



Office of the Ethics Commissioner

Information for Designated Office Holders

2017

This publication provides information about the various requirements and obligations that the Public Service Act places upon designated office holders.

Who is a designated office holder?

Section 25.2 of the Public Service Act defines who is a designated office holder:

25.2 The following persons are designated office holders:

- (a) a person appointed to the position of deputy minister under section 4 of the Government Organization Act;
- (b) a member of the public service or a person employed by the Crown pursuant to a contract of employment holding a position designated by the Lieutenant Governor in Council for the purposes of this Part;
- (c) in respect of a provincial agency designated by the Lieutenant Governor in Council for the purposes of this Part,
 - (i) a person appointed to the position of chief executive officer or a senior executive position designated by the Lieutenant Governor in Council for the purposes of this Part, and
 - (ii) a person appointed to the position of chair of the board of directors, or the highest ranking position on a governing body designated by the Lieutenant Governor in Council for the purposes of this Part.

The following positions are designated office holders under section 25.2(b) of the Public Service Act:

- i) Deputy Chief, Policy Coordination;
- ii) Deputy Clerk of Executive Council and Deputy Secretary to Cabinet;
- iii) Managing Director, Public Affairs Bureau;
- iv) Managing Director, Alberta Emergency Management Agency;
- v) Chief Delivery Officer, Health;
- vi) Chief Delivery Officer, Human Services;
- vii) Chief Strategy Officer, Human Services;
- viii) Controller;
- ix) Alberta's Representative in Asia;

- x) Senior Representative for the Asia Pacific Basin;
- xi) Senior Representative to the United States of America;
- xii) Senior Representative in Saskatchewan, British Columbia, the North and to the New West Partnership;
- xiii) Special Advisor on Water Quality;
- xiv) Associate Deputy Minister of Intergovernmental Relations;
- xv) Chief Advisor on Negotiations.

The Chief Executive Officers of the following agencies are designated under section 25.2(c)(i):

- i) Alberta Gaming and Liquor Commission;
- ii) Alberta Utilities Commission;
- iii) Credit Union Deposit Guarantee Corporation.

The Chair or highest ranking positions of the governing body of the following agencies are designated under section 25.2(c)(ii):

- i) Alberta Gaming and Liquor Commission;
- ii) Alberta Utilities Commission;
- iii) Credit Union Deposit Guarantee Corporation;
- iv) Labour Relations Board;
- v) Land Compensation Board;
- vi) Natural Resources Conservation Board;
- vii) Surface Rights Board;
- viii) Appeals Commission under the Workers' Compensation Act.

Conflict of Interest

The Public Service Act contains a number of restrictions in terms of a designated office holder's use of their position or information which they may have come into possession of in the course of carrying out their duties. The obligations are in addition to the Code of Conduct and Ethics for the Public Service of Alberta and any other additional or supplementary codes of conduct which affect members of the public service.

The relevant sections of the Act are:

Decisions furthering private interests

s. 25.21 A designated office holder breaches this Part if he or she takes part in a decision in the course of carrying out his or her office or powers knowing that the decision might further a private interest of the designated office holder, a person directly associated with the designated office holder or the designated office holder's minor or adult child.

Influence

s. 25.22 A designated office holder breaches this Part if the designated office holder uses his or her office or powers to influence or to seek to influence a decision to be made on behalf of the Crown or a provincial agency to further a private interest of the designated office holder, a person directly associated with the designated office holder or the designated office holder's minor child or to improperly further any other person's private interest.

Insider information

s. 25.23 A designated office holder breaches this Part if he or she uses or communicates information not available to the general public that was gained by the designated office holder in the course of carrying out his or her office or powers to further or seek to further a private interest of the designated office holder or any other person's private interest.

There are a number of restrictions that are placed on a designated office holder. A designated office holder is:

1. Required to submit a list of all direct associates and their addresses. Once provided, a copy of the list will be forwarded to the person designated under s.25.31(3) of the Public Service Act.
2. Required to provide a full financial disclosure of all of the assets, liabilities, investments, holdings and other interests of the designated office holder, their spouse or interdependent partner, minor children or any corporation controlled by the designated office holder, his or her spouse or adult interdependent partner.
3. Prohibited from owning publicly traded securities unless they are held in a blind trust or investment arrangement or unless advance approval to hold the shares is received from the Ethics Commissioner. This requirement does not apply to designated office holders appointed under section 25.2(c) of the Public Service Act.
4. Subject to certain post-employment restrictions which may limit the designated office holder's ability to conduct certain activities or accept employment with certain entities during the "cooling off" period.

Who are persons directly associated?

The Public Service Act defines persons directly associated:

25.1 (2) For the purposes of this Part, a person is directly associated with a designated office holder if that person is

- (a) the designated office holder's spouse or adult interdependent partner,
- (b) a corporation having share capital and carrying on business or activities for profit or gain of which the designated office holder is a director or senior officer,
- (c) a private corporation carrying on business or activities for profit or gain of which the designated office holder owns or is the beneficial owner of shares,

- (d) a partnership
 - (i) of which the designated office holder is a partner, or
 - (ii) of which one of the partners is a corporation directly associated with the designated office holder by reason of clause (b) or (c),
- or
- (e) a person or group of persons acting with the express or implied consent of the designated office holder.

A designated office holder is required to submit a list of all directly associated persons, and their addresses, to the Office of the Ethics Commissioner within 60 days of becoming a designated office holder. Thereafter, only changes need to be reported to the Ethics Commissioner.

A list of direct associates is also provided to certain persons, as required under the Public Service Act:

25.31 (3) On receipt of a return filed by a designated office holder under this section, the Ethics Commissioner shall provide a copy of the return,

- (a) in the case of a return filed by a deputy minister, to the Deputy Minister of Executive Council,
- (b) in the case of a return filed by the Deputy Minister of Executive Council, to the Premier,
- (c) in the case of a return filed by a member or person referred to in section 25.2(b), to the deputy minister to whom the member or person reports, and
- (d) in the case of a return filed by a designated office holder referred to in section 25.2(c), to the Minister who has responsibility for the relevant provincial agency.

What is the financial disclosure process? What are the requirements?

Each year, the Office of the Ethics Commissioner sends a letter to each designated office holder advising it is time for the annual financial disclosure and meeting. A form is provided which requires a complete list of all of the designated office holder's and the spouse or adult interdependent partner and minor children of the designated office holder's assets, liabilities, investments, holdings and business interests as of a given date. It is a requirement under the Public Service Act and all designated office holders must comply to be in compliance with the Act.

Once the required financial information has been filed, the Office of the Ethics Commissioner reviews the information and then arranges a meeting between the designated office holder and the Ethics Commissioner to review the information and address any conflict of interest issues the designated office holder or Ethics Commissioner may have.

Publicly traded securities

Within 60 days of becoming a designated office holder under s.25.2(a) and (b) there is a requirement to sell any publicly traded securities or place them in a blind trust or in an investment arrangement previously approved by the Ethics Commissioner. Reimbursement for certain costs related to establishing a blind trust or an investment arrangement is available, and must be approved by the Ethics Commissioner in advance.

The Public Service Act defines publicly traded securities:

25.24(1) In this section,

- (a) “publicly-traded securities” means
 - (i) securities of a corporation that are listed or posted for trading on a recognized stock exchange, or
 - (ii) securities of a corporation that has more than 15 shareholders and any of whose issued securities were part of a distribution to the public;
- (b) “securities” means
 - (i) shares of any class or series of shares of a corporation, or
 - (ii) bonds, debentures, notes or other evidence of indebtedness or guarantees of a corporation, whether secured or unsecured,

but does not include shares or units in a mutual fund.

This definition covers the entire range of stocks, bonds, warrants, rights, debentures, shares, and credit notes.

Publicly traded securities may be retained if placed in a blind trust, whose trustee and blind trust agreement are pre-approved by the Ethics Commissioner, by establishing an approved investment arrangement or by obtaining specific approval for an exemption from the Ethics Commissioner.

What is a blind trust?

A blind trust is an arrangement whereby:

1. The trustee is given sole power over investment decisions.
2. The designated office holder is precluded from having any knowledge of what investments are held in the trust, and is precluded from influencing or guiding investment decisions made by the trustee.

3. The designated office holder may only deposit in the trust certain types of investments including publicly traded securities.
4. The trustee is required to only invest in certain types of investments including publicly traded securities.

What is an investment arrangement?

An alternative to a blind trust is an investment arrangement, which is similar.

25.24 (7) The Ethics Commissioner may approve the retention of publicly-traded securities to be held in an investment arrangement if the investment arrangement will meet the following criteria:

- (a) it gives a person other than the designated office holder sole power over investment decisions,
- (b) it precludes the designated office holder from having any knowledge of the specific investments at any time after a deposit to the investment arrangement, and
- (c) it ensures there will be no relationship between the designated office holder and the person referred to in clause (a) that would affect or would appear to affect that person's investment decisions.

An approval or direction given by the Ethics Commissioner of a blind trust or investment arrangement may be given subject to any conditions determined by the Ethics Commissioner.

Exemption

The only other option is to seek approval of the Ethics Commissioner for an exemption which is considered on a case by case basis. An approval may be provided under s.25.24(5) of the Act which reads:

- (5) The Ethics Commissioner may give an approval
 - (a) under subsection (4)(b) or (c) if the Ethics Commissioner is of the opinion that the publicly-traded securities are securities of a corporation the interests of which are not likely to be affected by decisions of the Government, or
 - (b) under subsection (4)(b) if the Ethics Commissioner is of the opinion that the designated office holder will sustain a financial loss if the publicly-traded securities are disposed of and the public interest does not require disposition of the publicly-traded securities by the designated office holder.

Reimbursement for costs related to blind trusts and investment arrangements

A designated office holder is entitled to be reimbursed for costs relating to setting up a blind trust or investment arrangement, in an amount approved by the Ethics Commissioner.

25.34 (1) designated office holders are entitled to be reimbursed for

- (a) costs associated with the completion of their disclosure statements, and
- (b) costs associated with the establishment and administration of a blind trust or an investment arrangement approved by the Ethics Commissioner under section 25.24.

25.34 (2) The amount of the reimbursement is subject to the approval of the Ethics Commissioner.

Gifts

The Code of Conduct and Ethics for the Public Service of Alberta sets out gifts that may be received by deputy ministers and those appointed under s.25.2(b) but is quite restrictive:

14 Acceptance of Gifts

- (1) Employees shall not accept fees, gifts or other benefits that are connected directly or indirectly with the performance of their public service duties, from any individual, organization or corporation, other than:
 - (a) the normal exchange of gifts between friends;
 - (b) the normal exchange of hospitality between persons doing business together;
 - (c) tokens exchanged as part of protocol;
 - (d) the normal presentation of gifts to persons participating in public functions.

What are the specific post-employment restrictions?

Under section 25.4(1) of the Public Service Act, no former designated office holder shall, for a period of twelve months after the last day the position was held:

- lobby government, or
- act on a commercial basis or make representations on the former designated office holder's or someone else's behalf to a government entity in connection with any ongoing matter in connection with which the former designated office holder, while in office, directly acted for or advised a department or Provincial agency involved in the matter,

and also shall not, for a period of twelve months from the last day of the direct and significant official dealing:

- make representations with respect to a contract with or benefit from, or solicit or accept on his or her own behalf a contract or benefit from, any government entities with which the former designated office holder had a direct and significant

official dealing, including a contract of employment, or

- accept an appointment to a board or employment with any entity with which the former designated office holder had a direct and significant official dealing.

A former designated office holder is not restricted from being appointed to the board of directors or a government body of another provincial agency.

Designated office holders appointed under s.25.2(c) are subject to gift provisions in their agency's code of conduct.

The definition of "direct and significant official dealing" is in the sole discretion of the Ethics Commissioner. What constitutes a direct and significant official dealing is not necessarily limited to cases where there has been considerable interaction and discussion involving a designated office holder. In some cases, it may simply be a matter of knowing inside information, or being privy to a single meeting or discussion of a substantive nature.

A designated office holder or former designated office holder may apply to the Ethics Commissioner for a waiver or reduction of the above time periods. These are considered on a case by case basis, and certain criteria must be met. The discretion to waive the restriction rests solely with the Ethics Commissioner, and any approval given may be subject to conditions.

Contravention of these post-employment restrictions may result in a prosecution and carries a potential fine of up to \$50,000. Designated office holders are strongly encouraged to contact the Office of the Ethics Commissioner **before** accepting any employment or volunteer positions where there may be a conflict or contravention of the above restrictions, or where the designated office holder is unsure whether interactions with a government entity constitute a direct and significant official dealing.

Code of Conduct

Deputy ministers and those appointed under s.25.2(b) should also refer to the Code of Conduct and Ethics for the Public Service of Alberta.