



## **Office of the Ethics Commissioner**

### **Determining a Private Interest**

**2017**

“Having a conflict of interest is not in itself a sign of dishonesty. Honest people can and do find themselves in conflicts of interest. . . . Conflict itself may have nothing to do with unethical behaviour. The individual's actions when faced with a conflict of interest are what matters”.

Hon. Justice Denise Bellamy

When a matter is before the Legislative Assembly or one of its committees, or before Executive Council or one of its committees, a Member should ask, “Do I have personal interest in this matter?”

If the Member knows or has reason to believe that the Member has an interest in the matter to be decided, the Member should ask, “What is the exact nature of my interest: is it strictly financial? Does it provide some other benefit to my family such as an appointment or award that may promote my family's reputation?”

If the Member has such an interest, it may be a “private interest”. The Member should not take part in the discussion and should formally declare the conflict and leave the session or meeting.

If the interest is a private interest the Member may still participate if one of the following exemptions applies:

#### **Exemption 1: An interest that is trivial**

Is the benefit trivial or would it be viewed as significant?

If the Member would receive a benefit valued at \$500 or less, the interest is probably trivial and the Member may participate and vote. If it is more than \$500, the Member should seek the advice of the Ethics Commissioner.

#### **Exemption 2: An interest that is of general application**

Who is affected by this decision?

If all Albertans are affected, such as tax matters or publicly-funded health services, the Member can participate and vote as this matter falls under the general application exemption.

**Exemption 3: An interest that affects a person as one of a broad class of the public**

- (a) Does this affect a broad class of Albertans? For example, all teachers, lawyers or farmers?

If the matter affects all people within the class, this issue falls within the broad class exemption and the Member may participate and vote.

- (b) Within the broadest class (eg. all farmers), are there sub-classes? For example, only wheat or specialty crop producers?

A sub-class of a larger class may still fit within the broad class exemption. If all persons within a broad sub-class are affected, the Member may possibly participate and vote although it is recommended the Member check with the Ethics Commissioner before voting.

- (c) Are all persons within the class treated in the same fashion (for example, a one-time payment of \$1,000 versus a range from \$1,000 to \$100,000)?

If all recipients receive the same amount, the Member may participate and vote. If a payment to the Member or his or her direct associate may be significant compared to others, advice should be sought from the Ethics Commissioner.

**Exemption 4: Certain payments from the Crown**

Does this decision involve a subsidy program or disaster assistance or some other payment from the Crown?

Payments from the Crown to Members are dealt with in section 9 of the Conflicts of Interest Act. Members must meet the requirements of that section to be able to accept certain payments from the Crown (for example, must be eligible for the program under an enactment authorizing the payment and not receive preferential treatment.)

**Exemption 5: Public policy decisions**

Is the decision to be made an issue that would be viewed as a public policy decision (examples: the result of a negotiated process, including labour relations; a matter or initiative brought forward by an industry or association; or a matter that has received considerable public attention)?

The Member's constituents expect the Member to participate and vote on such decisions (unless the decision affects the Member narrowly, such as a contract awarded to a company controlled by the Member's family or would affect a business interest of the Member or Member's family).

**Exemption 6: An interest that concerns the remuneration and benefits of a Member**

Does this decision relate to the Member's salary or any benefit program (such as those issues dealt with by the Members' Services Committee)? If it does, the Member may participate and vote.

**Exemption 7: An interest relating to publicly-traded securities in a Minister's blind trust or investment arrangement**

Does the issue relate to publicly traded securities held in a blind trust or investment arrangement?

If it does, the Minister may participate and vote but should not to do so if the Minister is aware there are related shares in the blind trust or investment arrangement from when it was established.

**Other considerations**

A Member should ask:

- a) Could anyone call into question my motives for voting for or against this matter?

If they might, the Member should consider whether to vote and be satisfied voting is appropriate.

- b) Would I be comfortable with my decision being questioned on the front page of my local newspaper or on the evening news?

If the Member would not be comfortable, the Member should voluntarily withdraw.

If the Member is not certain whether the interest qualifies as a private interest, the Member should consult with the Ethics Commissioner.

If the Ethics Commissioner advises the Member that it is permissible to participate and vote, the Member will be protected from any subsequent proceedings alleging the Member may have breached of the Act.

**When should a Member call the Ethics Commissioner for advice?**

A Member should consult the Ethics Commissioner if there is any possibility that participating might be questioned as a breach of the Act.

If a Member believes the Member has a private interest in a matter for decision, the Member may wish to advise the Ethics Commissioner that the Member will not be participating or voting on the matter. If the Member advises the Ethics Commissioner of this decision, it will be noted on the Member's file for reference should the conduct be called into question.

## **Seeking advice from the Ethics Commissioner**

If a Member decides to seek the advice of the Ethics Commissioner:

- The text of any motion or Bill under consideration should be provided.
- The Ethics Commissioner needs adequate time to consider the matter, preferably one day.
- The Ethics Commissioner needs to know the details of the nature and extent of the Member's interest. If the interest belongs to a direct associate or child of the Member that information must be provided.
- Information to support a claim that the matter is one affecting the Member as one of a broad class of persons needs to be provided as well as relevant information on any sub-classes.
- If the Member believes the interest is trivial, the Member should indicate why the Member believes it is.

## **Acting on the advice of the Ethics Commissioner**

The Ethics Commissioner will consider the Act and advise the Member of any exemption that will allow the Member to participate and vote.

If the Member receives advice from the Ethics Commissioner, the Member must follow that advice. If the Member chooses not to follow the advice of the Ethics Commissioner, the Ethics Commissioner may initiate an investigation into the Member's actions.

This document is intended to provide a quick guide to Members in determining whether a private interest exists and whether the Member is required to withdraw.

It is not a legal document and the Conflicts of Interest Act should be consulted for the full text of all definitions and obligations, or the Ethics Commissioner should be consulted.