall accept travel on non-commercial chartered or private aircraft for any purpose unless required in his or her capacity as a public office holder or in exceptional circumstances or with the prior approval of the Commissioner.

Former members of Executive Council, former deputy ministers and former parliamentary secretaries

10 Section 8 of the Members' Conflict of Interest Act, R.S.B. 1996, c. 287 is amended by:

(a) adding ", former Deputy Minister" after the phrase "a former member of the Executive Council", wherever it appears, and

(b) striking out "\$5 000" in subsection (8), and replacing it with "\$50 000".

Carrying on business

11 Section 9 of the Members' Conflict of Interest Act, R.S.B. 1996, c. 287 is amended by:

(a) adding "Deputy Minister or Parliamentary Secretary" after the phrase "member of the Executive Council", wherever it appears, and

(b) striking out "member" and replacing it with "individual", wherever it appears.

Contracting

12 The Members' Conflict of Interest Act, R.S.B. 1996, c. 287 is amended:

(a) by repealing section 10 and substituting the following:

10 (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 member of the Executive Council, deputy minister 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 except in accordance with an impartial administrative process in which the public office holder plays no part.

(3) No member of the Executive Council, deputy minister 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 member of the Executive Council, deputy minister 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 member of the Executive Council, deputy minister or parliamentary secretary or party colleague in the Legislative Assembly, except in accordance with an impartial administrative process in which the member of Executive Council, deputy minister 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.

(b) by re-enacting section 10 at section 20.1,

(c) by adding to section 20.1 "of the Legislative Assembly" after "A member" in subsection (1), and

(d) by striking out subsection (4),

Contracts with public sector entities

13 The Members' Conflict of Interest Act, R.S.B. 1996, c. 287 is amended by adding the following section:

10.1 (1) No member of the Executive Council, deputy minister 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 member of the Executive Council, deputy minister 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.

Duties of appointees

14 The Members' Conflict of Interest Act, R.S.B. 1996, c. 287 is amended:

(a) by repealing section 11 and substituting the following text:

11 (1) An appointee appointed to a public sector organization or appointed to another body by the Province as a representative of a stakeholder group or region owes the same duties and loyalty to the public sector organization or other body to which the appointee is appointed by the Province and, when an appointee's duties or functions conflict with the wishes of the stakeholder group or region, the appointee's primary duty remains to act in the best interests of the public sector organization or other body to which the appointee is appointed by the Province.

(2) At the time of his or her appointment, an appointee shall declare in writing to the chair, chief executive officer or other head of the public

sector organization or body to which the appointee is appointed by the Province all possible conflicting outside business activities.

(3) An appointee shall fully disclose to the chair, chief executive officer or other head of the public sector organization or other body to which the appointee has been appointed by the Province all circumstances that could conceivably be construed as conflict of interest or apparent conflict of interest.

(4) An appointee shall, immediately upon becoming aware of a potential conflict of interest or apparent conflict of interest, disclose the conflict or apparent conflict in writing to the chair, chief executive officer or other head of the organization or body.

(5) Unless the appointee is otherwise directed by the chair, chief executive officer or other head of the organization or body, the appointee shall immediately take steps to resolve the conflict or apparent conflict.

(6) An appointee who has a relationship by way of ownership, financial interest, employment, contract, appointment or office with a person, organization or body that is not the public sector organization or the body to which the appointee is appointed by the Province, shall not participate in or in any way influence purchasing, selling, granting or other decisions of the public sector organization or body to which the appointee is appointed by the Province which may directly or indirectly benefit the other person, body, or organization with which the appointee has a relationship.

and

(b) by re-enacting section 11 as section 21.1

15 The Members' Conflict of Interest Act, R.S.B. 1996, c. 287 is amended:

(a) by repealing section 12 and substituting the following:

12 No reporting public office holder shall, unless otherwise provided in section 20, hold controlled assets as defined in this Act.

(b) by re-enacting section 12 at section 22.1, and

(c) by repealing section 22.1 and replacing it with the following:

The failure of any member of the Legislative Assembly to comply with section 20.1 does not of itself invalidate

(a) any contract or other financial transaction, or

(b) any procedure undertaken by the government with respect to a contract or other financial transaction to which the failure to comply with section 20.1 relates, but the transaction or procedure is voidable at the instance of the government before the expiration of 2 years from the date of the decision authorizing the transaction, except as against any person who or organization that acted in good faith and without actual notice of the failure to comply with section 20.1.

16 The Members' Conflict of Interest Act, R.S.B. 1996, c. 287 is amended:

(a) by repealing section 13 and substituting the following:

13 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.

(b) by re-enacting section 13 at section 23.1, and

(c) by adding to section 23.1 the following text highlighted by underline, and deleting the text highlighted by strikethrough:

23.1 Despite anything in this Act, if any person, whether or not the person is or was a public office holder ~~member~~, has realized financial gain in any transaction to which a violation of this Act relates, any other person affected by the financial gain, including the government or a government agency, may apply to the Supreme Court for an order of restitution against the person who has realized the financial gain.

17 The Members' Conflict of Interest Act, R.S.B. 1996, c. 287 is amended:

(a) by repealing section 14 and substituting the following text:

14 Compliance with this Act is a condition of a person's appointment or employment as a public office holder.

and

(b) by re-enacting section 14 at section 27.1

Recusal

18 The Members' Conflict of Interest Act, R.S.D. 1996, c. 287 is amended:

(a) by repealing section 15 and substituting the following:

15 A public office holder shall recuse himself or herself from any discussion, decision, debate or vote on any matter in respect of which he or she would be in a conflict of interest.

and

(b) by re-enacting section 15 at section 18.1

Confidential disclosure

19 *The Members' Conflict of Interest Act, R.S.B. 1996, c. 287 is amended:*

(a) by repealing section 16 and substituting the following:

16 (1) A public office holder shall, within 60 days after the day on which he or she is appointed as a public office holder, provide a confidential report to the Commissioner.

(2) The report required under subsection (1) must contain the following:

(a) a description of all of the public office holder's assets and an estimate of their value;

(b) a description of all of the public office holder's direct and contingent liabilities, including the amount of each liability;

(c) a description of all income received by the public office holder during the 12 months before the day of appointment and all income the public office holder is entitled to receive in the 12 months after the day of appointment;

(d) a description of all activities referred to in section 9 in which the public office holder was engaged in the two-year period before the day of appointment;

(e) a description of the public office holder's involvement in philanthropic, charitable or non-commercial activities in the two-year period before the day of appointment;

(f) a description of all of the public office holder's activities as trustee, executor or liquidator of a succession or holder of a power of attorney in the two-year period before the day of appointment;
and

(g) any other information that the Commissioner considers necessary to ensure that the public office holder is in compliance with this Act.

(3) A minister of the Crown, minister of state or parliamentary secretary shall make reasonable efforts to include in the report the information referred to in subsection (2) for each member of his or her family.

(4) A reporting public office holder shall include in the report a description of all benefits that he or she, any member of his or her family or any partnership or private corporation in which he or she or a member of his or her family has an interest is entitled to receive during the 12 months after the day of appointment, as a result of a contract with a public sector entity and the report must include a description of the subject-matter and nature of the contract.

(5) If there is a material change in any matter in respect of which a reporting public office holder is required to provide a confidential report under this section, the reporting public office holder shall, within 30 days after the change, file a report with the Commissioner describing the material change.

Offers of outside employment

20 The Members' Conflict of Interest Act, R.S.B. 1996, c. 287 is amended by repealing section 17 and substituting the following:

17 (1) A public office holder shall disclose in writing to the Commissioner within seven days all firm offers of outside employment.

(2) A public office holder who accepts an offer of outside employment shall within seven days disclose his or her acceptance of the offer in writing to the Commissioner as well as to the following persons:

(a) in the case of a member of the Executive Council, to the Premier of British Columbia;

(b) in the case a parliamentary secretary, to the minister whom the parliamentary secretary assists;

(c) in the case of deputy heads, to the Clerk of the Privy Council; and

(d) in the case of any other public office holder, to the appropriate minister.

Public declaration

21 The Members' Conflict of Interest Act, R.S.B. 1996, c. 287 is amended:

(a) by repealing section 18 and substituting the following:

18 (1) If a public office holder has recused himself or herself to avoid a conflict of interest, the public office holder shall, within 60 days after the day on which the recusal took place, make a public declaration of the recusal that provides sufficient detail to identify the conflict of interest that was avoided.

(2) A public office holder shall, within 120 days after the day on which he or she is appointed as a public office holder, make a public declaration of all of his or her assets that are neither controlled assets nor exempt assets.

(3) A member of the Executive Council, deputy minister or parliamentary secretary shall, within 120 days after the day on which he or she is appointed, make a public declaration with respect to all of his or her liabilities of \$10,000 or more that provides sufficient detail to identify the source and nature of the liability but not the amount.

(4) If a public office holder or a member of his or her family accepts any single gift or other advantage that has a value of \$200 or more, other than one from a relative or friend, the public office holder shall, within 30 days after accepting the gift or other advantage, make a public declaration that provides sufficient detail to identify the gift or other advantage accepted, the donor and the circumstances under which it was accepted.

(5) If travel has been accepted in accordance with section 7 (1), from any source, the member of Executive Council, deputy minister or parliamentary secretary concerned shall, within 30 days after the acceptance, make a public declaration that provides sufficient detail to identify the source and the circumstances under which the travel was accepted.

(b) by re-enacting section 18 at section 29.1, and

(c) by adding striking out "member" wherever it appears in section 29.1, and replacing it with "public office holder".

Summary statement

22 The Members' Conflict of Interest Act, R.S.B. 1996, c. 287 is amended:

(a) by repealing section 19 and substituting the following:

19 (1) A public office holder shall, within 120 days after the day on which he or she is appointed, sign a summary statement containing the information required under subsection (2) and provide it to the Commissioner.

(2) The summary statement must contain the following:

(a) for each controlled asset of the public officer holder, and for each asset of the public office holder that the Commissioner has ordered divested under section 33, a description of the asset and the method used to divest it;

(b) for each matter in respect of which the Commissioner has ordered a public office holder to recuse himself or herself under section 33, a description of the matter and information regarding the process to be put in place by the public office holder and others to effect the recusal; and

(c) for any other matter in respect of which the Commissioner has issued an order to the public office holder under section 33, a description of the matter and the order, and the steps taken to comply with the order.

(b) by re-enacting section 19 at section 30.1, and

(c) by repealing section 30.1 and replacing it with the following:

Commissioner's determination on referred question

30.1 (1) A public office holder who has reasonable and probable grounds to believe that another public office holder or former public office holder is in contravention of this Act or of section 25 of the *Constitution Act* may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the commissioner make a determination respecting the compliance of the other public office holder or former public office holder with the provisions of this Act.

(2) A member of the public who has reasonable and probable grounds to believe that there has been a contravention of this Act or of section 25 of the *Constitution Act* may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the commissioner make a determination respecting the alleged contravention.

(3) The Executive Council may request that the commissioner make a determination on any matter respecting the compliance of a member of the

Executive Council or a parliamentary secretary with the provisions of this Act or of section 25 of the *Constitution Act*.

(4) The Legislative Assembly may request that the commissioner make a determination on any matter respecting the compliance of a member with the provisions of this Act or of section 25 of the *Constitution Act*.

(5) The Information and Privacy Commissioner may request that the commissioner make a determination on any matter respecting the compliance of a public office holder or former public office holder with the provisions of this Act or section 15 of the *Lobbyists Registration Act*.

Divestment

23 The Members' Conflict of Interest Act, R.S.B. 1996, c. 287 is amended

(a) by repealing section 20 and substituting the following:

20 (1) Subject to subsections (9) and (10), a public office holder shall, within 120 days after the day on which he or she is appointed as a public office holder, divest each of his or her controlled assets by doing one of the following:

(a) selling it in an arm's-length transaction; or

(b) placing it in a blind trust that meets the requirements of subsection (4).

(2) Subject to subsections (9) and (10), a public office holder shall, within 120 days after the day on which he or she receives controlled assets by way of gift or testamentary disposition or in any other way over which the public office holder has no control, divest the controlled assets in the manner required by subsection (1).

(3) For greater certainty, a public office holder may not divest his or her controlled assets by any measure other than one referred to in subsection (1), including by placing them in a blind management agreement.

(4) The terms of a blind trust must provide that

(a) the assets to be placed in trust shall be registered to the trustee unless they are in a registered retirement savings plan account;

(b) the public office holder shall not have any power of management or control over the trust assets;

(c) the trustee shall not seek or accept any instruction or advice from the public office holder concerning the management or the administration of the assets;

(d) the assets placed in the trust shall be listed on a schedule attached to the instrument or contract establishing the trust;

(e) the term of any trust shall be for as long as the public office holder who establishes the trust continues to hold his or her office, or until the trust assets have been depleted;

(f) the trustee shall deliver the trust assets to the public office holder when the trust is terminated;

(g) the trustee shall not provide information about the trust, including its composition, to the public office holder, except for information that is required by law to be filed by the public office holder and periodic reports on the overall value of the trust;

(h) the public office holder may receive any income earned by the trust, and add to or withdraw from the capital funds in the trust;

(i) the trustee shall be at arm's length from the public office holder and the Commissioner is to be satisfied that an arm's length relationship exists;

(j) the trustee must be

(i) a public trustee,

(ii) a public company, including a trust company or investment company, that is known to be qualified to perform the duties of a trustee, or

(iii) an individual who may perform trustee duties in the normal course of his or her work; and

(k) the trustee shall provide the Commissioner, on every anniversary of the trust, a written annual report verifying as to accuracy the nature and market value of the trust, a reconciliation of the trust property, the net income of the trust for the preceding year, and the fees of the trustee, if any.

(5) Despite subsection (4), general investment instructions may be included in a blind trust instrument or contract but only with the prior approval of the Commissioner. The instructions may provide for proportions to be invested in

various categories of risk, but may not be industry-specific, except if there are legislative restrictions on the type of assets that a public office holder may own.

(6) For greater certainty, no oral investment instructions may be given with respect to a blind trust contract or instrument.

(7) A public office holder shall provide to the Commissioner a confirmation of sale or a copy of any contract or instrument establishing the trust in respect of any controlled asset divested under subsection (1).

(8) Unless otherwise required by law, the Commissioner shall keep confidential all information provided by a public office holder relating to a divestment under subsection (1), except the fact that a sale has taken place or that a trust exists.

(9) Subject to the approval of the Commissioner, a public office holder is not required to divest controlled assets that are given as security to a lending institution.

(10) A public office holder who is not a member of the Executive Council, a deputy minister or a parliamentary secretary is not required to divest controlled assets if in the opinion of the Commissioner, the assets are of such minimal value that they do not constitute any risk of conflict of interest in relation to the public office holder's official duties and responsibilities.

and

(b) by re-enacting section 20 at section 31.1

Inquiry

24 The Members' Conflict of Interest Act, R.S.B. 1996, c. 287 is amended:

(a) by moving section 21 to section 34, and

(b) by repealing section 34 and replacing it with the following:

34 (1) The commissioner may conduct an inquiry

(a) on receiving a request under section 30.1, or

(b) 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.

(2) If the commissioner determines that the request under section 30.1 is frivolous or vexatious or is 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.

(4) If it appears to the commissioner that the report may adversely affect the public office holder or former public office holder the commissioner must inform the public office holder or former public office holder of the particulars and give him or her the opportunity to make representations, either orally or in writing, at the discretion of the commissioner, before the commissioner finalizes the report.

(5) The commissioner must provide his or her report, upon its completion, to the of the Legislative Assembly who must immediately cause the report to be laid before the Legislative Assembly if it is in session or, if not in session, to the Clerk of the Legislative Assembly who must send a copy of it to all members of the Legislative Assembly.

(6) The commissioner shall, at the same time that the report is provided under subsection (5) to the Clerk of the Legislative Assembly, provide a copy of it to the public office holder or former public office holder who is the subject of the report and make the report available to the public.

(7) In conducting an inquiry under subsection (1) or if the commissioner undertakes a special assignment under section 31.1, the commissioner has the powers of a commissioner under sections 15 and 16 of the *Inquiry Act*.

(8) An inquiry must be conducted in private.

(9) Evidence given by an individual in an inquiry and evidence of the existence of an inquiry are inadmissible against the individual in a court or in any other proceeding, other than in proceedings for perjury in respect of a statement made to the commissioner.

(10) The commissioner, and every individual acting on behalf of 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, necessary for the purpose of conducting an investigation under this section or establishing the grounds for any findings or conclusions contained in a report under subsection 34(3),

(b) the information is disclosed in a report under subsection 34(3), or in the course of a proceeding for perjury in respect of a statement made to the commissioner, or

(c) the commissioner believes on reasonable grounds that the disclosure is necessary for the purpose of advising a peace officer having jurisdiction to investigate an alleged offence under this Act or any other enactment of British Columbia or under an Act of Parliament.

(11) The commissioner shall immediately suspend an investigation under this section if the Registrar discovers that the subject-matter of the investigation is also the subject matter of an investigation to determine whether an offence under this Act or any other enactment of British Columbia or under an Act of Parliament has been committed or that a charge has been laid with respect to that subject-matter.

(12) The commissioner may not continue an investigation under this section until any investigation or charge regarding the same subject-matter has been finally disposed of.

Penalties

25 *The Members' Conflict of Interest Act, R.S.B. 1996, c. 287 is amended by repealing section 22*

Protection of commissioner

26 *The Members' Conflict of Interest Act, R.S.B. 1996, c. 287 is amended by repealing section 23*

Appropriation

27 *The Members' Conflict of Interest Act, R.S.B. 1996, c. 287 is amended by moving section 24 to section 39*

Duties of former public office holders

28 *The Members' Conflict of Interest Act, R.S.B. 1996, c. 287 is amended:*

(a) by repealing section 25 and substituting the following:

25 No former public office holder shall act in such a manner as to take improper advantage of his or her previous public office.

and

(b) by re-enacting section 25 at section 40.

29 The Members' Conflict of Interest Act, RS.B. 1996, c. 287 is amended:

(a) by repealing sections 26 and 27

(b) by replacing section 26 with the following:

26 (1) No former public office holder shall act for or on behalf of any person or organization in connection with any specific proceeding, transaction, negotiation or case to which the Crown is a party and with respect to which the former public office holder had acted for, or provided advice to, the Crown.

(2) No former public office holder shall give advice to his or her client, business associate or employer using information that was obtained in his or her capacity as a public office holder and is not available to the public.

(3) No former public office holder shall enter into a contract of service with, accept an appointment to a board of directors of, or accept an offer of employment with, an entity with which he or she had direct and significant official dealings during the period of one year immediately before his or her last day in office.

(4) No former public office holder shall make whether for remuneration or not, for or on behalf of any other person or entity to any department, organization, board, commission or tribunal with which he or she hold direct and significant official dealings during the period of one year immediately before his or her last day in office.

(5) No former public office holder who was a member of Executive Council or deputy minister shall make representations to a current member of Executive Council or deputy minister who was a member of Executive Council or a deputy minister at the same time as the former public office holder.

27 (1) With respect to all former public office holders except former members of Executive Council and former deputy ministers, the prohibitions set out in subsections 26 (3) and (4) apply for the period of one year following the former public office holder's last day in office.

(2) With respect to former members of Executive Council and former deputy ministers, the prohibitions set out in subsections 26 (3) to (5) apply for a period of two years following their last day in office.

(c) by re-enacting section 26 at section 40.1.

Compliance order

30 *The Members' Conflict of Interest Act, R.S.B. 1996, c. 287 is amended by adding the following section:*

33 (1) The commissioner may order a public office holder, in respect of any matter, to take any compliance measure, including divestment or recusal, that the commissioner determines is necessary to comply with this Act.

(2) If the commissioner determines that a former public office holder is not complying with his or her obligations under this Act or section 15 of the *Lobbyists Registration Act*, the commissioner may order any current public office holders not to have official dealings with that former public office holder.

(3) All current public office holders shall comply with an order of the commissioner made under subsection (2).

Limit on liability

31 *The Members' Conflict of Interest Act, R.S.B. 1996, c. 287 is amended by adding the following section:*

35 (1) No action lies against the commissioner or any former commissioner or any other individual who is or was employed or engaged by the commissioner for anything done in good faith under this Act.

(2) No action lies against an individual who in good faith provides information or gives evidence in an investigation under this Act or to an individual employed or engaged by the commissioner.

Public registry

32 *The Members' Conflict of Interest Act, R.S.B. 1996, c. 287 is amended by adding the following section:*

36 (1) The commissioner shall maintain a registry consisting of the following documents for examination by the public:

- (a) public declarations made under section 29.1;
- (b) summary statements made under section 19;
- (c) notes of every gift or other advantage disclosed under section 7(3);
- (d) disclosures filed with the commissioner under section 34(3);

(e) reports prepared pursuant to section 34(3); and

(f) any other documents that the commissioner considers appropriate.

Offences and penalties

33 *The Members' Conflict of Interest Act, R.S.B. 1996, c. 287 is amended by adding the following section:*

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 of the *Offence Act* does not apply in respect of this Act or the regulations.

Suspension from public office

34 *The Members' Conflict of Interest Act, R.S.B. 1996, c. 287 is amended by adding the following section:*

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.