

Select Special Conflicts of Interest Act Review Committee

Final Report – Review of the *Conflicts of Interest Act*

Thirty-First Legislature
First Session
January 2025



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SELECT SPECIAL CONFLICTS OF INTEREST ACT REVIEW COMMITTEE

January 2025

**To the Honourable Nathan M. Cooper
Speaker of the Legislative Assembly
of the Province of Alberta**

I have the honour of submitting, on behalf of the Select Special Conflicts of Interest Act Review Committee, the Committee's final report on its review of the *Conflicts of Interest Act*, to the Legislative Assembly of Alberta.

Sincerely,

[original signed]

Shane Getson, MLA
Chair, Select Special Conflicts of Interest Act Review Committee

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**MEMBERS OF THE SELECT SPECIAL CONFLICTS OF INTEREST ACT REVIEW COMMITTEE
31st Legislature**

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Martin M. Long, MLA
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West Yellowhead (UC)

Brooks Arcand-Paul, MLA
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* Committee member to February 28, 2024

† Committee member from February 28, 2024

‡ Substitute for Garth Rowswell on January 15, 2024

§ Substitute for Brooks Arcand-Paul on April 25, 2024

** Substitute for Martin Long on January 15, 2024, and Justin Wright on December 11, 2024

†† Substitute for Jackie Lovely on December 11, 2024

‡‡ Substitute for Nathan Ip on April 24, 2024

§§ Substitute for Martin Long on December 11, 2024

1.0 EXECUTIVE SUMMARY

During its deliberations on December 11, 2024, the Select Special Conflicts of Interest Act Review Committee (the “Committee”) made the following 19 recommendations pertaining to the *Conflicts of Interest Act* (the “Act”).

Organization of the Act, consistency, and definitions

1. that the Act be amended to restructure the Act to make it easier to read and interpret.
2. that the Act may be amended to make the record retention period in sections 23.63 and 47(2) two years.
3. that the Act be amended to clarify what constitutes a private interest, rather than what does not constitute a private interest.

Application of the Act

4. that the Act be amended to remove from the application of the Act the following individuals:
 - (a) staff of the Premier’s office, except senior staff;
 - (b) staff of Ministers’ offices, except chiefs of staff;
 - (c) deputy ministers and other designated office holders;
 - (d) senior officials and members and employees of public agencies.
5. that the Act be amended to clarify that the Chief of Staff in the Office of the Premier is responsible for
 - (a) investigating any alleged breach of a code of conduct by a member of the Premier’s or Ministers’ staff, other than the Chief of Staff, and
 - (b) implementing any associated disciplinary action.

Investigative powers and procedures

6. that the Act be amended in section 25(5) to remove the reference to “a justice of the Court of King’s Bench”.
7. that the Act be amended to clarify that a breach of the Act by a Member must only be based on a specific decision or action by that Member.
8. that the Act be amended as follows:
 - (a) require the Ethics Commissioner to inform any individual who is involved in an investigation of
 - (i) the identity of the person being investigated, and
 - (ii) specific allegations made against the person being investigated;
 - (b) require the individual referred to in clause (a) to keep confidential any information provided to that individual in respect of the identity of the person being investigated and the specific allegations made against the person being investigated.
9. that the Act be amended to require the Ethics Commissioner to provide the information described in section 25(4) to the Speaker of the Legislative Assembly on commencing an investigation.
10. that the Act be amended to prohibit a Member from commenting on a request made to the Ethics Commissioner to investigate a matter prior to the Ethics Commissioner completing an investigation, if any.

Principles of procedural fairness

11. that the Act be amended to strengthen principles of procedural fairness as follows:
 - (a) establish a statutory right of a person who is the subject of an investigation to
 - (i) be provided with a copy of the complaint to which the investigation relates,
 - (ii) retain legal counsel with respect to the investigation, and permit that legal counsel to attend any proceeding that is part of that investigation, and
 - (iii) record any interview or meeting with the Ethics Commissioner;
 - (b) prohibit the Ethics Commissioner from requiring an individual to produce documents that are
 - (i) not directly relevant to the investigation, or
 - (ii) subject to any type of legal privilege, including solicitor-client privilege, or any kind of confidence, including Cabinet confidence;
 - (c) provide the subject of an investigation a statutory right to dispute the findings or recommendations of the Ethics Commissioner prior to the Ethics Commissioner reporting in respect of the investigation to the Speaker of the Legislative Assembly.
12. that the Act be amended to provide increased procedural fairness for the subject of an investigation, including the right to appeal interim decisions of the Ethics Commissioner with respect to how an investigation is conducted.
13. that the Act be amended to require the Ethics Commissioner to provide a reasonable amount of time for an individual to meet with the Ethics Commissioner as part of an investigation.

Restrictions on holdings and disclosure procedures

14. that the Act be amended to
 - (a) exclude certain types of securities, including market index funds and arm's-length mutual funds, from the restriction on holding publicly traded securities by a Minister,
 - (b) simplify the information required to be included in the disclosure statement, and
 - (c) permit Members to confirm with the Ethics Commissioner on an annual basis that there are no material changes in the information contained in their most recent disclosure statement as an alternative to submitting a new disclosure statement and meeting annually with the Ethics Commissioner.
15. that the Act be amended to remove the requirement to submit a return to the Ethics Commissioner by a person described in section 15(3) of the Act.

Carrying on a business and post-employment provisions

16. that the Act be amended to clarify that, with respect to a Minister, the management of residential rental properties does not constitute carrying on a business for the purpose of section 21.
17. that the Act be amended in sections 23.1 and 23.7 by
 - (a) reducing the applicable restriction period to six months, and
 - (b) prohibiting subsequent employment only if that employment is directly connected with an ongoing matter with which the former Minister or former member of the Premier's or Ministers' staff directly acted or advised.
18. that the Act be amended to allow former Ministers and former members of the Premier's and Ministers' staff to accept employment with a department of the Government or the Legislative Assembly Office.

Travel on non-commercial aircraft

19. that the Act be amended to require a Member to request the approval of the Ethics Commissioner before accepting an offer of travel on a non-commercial chartered or private aircraft.

2.0 COMMITTEE MANDATE

On December 5, 2023, the Legislative Assembly passed Government Motion 10, which appointed the Select Special Conflicts of Interest Act Review Committee to conduct a review of the *Conflicts of Interest Act*.

The scope of the Committee's review with respect to the *Conflicts of Interest Act* is mandated by section 48 of that Act:

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.

The Committee began its review of the Act on January 15, 2024.

3.0 BACKGROUND

The *Conflicts of Interest Act* governs the ethical conduct of Members of the Legislative Assembly, Ministers, members of the Premier's and Ministers' staff, and designated senior officials of public agencies. The Act is administered by the Ethics Commissioner.

The *Conflicts of Interest Act* of Alberta was given Royal Assent in 1991 and was fully in force by spring 1993. In 1995, a review panel was established by the Ethics Commissioner, chaired by Professor Allan Tupper, and given the mandate to review the suitability and effectiveness of the Act. In 1996, the panel published its report, titled *Integrity in Government in Alberta: Towards the Twenty First Century, Report of the Conflicts of Interest Act Review Panel*, commonly referred to as the Tupper Report.* The *Conflicts of Interest Act* was subsequently amended in 1998, based on a recommendation in the Tupper Report to include a provision requiring a comprehensive review of the Act every five years by a special committee established by the Assembly. This mandatory periodic review was described in the Tupper Report as a means of ensuring the Act's continued relevance and applicability "in light of changing public expectations, alterations to the role of government, and changes in the responsibilities of Members."[†]

The first Committee of the Assembly to review the Act tabled its final report in May 2006. Thirty-six recommendations for action were outlined in the report. Bill 2, *Conflicts of Interest Amendment Act*, which was introduced on April 18, 2007, incorporated most of these recommendations. Bill 2 was referred to the Standing Committee on Government Services for review on May 30, 2007. Upon completion of the review, the Standing Committee on Government Services tabled its report to the Assembly in November 2007, recommending that Bill 2 proceed with four proposed amendments, which were subsequently agreed to in Committee of the Whole on November 27 and 28, 2007. Bill 2 received third reading on December 4, 2007, and was granted Royal Assent on December 7, 2007.

The second Committee of the Assembly to review the Act tabled its final report in November 2013. Twenty-five recommendations for action and 19 recommendations for "no change" were outlined in the report. Bill 2, *Alberta Accountability Act*, which was introduced on December 8, 2014, and received Royal Assent on December 17, 2014, amended three statutes, including the *Conflicts of Interest Act*, incorporating many of the Committee's recommendations.

* Newman, Patricia, Francis M. Saville, and Allan Tupper. 1996. *Integrity in Government in Alberta: Towards the Twenty First Century, Report of the Conflicts of Interest Act Review Panel*. Edmonton: Conflicts of Interest Act Review Panel.

[†] *Ibid.*, pp. 40-41.

In addition, the *Conflicts of Interest Act* was amended during the 2017 Fall Sitting of the Legislative Assembly. The focus of these amendments was to establish conflicts of interest provisions within the Act for senior officials and members and employees of public agencies.

The Standing Committee on Resource Stewardship commenced the third review of the Act in November 2017. The Committee tabled its report in August 2018, which included 14 recommendations; however, no changes were made to the Act by the Assembly following this review.

In 2023, two significant amendments were made through Bill 8, *Justice Statutes Amendment Act, 2023*, which received Royal Assent on December 7, 2023. This Act amended section 7 of the *Conflicts of Interest Act* with respect to the value of gifts and event fee waivers that do not require approval from the Ethics Commissioner and added a section that enables the suspension of an investigation of a candidate by the Ethics Commissioner during a general election.

This report is the result of the fourth mandatory review of the Act. The review was conducted by the Select Special Conflicts of Interest Act Review Committee, which commenced its review on January 15, 2024. The report contains the 19 recommendations that the Committee passed during its deliberations. For a complete record of the Committee's deliberations please consult the transcript of the Committee's meeting from December 11, 2024, which is posted online at assembly.ab.ca.

4.0 ACKNOWLEDGEMENTS

The Committee wishes to acknowledge the useful contributions of the individuals and organizations who provided written submissions and/or appeared before the Committee.

The Committee also wishes to acknowledge the valuable assistance of the technical support staff and Legislative Assembly Office support staff.

Technical Support Staff

Ministry of Justice

Mr. Mark Ammann, Barrister and Solicitor, Justice and Public Safety and Emergency Services Legal Team

Office of the Ethics Commissioner of Alberta

Mr. Shawn McLeod, Ethics Commissioner
Mr. Josh de Groot, Lobbyist Registrar and General Counsel
Mr. Kent Ziegler, Chief Administrative Officer
Hon. Marguerite Trussler, KC, former Ethics Commissioner

Legislative Assembly Office Support Staff

Ms Shannon Dean, KC, Clerk
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Dr. Philip Massolin, Clerk Assistant and Executive Director of Parliamentary Services
Ms Nancy Robert, Clerk of *Journals* and Committees
Mr. Abdul Bhurgri, Research Officer
Dr. Rachel McGraw, Research Officer
Dr. Christina Williamson, Research Officer
Mr. Warren Huffman, Committee Clerk
Ms Jody Rempel, Committee Clerk
Mr. Aaron Roth, Committee Clerk
Ms Sharon Marioselva, Committee Services Operations Assistant
Ms Rhonda Sorensen, Manager of Corporate Communications
Ms Christina Steenberg, Supervisor of Communications Services
Ms Amanda LeBlanc, Managing Editor of *Hansard* and Manager of Venue Services
Hansard staff
Security staff

5.0 CONSULTATION AND REVIEW PROCESS

The Committee's review of the *Conflicts of Interest Act* involved a series of meetings that were open to the public, broadcast on Alberta Assembly TV, and video- and audio-streamed live on the Legislative Assembly website. These meetings took place on January 15, March 1, April 25, June 17, and December 11, 2024.

At the meeting on March 1, 2024, the Committee received a technical briefing on the *Conflicts of Interest Act* from Hon. Marguerite Trussler, KC, the then Ethics Commissioner of Alberta, and Mark Ammann, Barrister and Solicitor, Justice and Public Safety and Emergency Services Legal Team, Ministry of Justice.

Also on March 1, 2024, the Committee agreed to invite written submissions from stakeholders and members of the public. Submissions were accepted for one month beginning on March 8, 2024. The stakeholders that the Committee agreed to invite included Ethics, Conflicts of Interest, and Integrity Commissioners from across Canada, ethics advocacy groups, professional associations, research institutes, academic experts, MLAs (except those on the Committee), staff of the offices of the Premier and Ministers, designated office holders, public agencies, and designated senior officials. The Committee advertised for written submissions from members of the public through the Legislative Assembly's social media platforms and on the Assembly's website. The deadline for submissions was April 8, 2024. The Committee received 12 written submissions, 11 from stakeholders and one from a private citizen. The names of those who made written submissions are listed in Appendix A of this report.

On April 25, 2024, the Committee met to discuss the written submissions and the documents prepared by the Legislative Assembly Office, including the summary of submissions and the comparison of conflicts of interest legislation across select jurisdictions in Canada. During this meeting, the Committee also agreed to invite a Committee member from each of the Government and Official Opposition caucuses to submit a list of up to three people or organizations to make oral presentations at the next meeting of the Committee. The Committee also directed the Legislative Assembly Office to provide additional crossjurisdictional research regarding provisions related to holding index and mutual funds, the powers of the Ethics Commissioner, and investigations into breaches of the Act.

On June 17, 2024, the Committee met to hear the six invited oral submissions. Appendix B provides a list of the individuals and organizations that provided oral presentations to the Committee. At this meeting, the Committee also discussed the additional research documents requested by the Committee at the previous meeting and prepared by the Legislative Assembly Office. The Committee then directed the Legislative Assembly Office to prepare a summary of issues and proposals to assist the Committee as it moved into the deliberation stage of the review.

The Committee held its final meeting on December 11, 2024, to deliberate on the issues and proposals arising from the written submissions and oral presentations. Representatives from the Ministry of Justice and the Office of the Ethics Commissioner attended the meeting and were available to support the Committee by providing technical expertise. The Committee passed 19 recommendations at this meeting and also directed the Legislative Assembly Office to prepare this final report. This report is thus the result of the Committee's deliberations and contains its recommendations in relation to the *Conflicts of Interest Act*.

6.0 COMMITTEE RECOMMENDATIONS

6.1 Organization of the Act, consistency, and definitions

The Office of the Ethics Commissioner noted in its written submission that part 4 of the Act is particularly complex and contains a large number of sections that were added after the last time the Act was renumbered in 2002. The Committee agreed, noting that “the Act has an extremely complex numbering structure due to a series of significant amendments over the years ... [which] have also resulted in language that is inconsistent and difficult to interpret ... and follow.” The Committee emphasized the importance of “providing clear and plain language” in the Act.

Therefore, the Committee recommends:

1. **that the Act be amended to restructure the Act to make it easier to read and interpret.**

The Committee also discussed the records retention time periods in the Act. Currently section 23.63 of the Act stipulates that the disclosure statements, amendments, and returns of former members of the Premier’s or Ministers’ staff be retained for three years. On the other hand, section 47(2) specifies that the records pertaining to former Members and Ministers be retained for two years. The Office of the Ethics Commissioner submitted that a consistent retention period of two years throughout the Act and for all those subject to the Act would be sufficient, a recommendation with which the Committee agreed.

Consequently, the Committee recommends:

2. **that the Act may be amended to make the record retention period in sections 23.63 and 47(2) two years.**

The Committee deliberated on the definition of what constitutes a private interest for the purpose of the Act. During deliberations, the Committee referred to the recommendation from the Office of the Ethics Commissioner to include a positive definition of what constitutes a private interest under the Act to provide guidance and clarity. Hon. Mr. Todd Loewen, MLA for Central Peace-Notley, also recommended “clearly outlining specific scenarios or relationships that qualify as conflicts” in order to reduce ambiguity and ensure accountability. Committee members noted that “a clear, positive definition would make it easier to interpret the Act.”

The Committee therefore makes the following recommendation:

3. **that the Act be amended to clarify what constitutes a private interest, rather than what does not constitute a private interest.**

6.2 Application of the Act

Currently, part 4.2 of the *Conflicts of Interest Act* stipulates that the Act applies to Premier’s and Ministers’ staff. Part 4.3 specifies that the Act applies to designated senior officials of public agencies. However, the *Public Service Act* currently contains the provisions related to conflicts of interest for designated office holders, including deputy ministers.

The Office of the Ethics Commissioner recommended in its written submission that

[p]rovisions respecting conflicts of interest, financial disclosure, direct associate reporting, and post-employment for deputy ministers and other designated office holders should be removed from the *Public Service Act* and consolidated into the *Conflicts of Interest Act*.

In his oral submission, Deputy Minister of Justice and Deputy Attorney General Malcolm Lavoie recommended against this, noting that

[t]he Alberta public service serves the Crown and Albertans in an impartial and nonpartisan fashion. This expectation is specifically codified in the code of conduct and ethics for the public service of Alberta. Consolidating conflict of interest rules in a single Act would not be consistent with this expectation and this distinction. In other words, this approach would not reflect the important separation that currently exists between the public service and elected officials, political staff, and others outside the public service.

In considering this issue, the Committee noted that

the *Public Service Act* governs staff in the Alberta public service, including deputy ministers, who serve in an impartial and nonpartisan fashion. This expectation is found in the Code of Conduct and Ethics for the Alberta public service ... staff on agencies, boards, and commissions ... are governed by the *Alberta Public Agencies Governance Act*.

The Committee thus reasoned that inclusion of public servants under the application of the *Conflicts of Interest Act* would not reflect the separation that exists between the public service and elected officials and political staff. Therefore, the Committee concluded that nonsenior staff of the Premier's office, staff of Ministers' offices (except chiefs of staff), deputy ministers, designated office holders, senior officials, and members and employees of public agencies should not be subject to the *Conflicts of Interest Act* since they are subject to conflicts of interest rules set out in other Acts and codes of conduct.

For these reasons, the Committee recommends:

- 4. that the Act be amended to remove from the application of the Act the following individuals:**
 - (a) staff of the Premier's office, except senior staff;**
 - (b) staff of Ministers' offices, except chiefs of staff;**
 - (c) deputy ministers and other designated office holders;**
 - (d) senior officials and members and employees of public agencies.**

The individuals in categories (a) and (b) of recommendation 4, namely staff of the Premier's office, except senior staff, and staff of the Ministers' offices, except chiefs of staff, are not subject to the *Public Service Act*, and the Committee deliberated on this point. It was noted that section 23.41(1) of the Act stipulates that "the Lieutenant Governor in Council may establish a code of conduct for the Premier's and Ministers' staff." Currently, this code of conduct exists as the Premier's and Ministers' Staff Employment Order (O.C. 341/2020, with amendments in O.C. 237/2023). The Act also makes clear in section 23.41(3) that any staff who contravene this code of conduct breach part 4.2 of the Act.

During oral submissions, Deputy Minister of Justice Malcolm Lavoie submitted that

[p]ursuant to section 24, the Ethics Commissioner may "investigate any matter respecting an alleged breach or contravention" of the Act. Based on a plain reading of this section, the Ethics Commissioner would appear to have responsibility for investigating breaches of the code of conduct [for the Premier's and Ministers' staff]. On the other hand, sections 4 and 5 of the code of conduct itself establish that the Premier's chief of staff is responsible for administering the code of conduct with respect to members of the Premier's staff and Ministers' chiefs of staff. The

Premier's chief of staff is also responsible for issuing supplementary instructions. Each Minister's chief of staff is responsible for administering the code of conduct for the respective Minister's staff, including issuing supplemental directions. The Ethics Commissioner is responsible for administering the code and issuing supplementary instructions only for the Premier's chief of staff. It is not clear whether the Premier's or Ministers' chiefs of staff are intended to be primarily responsible for investigations of violations in their offices. Having the chiefs of staff in the Premier's office and in Ministers' offices responsible for administering the code of conduct for their respective staff would likely be more consistent with section 23.41(3), which indicates that contraventions of the code of conduct "may be subject to disciplinary action."

During deliberations, the Committee noted the overlap in some of the investigative authorities under the Act and staff code of conduct, as pointed out by Deputy Minister Lavoie. The Committee reasoned that clarifying who has authority to administer and enforce the staff code of conduct is needed.

Consequently, the Committee recommends:

- 5. that the Act be amended to clarify that the Chief of Staff in the Office of the Premier is responsible for**
 - (a) investigating any alleged breach of a code of conduct by a member of the Premier's or Ministers' staff, other than the Chief of Staff, and**
 - (b) implementing any associated disciplinary action.**

6.3 Investigative powers and procedures

During deliberations the Committee discussed how the powers of the Ethics Commissioner are set out in the Act. Section 25(5) of the Act currently reads:

- (5)** For the purpose of conducting an investigation, the Ethics Commissioner may
 - (a) in the same manner and to the same extent as a justice of the Court of King's Bench,
 - (i) summon and enforce the attendance of individuals before the Ethics Commissioner and compel them to give oral or written evidence on oath, and
 - (ii) compel persons to produce any documents or other things that the Ethics Commissioner considers relevant to the investigation, and
 - (b) administer oaths and receive and accept information, whether or not it would be admissible as evidence in a court of law.

In his oral submission Deputy Minister Lavoie of the Ministry of Justice explained that while the Ethics Commissioner

has the power to summon individuals to give evidence, compel them to produce documents or other items, and administer oaths and receive information, the Act does not grant the Ethics Commissioner other powers of a [justice of the Court of King's Bench] whether or not references were made to a justice of the Court of King's Bench as the baseline against which the powers are identified.

During deliberations, Committee members considered the reference to a justice of the Court of King's Bench in the Act. The Committee concluded that removing the reference to the Court of King's Bench in section 25(5)(a) would eliminate misunderstanding and confusion about the powers of the Ethics Commissioner. Committee members pointed out that the Ethics Commissioner is not a justice of the Court of King's Bench and that the subject of an investigation does not have the protection that a defendant would have in a judicial process.

The Committee also noted that a recommendation to remove the reference to the Court of King's Bench in section 25(5)(a) would not be intended to remove any of the powers of the Ethics Commissioner,

including the power to summon individuals to give evidence, compel them to produce documents or other items, and administer oaths and receive information, as set out in sections 25(5)(a)(i) and (ii) of the Act.

The Committee therefore makes the following recommendation:

- 6. that the Act be amended in section 25(5) to remove the reference to “a justice of the Court of King’s Bench.”**

The Committee expressed concern regarding the lack of specificity in the Act with respect to what should constitute an alleged breach of the Act that would warrant an investigation. The Committee noted that “if laws are open to subjective interpretation, this creates confusion and uncertainty, making it difficult for people to understand what is allowed and what is not.” The Committee reasoned that the law needs to be as clear as possible so that people who are subject to the Act are able to follow it.

For this reason, the Committee recommends:

- 7. that the Act be amended to clarify that a breach of the Act by a Member must only be based on a specific decision or action by that Member.**

The Committee talked about the role of witnesses in investigations of the Ethics Commissioner. The Committee reasoned that it is important that if witnesses are called, they are aware of the issue about which they are being called to provide information. Knowing the reason for being called would allow a witness to prepare before being questioned. Therefore, the Committee felt it important to change the Act so that the Ethics Commissioner is required to provide specific information about the allegations to any witnesses involved in an investigation. However, the Committee also recognized the importance of protecting the confidentiality of the person who is subject to an investigation and of the investigative process.

Following this rationale, the Committee recommends:

- 8. that the Act be amended as follows:**
 - (a) require the Ethics Commissioner to inform any individual who is involved in an investigation of**
 - (i) the identity of the person being investigated, and**
 - (ii) specific allegations made against the person being investigated;**
 - (b) require the individual referred to in clause (a) to keep confidential any information provided to that individual in respect of the identity of the person being investigated and the specific allegations made against the person being investigated.**

The Committee also discussed the importance of requiring, rather than simply permitting, the Ethics Commissioner to inform the Speaker of the commencement of an investigation. Currently, section 25(4) of the Act states that “[o]n commencing an investigation under subsection (1), the Ethics Commissioner may inform the Speaker of the Legislative Assembly”. Section 24(6) of the Act also states that “where a matter has been referred to the Ethics Commissioner under subsection (1), (3) or (4), neither the Legislative Assembly nor a committee of the Assembly shall inquire into the matter.”

The submission from the Speaker of the Legislative Assembly suggested that requiring disclosure of an investigation to the Speaker by the Ethics Commissioner “would facilitate the Speaker’s management of Assembly business in that with this information, the Speaker would be able to direct the Assembly to avoid debate on matters to ensure that section 24(6) of the Act ... is complied with.” The Committee

agreed with the Speaker's submission that making the notification under section 25(4) a requirement would better enable the Speaker to consistently enforce section 24(6). Consequently, the Committee makes the following recommendation:

9. that the Act be amended to require the Ethics Commissioner to provide the information described in section 25(4) to the Speaker of the Legislative Assembly on commencing an investigation.

The Office of the Ethics Commissioner made a recommendation in its submission to “restrict Members from commenting on a request for [an] investigation until the Ethics Commissioner has confirmed whether an investigation is being undertaken.” The Committee discussed this recommendation, noting that “when Members publicly state that they will be sending or have sent a request for investigation to the Ethics Commissioner, the allegation that is made becomes the only information in the public realm and [is then] subject to public scrutiny.”

Committee members agreed with this recommendation, emphasizing that a person is presumed innocent until found guilty and that due process must be followed so that the person's reputation is not unnecessarily damaged. The Committee explained that after an allegation is made, the Ethics Commissioner considers the merits of the allegations, decides if an investigation is warranted, and, if so, conducts an investigation. During this period, the individual being investigated may be subjected to public and media speculation that may lead the public to assume that the person breached the Act before the Ethics Commissioner has completed the investigation and made a finding. Committee members noted that the public will not find out until after the investigation is complete that the person under investigation may not have done anything wrong, but at that point it may be extremely difficult to correct the information in the public realm and repair the person's reputation. The Committee reasoned that restricting Members from making public comments on a request for an investigation until after that investigation is complete removes the likelihood of unwarranted public scrutiny and politicization of an issue before the Ethics Commissioner has made a finding.

Consequently, the Committee recommends:

10. that the Act be amended to prohibit a Member from commenting on a request made to the Ethics Commissioner to investigate a matter prior to the Ethics Commissioner completing an investigation, if any.

6.4 Principles of procedural fairness

Principles of procedural fairness include the right to an unbiased decision-maker who exercises discretion, the right to be given enough information about the matter to meaningfully participate, the right to be heard, the right to a timely process, and the right to a clear and coherent explanation of the decision.* The Committee spent some time discussing the importance of procedural fairness during investigations by the Ethics Commissioner. The discussion focused on the transparency of the investigative process and the importance of fair treatment and protecting the rights of the person under investigation by the Ethics Commissioner.

One of the aspects of procedural fairness emphasized by the Committee is the need to inform the person under investigation not only that an investigation is under way but also the details of the specific allegations. Currently, the Ethics Commissioner is required to give reasonable notice to the person who is the subject of an investigation that an investigation will commence, as indicated in section 25(1) of the Act. However, there is no requirement to provide the individual under investigation with information pertaining to the specific allegations against the individual. Section 25(1) of the Act states:

* Alberta Ombudsman. 2024. Administrative Fairness Guidelines. Available from <https://www.ombudsman.ab.ca/determining-fairness/administrative-fairness-guidelines/>. Accessed on December 19, 2024.

25(1) On receiving a request under section 24 or where the Ethics Commissioner has reason to believe that an individual has acted or is acting in contravention of advice, recommendations or directions or any conditions or any approval given by the Ethics Commissioner, and on giving reasonable notice to that individual, the Ethics Commissioner may conduct an investigation.

Section 26 of the Act requires the Office of the Ethics Commissioner to maintain confidentiality while also allowing the Ethics Commissioner to exercise discretion over whether to disclose information and what information to disclose to individuals involved in the investigation as part of the investigative process.

Section 26 currently states:

26(1) Except as provided in this section, the Ethics Commissioner, any former Ethics Commissioner and a person who is or was employed or engaged 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 individual against whom the allegation was made;
- (b) disclosed by a person conducting an investigation to the extent necessary to enable that person to obtain information from another person;
- (c) disclosed in a notice or report made by the Ethics Commissioner under this Act;
- (d) disclosed to the Minister of Justice or a law enforcement agency where the Ethics Commissioner believes on reasonable grounds that the disclosure is necessary for the purpose of advising the Minister of Justice 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.

The Committee reasoned that when someone is under investigation for a legal matter, they are usually made aware of the specific allegations for which they are under investigation and that this should be a requirement for investigations under the *Conflicts of Interest Act*, rather than at the discretion of the Ethics Commissioner. The Committee also noted that in Quebec and at the House of Commons the Ethics Commissioner sends a copy of the investigation request, which contains the allegations, to the Member named in the request. In British Columbia, Saskatchewan, Manitoba, Ontario, the Senate, and the House of Commons the respective Ethics Commissioner is required to give reasonable notice of the specific allegations to the Member.

During deliberations, the Committee also noted that currently there is no provision in the Act that states that an individual has the right to legal counsel during an investigation. While the former Commissioner stated that she would allow for legal counsel to be present throughout an investigation, the Committee felt that this should be an explicit right stipulated in the Act.

The Committee also discussed the importance of protecting the legal rights of individuals, including the ability to invoke solicitor-client privilege and the protection of Cabinet confidence. The Committee argued that the investigation process needs to be more transparent, especially in relation to the Ethics Commissioner's powers to compel the production of documents during an investigation and the rights of the person subject to an investigation to dispute the findings or recommendations of the Ethics Commissioner before the report is submitted to the Speaker.

Considering these concerns for procedural fairness, the Committee recommends:

11. that the Act be amended to strengthen principles of procedural fairness as follows:

- (a) establish a statutory right of a person who is the subject of an investigation to**
 - (i) be provided with a copy of the complaint to which the investigation relates,**
 - (ii) retain legal counsel with respect to the investigation, and permit that legal counsel to attend any proceeding that is part of that investigation, and**
 - (iii) record any interview or meeting with the Ethics Commissioner;**
- (b) prohibit the Ethics Commissioner from requiring an individual to produce documents that are**
 - (i) not directly relevant to the investigation, or**

- (ii) **subject to any type of legal privilege, including solicitor-client privilege, or any kind of confidence, including Cabinet confidence;**
- (c) **provide the subject of an investigation a statutory right to dispute the findings or recommendations of the Ethics Commissioner prior to the Ethics Commissioner reporting in respect of the investigation to the Speaker of the Legislative Assembly.**

The Committee also discussed procedural fairness related to the right to appeal decisions of the Ethics Commissioner made with respect to how an investigation is conducted. The Committee noted that investigations into conflicts of interest can have serious personal and professional consequences, and “the ability to appeal interim decisions could give the subject of an investigation a process that allows for corrections if something seems unfair or improperly handled.” According to the Committee, the right to appeal interim decisions may also improve transparency, accountability, and due process.

Consequently, the Committee recommends:

- 12. that the Act be amended to provide increased procedural fairness for the subject of an investigation, including the right to appeal interim decisions of the Ethics Commissioner, with respect to how an investigation is conducted.**

The Committee again discussed the importance of due process in terms of the time allowed for a person who is subject to an investigation to meet with the Ethics Commissioner. The Committee argued that allowing a reasonable amount of time would ensure that the individual can adequately prepare for the meeting, understands the rights of individuals under investigation, understands any documents the individual is being asked to sign, and has the opportunity to consult with legal counsel.

Therefore, the Committee makes the following recommendation:

- 13. that the Act be amended to require the Ethics Commissioner to provide a reasonable amount of time for an individual to meet with the Ethics Commissioner as part of an investigation.**

6.5 Restrictions on holdings and disclosure procedures

Currently in Alberta, Ministers and the Leader of His Majesty’s Loyal Opposition, who are subject to financial restrictions stipulated in section 20 of the Act, are only permitted to hold publicly traded securities in a blind trust or in an investment arrangement approved by the Ethics Commissioner. During its deliberations, the Committee argued that this restriction was unnecessary, noting that in some provinces, including Manitoba, Ontario, and Quebec, Ministers can hold open-ended mutual funds without placing them in a blind trust. Furthermore, in Ontario open-ended mutual funds are not required to be disclosed to the Ethics Commissioner. The Committee discussed bringing Alberta’s restrictions on holdings in line with other jurisdictions while still ensuring that the requirements in the legislation remain strict enough to maintain standards for transparency and integrity in Government.

The Committee also noted that the former Ethics Commissioner mentioned that late submission of disclosure statements had been an issue in recent years. The Committee argued that the disclosure process can be burdensome and should be simplified. For instance, the Committee noted that filling out the form starts anew each year, and this can be repetitive and unnecessary if the person’s financial situation is the same and is not likely to change.

Considering these issues, the Committee recommends:

14. that the Act be amended to

- (a) exclude certain types of securities, including market index funds and arm's-length mutual funds, from the restriction on holding publicly traded securities by a Minister,**
- (b) simplify the information required to be included in the disclosure statement, and**
- (c) permit Members to confirm with the Ethics Commissioner on an annual basis that there are no material changes in the information contained in their most recent disclosure statements as an alternative to submitting a new disclosure statement and meeting annually with the Ethics Commissioner.**

The Office of the Ethics Commissioner recommended removing the requirement for former Members to submit a final direct associates report within 30 days after ceasing to be a Member, as stipulated in section 15(3) of the Act. Section 15(3) currently reads as follows:

- (3) Where a person ceases to be a Member by reason of dissolution of the Legislature or otherwise,**
 - (a) that person shall, within 30 days after ceasing to be a Member, furnish a return to the Ethics Commissioner showing**
 - (i) the name and address of each person with whom the person became directly associated or with whom that person ceased to be directly associated on or after the date of that person's last return under this section, and**
 - (ii) the date on which the direct association began or terminated, as the case may be, and**
 - (b) if that person again becomes a Member in the succeeding general election or by-election, as the case may be, that person shall, within 60 days after again becoming a Member, furnish a return to the Ethics Commissioner showing**
 - (i) the name and address of each person with whom the Member became directly associated or with whom the Member ceased to be directly associated in the intervening period, and**
 - (ii) the date on which the direct association began or terminated, as the case may be.**

The Office of the Ethics Commissioner noted that these reporting requirements do not seem to have any purpose and former Members rarely provide these reports. Further, the Ethics Commissioner has no ability to compel former Members to provide the required return, as they are no longer subject to the Act once they cease to be a Member. The Committee agreed with this recommendation from the Office of the Ethics Commissioner but noted that any recommendation related to this issue would not impact section 15(3)(b), which requires someone who ceased to be Member but subsequently becomes a Member again to file a new return within 60 days of once again becoming a Member.

Consequently, the Committee recommends:

15. that the Act be amended to remove the requirement to submit a return to the Ethics Commissioner by a person described in section 15(3) of the Act.

6.6 Carrying on a business and post-employment provisions

The Office of the Ethics Commissioner made a recommendation to amend the prohibition restricting Ministers from managing rental properties. The suggestion was that the Act be amended to allow Ministers to manage up to four residential rental properties before these activities would be considered carrying on a business while also noting that any commercial property rentals should still be considered carrying on a business.

The Committee agreed with the main premise of this recommendation and considered how many rental properties should be exempt, noting that the Office of the Ethics Commissioner did not offer specific written rationale for suggesting a limit of four properties. During oral submissions, the Office of the Ethics

Commissioner noted that the Ethics Commissioner often grants exemptions to individuals who are managing a small number of properties, which may have informed the suggestion of four properties. However, the Committee ultimately decided that it would not recommend a limit to the number of rental properties a Minister may manage, noting that a rental property is very different from other investments in businesses that could cause a conflict of interest.

Therefore, the Committee recommends:

16. that the Act be amended to clarify that, with respect to a Minister, the management of residential rental properties does not constitute carrying on a business for the purpose of section 21.

The Committee deliberated on the length of the post-employment restrictions for former Ministers and former members of the Premier's and Ministers' staff. Currently, sections 23.1 and 23.7 of the Act stipulate a cooling-off period of 12 months for both of these groups of individuals before they are able to lobby, act on a commercial basis, solicit or accept a contract or benefit, or accept employment with a department, agency, organization, or board for which the individual directly acted for or advised or had direct and significant official dealings.

The Committee discussed that the current provisions may act as a "deterrent to skilled, qualified, and competent individuals ... applying for [G]overnment positions" or "taking up roles in the public or private sector that may be of significant value to both the individual and society as a whole." The Committee also noted that this cooling-off period can affect the careers of talented professionals, especially those who are young or have less experience outside Government, who wish to use their expertise in other roles. Mr. Ammann of the Ministry of Justice provided the technical advice that exemptions to the current provisions are often granted under section 23.11 of the Act in order to allow people to more quickly take up employment within Government.

The Committee reasoned that reducing the cooling-off period and focusing employment prohibitions only on matters in which the person "directly acted or advised" would simplify the provisions and allow former Ministers and political staff to transition into new roles more effectively while still mitigating against potential conflicts or undue influence. The Committee also noted that cooling-off periods of less than one year are in place in some other jurisdictions in Canada.

Considering these reasons, the Committee recommends:

17. that the Act be amended in sections 23.1 and 23.7 by
(a) reducing the applicable restriction period to six months, and
(b) prohibiting subsequent employment only if that employment is directly connected with an ongoing matter with which the former Minister or former member of the Premier's or Ministers' staff directly acted or advised.

The Committee discussed the need to further clarify post-employment provisions in the Act, noting that the current provisions create challenges when former Ministers or former members of the Premier's or Ministers' staff want to move to different public-sector jobs. The Committee emphasized the need to retain the expertise of experienced staff who have a deep understanding of public policy, Government operations, and the legislative process.

The Office of the Ethics Commissioner noted that the post-employment provisions are overly complex and difficult to interpret and recommended that the phrases "directly acted for" and "direct and significant official dealing" be removed. The Office of the Ethics Commissioner also recommended that the Act be amended to permit political staff, deputy ministers, and designated senior officials to move within Government if they are returning to a previous role or are selected for a position through an open competition.

Consequently, the Committee recommends:

- 18. that the Act be amended to allow former Ministers and former members of the Premier's and Ministers' staff to accept employment with a department of the Government or the Legislative Assembly Office.**

6.7 Travel on non-commercial aircraft

Currently, section 7.1 of the Act states:

- 7.1(1)** In this section, "non-commercial chartered or private aircraft" does not include a non-commercial aircraft chartered by the Crown or a private aircraft owned or leased by the Crown.
- (2)** A Member breaches this Act if the Member accepts an offer of travel on a non-commercial chartered or private aircraft that is connected, directly or indirectly, with the performance of the Member's office, unless
 - (a) the travel is required for the performance of the Member's office,
 - (b) there are exceptional circumstances warranting the acceptance of the travel, or
 - (c) the Member receives approval from the Ethics Commissioner before accepting the travel.

In their written submissions, the Office of the Ethics Commissioner and Dr. Ian Stedman from the School of Public Policy and Administration at York University both noted that this provision is ambiguous because of the conjunction "or" at the end of clause (b), which they suggest changing to "and." During oral submissions, Josh de Groot of the Office of the Ethics Commissioner adjusted the recommendation, stating that the provision should be amended further to make it clear that the Ethics Commissioner's approval is always required, and approval is based on whether travel is necessary for the performance of the Member's duties or if there are exceptional circumstances that warrant the travel.

The Committee agreed that there is a need to clarify that the permission of the Ethics Commissioner is always required before accepting non-commercial flights.

For this reason, the Committee recommends:

- 19. that the Act be amended to require a Member to request the approval of the Ethics Commissioner before accepting an offer of travel on a non-commercial chartered or private aircraft.**

APPENDIX A: WRITTEN SUBMISSIONS TO THE COMMITTEE

List of Written Submissions

Name	Role
Braedon Rolls	Private Citizen
Hon. Marguerite Trussler, KC	Former Ethics Commissioner of Alberta
Hon. Todd Loewen	Member of the Legislative Assembly, Central Peace-Notley
Hitomi Suzuta	Alberta Union of Provincial Employees
Stefanie Jones	Travel Alberta
Catherine Durepos	Commissaire à l'éthique et à la déontologie du Québec
Gordon McClure	Chair, Public Lands Appeal Board
Dr. Mark Young	Canadian Society for the Study of Practical Ethics
Dr. Randall Morck	Professor, Alberta School of Business, University of Alberta
Sean Sexton	Executive Vice-president, Law and General Counsel, Alberta Energy Regulator
Hon. Nathan Cooper	Speaker, Legislative Assembly of Alberta
Dr. Ian Stedman	Associate Professor, School of Public Policy and Administration, York University

APPENDIX B: ORAL PRESENTATIONS TO THE COMMITTEE

List of Oral Submissions

Name	Role
Shawn McLeod	Ethics Commissioner of Alberta
Malcolm Lavoie	Deputy Minister of Justice and Deputy Attorney General
Dr. Randall Morck	Professor, Alberta School of Business, University of Alberta
Dr. Ian Stedman	Associate Professor, School of Public Policy and Administration, York University
Dr. Mark Young	Canadian Society for the Study of Practical Ethics
Hon. Todd Loewen	Member of the Legislative Assembly, Central Peace-Notley

APPENDIX C: MINORITY REPORT

To the Chair of the Select Special Conflicts of Interest Act Review Committee (the “Committee”):

The *Conflicts of Interest Act*, RSA 2000, c. c-23 (the “Act”), establishes conflict rules, financial reporting requirements and post-employment restrictions for the members of Alberta’s legislature, executive council, senior political staff, senior public officials and employees of public agencies. Section 48 of the Act requires that this legislation be reviewed periodically every five years to ensure this legislation is effective and serves its purpose of upholding and strengthening public trust in our institution of democracy.

On December 5th, 2024, the Select Special Conflicts of Interest Act Review Committee was established to review the Act. Throughout this review process, we have had the support of the Legislative Assembly’s staff and an opportunity to hear from a broad range of stakeholders with varying perspectives. We sincerely appreciate the support and thoughtful input we received during the review process.

The Committee considered a number of proposed changes. While we are in support of the changes simplifying and clarifying the language of the Act to increase accessibility, there are several changes proposed by the UCP members of the Committee that are clearly self-serving. If implemented, these changes would severely undermine the conflict rules, transparency, public trust and democratic accountability in this province. In particular, the Official Opposition members of the Committee cannot and will not support the following motions proposed and supported by the UCP members of the Committee.

- 1) MOVED by MLA Hunter that the Select Special Conflicts of Interest Act Review Committee recommend that the Conflicts of Interest Act be amended to remove from the application of the Act the following individuals:
 - (a) staff of the Premier’s office, except senior staff;
 - (b) staff of Ministers’ offices, except chiefs of staff;
 - (c) deputy ministers and other designated office holders;
 - (d) senior officials and members and employees of public agencies.
- 2) MOVED by MLA Hunter that the Select Special Conflicts of Interest Act Review Committee recommend that the Conflicts of Interest Act be amended to clarify that the Chief of Staff in Office of the Premier is responsible for
 - (a) investigating any alleged breach of a code of conduct by a member of the Premier’s or Ministers’ staff, other than the Chief of Staff, and
 - (b) implementing any associated disciplinary action.
- 3) MOVED by MLA Hunter that the Select Special Conflicts of Interest Act Review Committee recommend that the Conflicts of Interest Act be amended in section 25(5) to remove the reference to a justice of the Court of King’s Bench.
- 4) MOVED by MLA Hunter that the Select Special Conflicts of Interest Act Review Committee recommend that the Conflicts of Interest Act be amended to allow former Ministers and former members of the Premier’s and Ministers’ staff to accept employment with a department of the Government or the Legislative Assembly Office.
- 5) MOVED by MLA Hunter that the Select Special Conflicts of Interest Act Review Committee recommend that the Conflicts of Interest Act be amended to clarify that, with respect to a Minister, the management of residential rental properties does not constitute carrying on a business for the purpose of section 21.

These changes proposed and supported by the UCP majority of the Committee are dangerous and extremely concerning, unprecedented and out of step with democratic norms. The first and second motions above propose excluding some very critical positions of power and influence from the application

of the Act altogether. Instead of the Ethics Commissioner having purview over the premier's staff, ministers' office, deputy ministers and senior officials, the UCP majority of the Committee is proposing to make the Premier's Chief of Staff in charge of investigations and disciplinary action. If implemented, these changes would fundamentally change how conflicts are managed in this province. It would make the government of Alberta the most secretive and unaccountable government in Canada.

Similarly, through motion three listed above, the UCP members of the Committee are proposing to water down the Ethics Commissioner's ability to summon and enforce the attendance of individuals before the Commissioner and the Commissioner's ability to compel the relevant evidence. With motion four, the UCP members of the Committee are opening the doors to partisan appointments in public service and other positions of power. And finally, with the fifth motion, the UCP members of the Committee are allowing ministers to manage residential rental properties while in office. While having two, three, or four properties may not be viewed as a business by the public, it is deeply concerning that the UCP member turned down the Official Opposition member's amendment to limit the number of properties exempt from the application of this Act to a maximum of five properties.

It is clear from the UCP's motions that these proposed changes are completely self-serving and do not serve to strengthen the conflict rules in this province. Rather, they are designed to weaken the conflict rules and reduce government accountability and must not be accepted by the Legislature.

We note that the Official Opposition's members of the committee moved several motions based on research, evidence, and input from stakeholders. These motions would have helped strengthen the Act and included motions to:

- Enable the Ethics Commissioner to initiate an investigation at the discretion of the Ethics Commissioner;
- Prohibit a Member of the Legislature from using the Member's office to influence or seek to influence decisions made by any other person to further that Member's private interests;
- Prohibit a Member of the Legislature from taking part in a decision in the course of carrying out the functions of the Member's office if there is a reasonable perception that the Member's ability to take part in the decision must have been affected by a private interest of the Member or a person directly associated with the Member, including the Member's spouse, adult interdependent partner or minor child;
- Repeal the amendments made to the *Conflicts of Interest Act* by the *Justice Statutes Amendment Act, 2023*, which allowed UCP members to accept bigger gifts such as playoff hockey tickets for themselves and their staff;
- Require the Lieutenant Governor in Council to establish a code of conduct applicable to the Premier's and Ministers' offices.

Unfortunately, all these motions put forward by the Official Opposition Committee members were defeated by the UCP members majority of the Committee. This clearly shows that the UCP members are not interested in empowering the Ethics Commissioner office, restricting members from using their influence to further private interests or agreeing on a code of ethical conduct for the Premier and Ministers' offices.

In conclusion, the changes proposed by the UCP members of the committee are dangerous. They would seriously undermine the conflict rules, reduce transparency and limit government accountability in this province. These changes, coupled with the UCP government changes to gift rules and access to information and privacy rules through its recent bills, Bill 33 and 34, would compromise government transparency and accountability in ways never seen before in the history of this province.

We urge all members of the Legislature to reflect on the changes proposed by the UCP majority members of the Committee carefully, rise above partisan politics, and reject the changes, in particular those highlighted above.

Submitted by:

Honourable Irfan Sabir, MLA Calgary-Bhullar-McCall
Brooks Arcand-Paul, MLA Edmonton-West Henday
Court Ellingson, MLA Calgary-Foothills
Nathan Ip, MLA Edmonton-South West