



OFFICE OF THE ETHICS
COMMISSIONER

FAQ Update

REVIEW OF PUBLIC AGENCY CODES OF CONDUCT 2018

To assist public agencies as they review and revise their codes of conduct, our Office has set out and addressed below certain issues regarding the code of conduct review process and content requirements pursuant to the recently-enacted Part 4.3 of the *Conflicts of Interest Act*. These issues have arisen since the beginning of January, 2018 either as frequently-asked questions from public agencies or upon our Office's review of public agency codes of conduct submitted so far.

Please note that our Office may issue one or more further updates in the future to provide guidance to public agencies if additional issues arise.

A PUBLIC AGENCY MUST CONSOLIDATE ALL RELEVANT POLICIES

All provisions, policies, procedures, and information relevant to the code of conduct provisions required by the *Conflicts of Interest Act* must be set out in a single document. Our Office will not approve cross-referencing other policy or procedure documents or collective bargaining agreements. Cross-referencing does not provide transparency as it renders it more difficult for those subject to the code and for the public to ascertain and locate all of the relevant obligations, restrictions and procedures.

The relevant provisions must be set out in the body of the code of conduct rather than in appendices.

However, if a public agency has more detailed policies regarding any of the *non-mandatory* recommendations in the Checklist for Review of Public Agency Codes of Conduct 2018 (e.g. an extensive intellectual property policy), it may simply reference that non-mandatory external policy in the code of conduct (e.g. in a non-mandatory provision in the code of conduct regarding use of the public agency's property).

When consolidating relevant provisions, policies, procedures, and information into a single code of conduct, please ensure that any terms used therein are consistent with any defined terms or other concepts used in the code of conduct.

A PUBLIC AGENCY MAY HAVE REASONABLE LIMITED NUMBER OF SEPARATE CODES OF CONDUCT

A public agency may have a reasonable limited number of separate codes of conduct (e.g. a code of conduct for board members, a code of conduct for senior officials and employees, a code of conduct for a particular segment of employees which is significantly distinct from the others). However, with a view to transparency, each of these codes of conduct must contain all of the provisions applicable to the individuals that are subject to the code and cannot cross-reference separate agreements or policy and procedure documents.

A public agency may have a single code of conduct, but it must consider whether that renders its code of conduct unduly complicated or practically incomprehensible, in which case the Ethics Commissioner certainly will bring that to the public agency's and the Minister's attention.

DSO AND SO PROVISIONS MUST BE INCLUDED IN CODES OF CONDUCT

Public agencies must include the *Conflicts of Interest Act* designated senior official ("DSO") and senior official ("SO") obligations and restrictions in their codes of conduct. Public agencies do not necessarily need to repeat the legislative DSO and SO provisions verbatim, but they may do so and, at the least, they must summarize the content of those provisions and indicate those provisions' legislative origin in their codes of conduct. The goal is to ensure transparency, such that individuals can look in one place and see all of the various applicable requirements, processes and restrictions.

However, please note that the terms DSO and SO should not be used in the code of conduct, as those terms may not be easily understandable and individuals should not have to look elsewhere to try to determine which positions constitute DSOs or SOs. All of the DSO and SO provisions must expressly state each particular position to which they apply. For example, if the President is the only DSO at a public agency, each provision that is only applicable to DSOs should replace the term "DSO" with the term "President" throughout.

In addition, underneath each DSO and SO provision, it must state (in smaller font if desired) when that particular provision will come into effect for the individuals that currently hold the particular positions to which the provision applies. For example, if the President is the only DSO, at the end of each provision that is only applicable to DSOs it should state something along the lines of: "This provision comes into effect for the current President on [month], [day], [year]". In most cases, these provisions will come into effect for incumbents with existing contracts or appointments the earlier of (i) 2 years after designation or (ii) upon renewal or extension of their contract or appointment. For new hires or appointments after Part 4.3 of the *Conflicts of Interest Act* came into force, they will apply immediately. The only SO provision to which this stipulation would not apply is the provision containing the subject-matter of s.23.925 (Furthering Private Interests), as that provision applies immediately to all SOs and DSOs once designated.

Our Office has been asked on more than one occasion whether a public agency may hold all individuals subject to its code of conduct (not just DSOs or SOs) to the standards set out in the DSO and SO provisions. A public agency may voluntarily choose to do so.

OUR OFFICE DOES NOT CONTROL WHEN SO OR DSO DESIGNATIONS OCCUR

Designations of SOs and DSOs will be done by Order in Council. We are not in a position to confirm which positions have or will be designated.

A PUBLIC AGENCY SHOULD TAILOR ITS CODE OF CONDUCT TO SUIT ITS PARTICULAR CIRCUMSTANCES

Subject to the requirements of the *Conflicts of Interest Act* and the Ethics Commissioner's directions in that regard, our Office understands that each public agency has different circumstances and one size does not necessarily fit all when it comes to public agencies' code of conduct provisions.

The examples in the Checklist for Review of Public Agency Codes of Conduct 2018 are simply for illustrative purposes to assist public agencies which may not have much or any experience with codes of conduct. They do not mean that those examples necessarily are appropriate for every public agency.

Public agencies should draft their codes of conduct (including, for example, the gift policies and limits therein) to reflect their particular circumstances and ethical risks. Our Office will consider them accordingly on a case-by-case basis. If, upon review, the Ethics Commissioner determines that a submitted code of conduct or any portion thereof is not acceptable, that will be made clear to the public agency and the Minister.

PART A & C RECOMMENDATIONS IN CHECKLIST ARE NOT MANDATORY

Part B of the Checklist for Review of Public Agency Codes of Conduct 2018 addresses the code of conduct content requirements mandated by the *Conflicts of Interest Act*. Those requirements are mandatory.

Parts A and C of the Checklist for Review of Public Agency Codes of Conduct 2018 set forth additional recommendations which are not mandatory and some of which may not be applicable to a public agency's particular circumstances. Our Office has included these suggestions as a courtesy with the aim of offering additional guidance to public agencies (some of which may not have much or any experience with codes of conduct) as they review and revise their codes of conduct. If a recommendation in Parts A or C of the Checklist is absent from a submitted code of conduct, the Ethics Commissioner likely will note its absence to the public agency but will not require the public agency to include it.

CONSIDER WHETHER SECTION 6(2) OF THE CONFLICTS OF INTEREST ACT APPLIES TO YOUR PUBLIC AGENCY'S EMPLOYEES OR MEMBERS

Section 6(2) of the *Conflicts of Interests Act* requires any person who is, immediately before becoming a Member of the Legislative Assembly ("MLA"), an employee of the Crown (whether the employment is permanent or temporary or on a full-time or part-time basis) or the holder of any of the offices set out in the Schedule to the *Conflicts of Interest Act* to cease to be an employee of the Crown or the holder of the office (as the case may be) upon becoming an MLA, notwithstanding any other Act or law in force in Alberta.

If a public agency chooses to include provisions regarding political activity in its code of conduct, it should consider whether its employees or members constitute employees of the Crown or holders of any of the identified disqualifying offices pursuant to the *Conflicts of Interest Act*. If that is the case, in order to comply with section 6(2) of the *Conflicts of Interest Act*, its code of conduct should require employees or members to cease their position with the public agency if they are elected to be an MLA.

RECOMMENDATIONS REGARDING DEFINITIONS IN CODE OF CONDUCT

When including definitions of key terms in a code of conduct, public agencies should:

- Ensure that all important terms used in the code of conduct are expressly defined therein. For example, many codes of conduct reviewed thus far have not included a definition of “private interests”, despite using that term throughout the provisions of the code of conduct;
- Ensure that the definition of “associate” or “direct associate” in the code of conduct captures all persons who constitute “persons directly associated” in the *Conflicts of Interest Act*;
- Ensure that, if they capitalize a defined term, they use the capitalized version of the term throughout the code of conduct to indicate that the defined term is intended;
- Ensure that defined terms are used consistently throughout the code of conduct. For example, some of the codes of conduct reviewed thus far have used the terms “private interests” (which was expressly defined) and “personal interests” (which was not defined) interchangeably throughout the code of conduct. In such an example, a code of conduct should use the defined term “private interest” throughout, rather than the undefined term “personal interest”, or, if there is a distinction between “private” and “personal” interests such that both terms should be used, the code of conduct should expressly define “personal interests” as well.

Please see the *Conflicts of Interest Act* for complete definitions and provisions. Our Office continues to be available to provide guidance to public agencies during the *Conflicts of Interest Act* codes of conduct review process. Should you have any questions, please visit our website or contact our Office.

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Please contact our Office if you need further assistance.

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