



PRINCE EDWARD ISLAND  
ÎLE-DU-PRINCE-ÉDOUARD

# **CONFLICT OF INTEREST ACT**

## PLEASE NOTE

This document, prepared by the *Legislative Counsel Office*, is an office consolidation of this Act, current to December 19, 2009. It is intended for information and reference purposes only.

This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the Queen's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site ([www.princeedwardisland.ca](http://www.princeedwardisland.ca)).

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## CONFLICT OF INTEREST ACT

### Table of Contents

Section	Page
1. Definitions.....	5
<b>CONFLICT OF INTEREST COMMISSIONER</b>	<b>6</b>
2. Commissioner .....	6
3. Annual report .....	7
4. Personal liability .....	7
5. Compellability.....	7
6. Extension of time .....	7
7. Opinion and recommendations .....	7
8. Information disclosed confidential.....	8
<b>PROVISIONS APPLYING TO ALL</b>	<b>8</b>
<b>MEMBERS OF THE LEGISLATIVE ASSEMBLY</b>	<b>8</b>
9. Conflict of Interest .....	8
10. Misuse of information.....	8
11. Influence .....	9
12. Activities on behalf of constituents .....	9
13. Gifts .....	9
14. Government contracts with members.....	9
15. Procedure on conflict of interest .....	10
16. Rights preserved.....	11
<b>PROVISIONS APPLYING TO MINISTERS AND FORMER MINISTERS</b>	<b>11</b>
17. Outside activities.....	11
18. Investments .....	11
19. Partnerships and sole proprietorships.....	12
20. Approved exceptions.....	12
21. Time for compliance .....	13
22. Procedure on conflict of interest .....	13
23. Restrictions applicable to Executive Council.....	13
24. Restrictions applicable to former Ministers .....	13
<b>DISCLOSURE</b>	<b>14</b>
25. Private disclosure statement.....	14
26. Public disclosure statement .....	15
27. Destruction of records.....	17
<b>ENFORCEMENT</b>	<b>17</b>
28. Matter referred by member .....	17
29. Inquiry by Commissioner.....	18
30. Police investigation or charge .....	19

31.	Reference to appropriate authorities .....	20
32.	Recommendation <i>re</i> penalty .....	20
33.	Effect on other government business.....	21
34.	Regulations.....	21





## CONFLICT OF INTEREST ACT

### CHAPTER C-17.1

#### 1. Definitions

In this Act

- (a) “**child**” includes a person whom a member of the Legislative Assembly has demonstrated a settled intention to treat as a child of the member’s family, but does not include a child placed for valuable consideration in the member’s home as a foster child by a person having lawful custody;
- (b) “**Commissioner**” means the person appointed as Conflict of Interest Commissioner pursuant to section 2;
- (c) “**family**”, when used with reference to a person, means
  - (i) the person’s spouse,
  - (ii) the person’s minor children, and
  - (iii) any other adult who
    - (A) is related to the person or the person’s spouse,
    - (B) shares a residence with the person, and
    - (C) is primarily dependent on the person or spouse for financial support;
- (d) “**member**” means a member of the Legislative Assembly and includes a Minister and the Premier;
- (e) “**Minister**” means a member of the Executive Council and includes the Premier;
- (f) “**private company**” means a company in which, by special Act, letters patent or supplementary letters patent, articles of incorporation or amendment to articles of incorporation
  - (i) the right to transfer its shares is restricted,
  - (ii) the number of its shareholders, exclusive of persons who are in the employ of the company, is limited to fifty, two or more persons holding one or more shares jointly being counted as a single shareholder, and
  - (iii) an invitation to the public to subscribe for any shares, debentures or debenture stock of the company is prohibited;
- (g) “**private interest**” does not include an interest in a decision,
  - (i) that is of general application,
  - (ii) that affects a member or a person belonging to the member’s family as one of a broad class of persons,
  - (iii) that concerns the remuneration or benefits of a member or of an officer or employee of the Legislative Assembly, or

- (iv) where the interest is so remote or insignificant in its nature that a decision affecting the interest cannot reasonably be regarded as likely to influence the member;
- (h) “**Speaker**” means the Speaker of the Legislative Assembly;
- (i) “**spouse**” does not include a person from whom the member is separated, whether or not support obligations and family property have been dealt with by a domestic contract or court order. *1999,c.22,s.1; 2008,c.8,s.4.*

## CONFLICT OF INTEREST COMMISSIONER

### 2. Commissioner

- (1) There shall be a Conflict of Interest Commissioner who is an officer of the Legislative Assembly.

#### **Appointment**

- (2) The Commissioner shall be appointed by the Legislative Assembly
  - (a) on the recommendation of the Standing Committee on Legislative Management; and
  - (b) following a resolution of the Legislative Assembly supported by at least two-thirds of the members.

#### **Term of office**

- (3) The Commissioner shall hold office for a term of five years and may be reappointed for a further term or terms.

#### **Term**

- (4) The Commissioner continues to hold office after the expiry of the term until reappointed, or until a successor is appointed.

#### **Removal**

- (5) The Commissioner may be removed for cause, before the expiry of the term of office, by a resolution of the Legislative Assembly supported by at least two-thirds of the members present.

#### **Acting Commissioner**

- (6) The Lieutenant Governor in Council may appoint an acting Commissioner where
  - (a) the office of Commissioner becomes vacant during a sitting of the Legislative Assembly, and the Legislative Assembly does not make an appointment pursuant to subsection (2) before the end of the sitting; or
  - (b) the office of Commissioner becomes vacant while the Legislative Assembly is not sitting.

#### **Term**

- (7) The appointment of the acting Commissioner comes to an end when a new Commissioner is appointed pursuant to subsection (2).

#### **Term - illness**

- (8) If the Commissioner is unable to act because of illness, the Lieutenant Governor in Council may appoint an acting Commissioner, whose appointment comes to an end when the Conflict of Interest Commissioner is again able to act or when the office becomes vacant.



**Salary**

- (9) The Commissioner shall be paid the remuneration and allowances that are fixed by the Standing Committee on Legislative Management.

**Staff**

- (10) The employees who are necessary to assist the Commissioner in the performance of the Commissioner's duties shall be members of the staff of the Office of the Legislative Assembly. *1999,c.22,s.2.*

**3. Annual report**

- (1) The Commissioner shall prepare and submit an annual report regarding the affairs of the office of the Commissioner to the Speaker, who shall cause the report to be laid before the Legislative Assembly.

**Contents**

- (2) The annual report may summarize advice given by the Commissioner, but shall not disclose confidential information or information that could identify a person concerned. *1999,c.22,s.3; 2002,c.24,s.1.*

**4. Personal liability**

No proceeding shall be commenced against the Commissioner or an employee of the Legislative Assembly for any act done in good faith in the execution or intended execution of any duty created by this Act. *1999,c.22,s.4.*

**5. Compellability**

Neither the Commissioner nor an employee of the Legislative Assembly is a competent or compellable witness in a civil proceeding outside the Legislative Assembly in connection with anything done pursuant to this Act. *1999,c.22,s.5.*

**6. Extension of time**

- (1) A member required by this Act to do anything within a specified period of time may give the Commissioner a written request for an extension.

**Extension; written notice**

- (2) The Commissioner may, by giving the member a written notice, extend the time as requested pursuant to subsection (1) by a specified number of days, as the Commissioner considers reasonable and consistent with the public interest.

**Conditions of extension**

- (3) The Commissioner may impose any conditions on the extension the Commissioner considers just and reasonable. *1999,c.22,s.6.*

**7. Opinion and recommendations**

- (1) A member may, in writing, request that the Commissioner give an opinion and recommendations on any matter respecting the member's obligations pursuant to
- (a) this Act,

- (b) any additional written guidelines established by the Premier for the guidance of Ministers; or
- (c) Prince Edward Island parliamentary convention.

**Inquiries**

- (2) In response to a request made pursuant to subsection (1), the Commissioner
  - (a) may make any inquiries the Commissioner considers appropriate; and
  - (b) shall provide the member with a written opinion and recommendations.

**Opinion and recommendations confidential**

- (3) The opinion and recommendations of the Commissioner are confidential, but may be released by the member or with the member's written consent. *1999,c.22,s.7.*

**8. Information disclosed confidential**

Information disclosed to the Commissioner pursuant to this Act is confidential and shall not be disclosed to any person except

- (a) by the member, or with the member's written consent;
- (b) in a criminal proceeding, as required by law; or
- (c) otherwise in accordance with this Act. *1999,c.22,s.8.*

**PROVISIONS APPLYING TO ALL**

**MEMBERS OF THE LEGISLATIVE ASSEMBLY**

**9. Conflict of Interest**

No member shall make a decision or participate in making a decision in the execution of the member's office if the member knows or reasonably should know that in the making of the decision there is an opportunity

- (a) to further the member's private interest; or
- (b) improperly to further another person's private interest. *1999,c.22,s.9.*

**10. Misuse of information**

- (1) No member shall use information that is obtained in the member's capacity as a member and that is not available to the general public to further or seek to further the member's private interest or improperly to further or seek to further another person's private interest.

**Communication of information**

- (2) No member shall communicate information described in subsection (1) to another person if the member knows or reasonably should know that the information may be used for a purpose described in that subsection. *1999,c.22,s.10.*





**11. Influence**

No member shall use the member's office to seek to influence a decision made or to be made by another person so as to further the member's private interest or improperly to further another person's private interest. *1999,c.22,s.11.*

**12. Activities on behalf of constituents**

This Act does not prohibit the activities in which members normally engage on behalf of constituents in accordance with Prince Edward Island parliamentary convention. *1999,c.22,s.12.*

**13. Gifts**

- (1) A member, or a person who belongs to the member's family, shall not accept a fee, gift or personal benefit that is connected directly or indirectly with the performance of the member's duties of office.

**Exception**

- (2) Subsection (1) does not apply to
- (a) compensation authorized by law; or
  - (b) a gift or personal benefit
    - (i) that is received as an incident of the protocol, customs or social obligations that normally accompany the responsibilities of office, or
    - (ii) that is of such a nature that it could not reasonably be regarded as likely to influence the member in the performance of the member's duties.

**Disclosure of gifts**

- (3) Within 30 days of receipt by the member or a person who belongs to the member's family, of a gift or personal benefit referred to in clause (2)(b) that exceeds \$500 in value, the member shall file with the Commissioner a disclosure statement in the form provided by the Commissioner, indicating the nature of the gift or benefit, its source, and the circumstances under which it was given and accepted.

**Gifts; one source**

- (4) Subsection (3) also applies to gifts and benefits where the total value of what is received from one source in any 12 month period exceeds \$500. *1999,c.22,s.13.*

**14. Government contracts with members**

- (1) No member shall knowingly be a party to a contract with the Government of Prince Edward Island under which the member receives a benefit.

**Partnerships, private companies**

- (2) No member shall have an interest in a partnership or in a private company that is a party to a contract with the Government of Prince Edward Island under which the partnership or company receives a benefit.

**Exception, existing contracts**

- (3) Subsections (1) and (2) do not apply to a contract that existed before the member's election to the Legislative Assembly, but they do apply to its renewal or extension.

**Exception, nature of interest**

- (4) Subsection (2) does not apply if the Commissioner is of the opinion that the interest is unlikely to affect the member's performance of the member's duties.

**Exception, management trust**

- (5) Subsection (2) does not apply if the member has entrusted the interest to one or more trustees on the following terms:
- (a) the provisions of the trust shall be approved by the Commissioner;
  - (b) the trustees shall be persons who are at arm's length with the member and approved by the Commissioner;
  - (c) the trustees shall not consult with the member with respect to managing the trust property, but may consult with the Commissioner;
  - (d) annually, the trustees shall give the Commissioner a written report stating the nature of the assets in the trust, the net income of the trust for the preceding year and the trustees' fees, if any;
  - (e) the trustees shall give the member sufficient information to permit the member to submit returns as required by the *Income Tax Act* (Canada) and shall give the same information to Revenue Canada.

**Exception, pensions**

- (6) Subsection (1) does not prohibit a member from receiving benefits pursuant to the *Civil Service Superannuation Act* R.S.P.E.I. 1988, Cap. C-9, the *Teachers' Superannuation Act* R.S.P.E.I. 1988, Cap. T-1 or any other Act or pension plan that provides for retirement benefits funded wholly or partly by the Government of Prince Edward Island except a pension resulting from prior service in the Legislative Assembly.

**Inheritance**

- (7) Subsection (2) does not apply until the first anniversary of the acquisition if the interest in the partnership or private company was acquired by inheritance. *1999,c.22,s.14.*

**15. Procedure on conflict of interest**

- (1) A member who has reasonable grounds to believe that the member has a conflict of interest in a matter that is before the Legislative Assembly or the Executive Council, or a committee of either of them, shall, if present at a meeting considering the matter,
- (a) disclose the general nature of the conflict of interest;
  - (b) withdraw from the meeting without voting or participating in consideration of the matter; and
  - (c) refrain at all times from attempting to influence the matter.

**Record of disclosure; Executive Council**

- (2) The Clerk of the Executive Council, or the secretary of any committee of Executive Council, shall record the disclosure and withdrawal by a member pursuant to subsection (1).

**Record of disclosure; Legislative Assembly**

- (3) The Clerk of the Legislative Assembly, or the clerk of any committee of the Legislative Assembly shall record the disclosure and withdrawal by a member pursuant to subsection (1), and
- (a) provide the Commissioner with a copy of the record;
  - (b) make the record available for examination by members of the public; and



- (c) provide a copy of the record to any person who pays a fee fixed by the Clerk. *1999, c.22, s.15.*

**16. Rights preserved**

Nothing in this Act prohibits a member who is not a Minister from,

- (a) engaging in employment or in the practice of a profession;
- (b) receiving fees for providing professional services under any legal aid, medical, dental, health, or social services program provided by the province;
- (c) engaging in the management of a business carried on by a corporation;
- (d) carrying on a business through a partnership or sole proprietorship;
- (e) holding or trading in securities, stocks, futures and commodities;
- (f) holding shares or an interest in any corporation, partnership, syndicate, cooperative or similar commercial enterprise;
- (g) being a director or partner or holding an office, other than an office that a member may not hold pursuant to another Act,

where the member fulfils the obligations created pursuant to this Act. *1999, c.22, s.16.*

**PROVISIONS APPLYING TO MINISTERS AND FORMER MINISTERS**

**17. Outside activities**

Subject to section 20, a Minister shall not,

- (a) engage in employment or the practice of a profession;
- (b) engage in the management of a business carried on by a corporation; or
- (c) hold an office or directorship, unless holding the office or directorship is one of the Minister's duties as a Minister, or the office or directorship is in a social club, religious organization or political party. *1999, c.22, s.17.*

**18. Investments**

- (1) Subject to section 20, a Minister shall not hold or trade in securities, stocks, futures or commodities.

**Exception**

- (2) Subsection (1) does not apply to assets and liabilities described in subsection 26(4).

**Management of trust**

- (3) A Minister may comply with subsection (1) by entrusting the assets to one or more trustees on the following terms:
- (a) the provisions of the trust shall be approved by the Commissioner;
  - (b) the trustees shall be persons who are at arm's length from the Minister and approved by the Commissioner;
  - (c) the trustees shall not consult with the Minister with respect to managing the trust property, but may consult with the Commissioner;
  - (d) at the end of each calendar year and at one or more intervals during the year, the trustees shall give the Minister a written report stating the value, but not the nature, of the assets in the trust;

- (e) the year-end report required by clause (d) shall also state the net income of the trust for the preceding year and the trustees' fees, if any;
- (f) the trustees shall give the Minister sufficient information to permit the Minister to submit returns as required by the *Income Tax Act* (Canada) and shall give the same information to Revenue Canada;
- (g) the trustees shall give the Commissioner copies of all information and reports given to the Minister;
- (h) the trust shall provide that the Minister may, at any time, instruct the trustees to liquidate all or part of the trust and pay over the proceeds to the Minister.  
*1999,c.22,s.18.*

**19. Partnerships and sole proprietorships**

- (1) Subject to section 20, a Minister shall not carry on business through a partnership or sole proprietorship.
- (2) A Minister may comply with the requirements of subsection (1) by entrusting the business or the Minister's interest in the business to one or more trustees on the following terms:
  - (a) the provisions of the trust shall be approved by the Commissioner;
  - (b) the trustees shall be persons who are at arm's length from the Minister and approved by the Commissioner;
  - (c) the trustees shall not consult with the Minister with respect to managing the trust property, but may consult with the Commissioner;
  - (d) annually, the trustees shall give the Commissioner a written report stating the nature of the assets in the trust, the net income of the trust for the preceding year and the trustees' fees, if any;
  - (e) the trustees shall give the Minister sufficient information to permit the Minister to submit returns as required by the *Income Tax Act* (Canada) and shall give the same information to Revenue Canada.

**Reimbursement**

- (3) The Minister is entitled to be reimbursed from the Operating Fund for reasonable fees and disbursements actually paid for the establishment and administration of the trust established pursuant to subsection (2), as approved by the Commissioner, but is responsible for any income tax liabilities that may result from the reimbursement.

**Personal financial interests**

- (4) For the purposes of this section and clause 17(b), the management of routine personal financial interests does not constitute carrying on a business. *1999,c.22,s.19.*

**20. Approved exceptions**

A Minister may engage in an activity prohibited by clause 17(b) or (c) or subsection 18(1) or 19(1) if the following conditions are met:

- (a) the Minister has disclosed all material facts to the Commissioner;
- (b) the Commissioner is satisfied that the activity, if carried on in the specified manner, will not create a conflict between the Minister's private interest and public duty;
- (c) the Commissioner has given the Minister approval and has specified the manner in which the activity may be carried out; and
- (d) the Minister carries the activity out in the specified manner. *1999,c.22,s.20.*



**21. Time for compliance**

A person who becomes a Minister shall comply with section 17 and subsections 18(1) and 19(1), or obtain the Commissioner's approval pursuant to section 20, within 60 days after the Minister's appointment. *1999,c.22,s.21.*

**22. Procedure on conflict of interest**

- (1) Where a Minister has reasonable grounds to believe that a conflict of interest exists in a matter requiring a decision by the Minister, the Minister shall ask the Premier to appoint another Minister to perform the Minister's duties in the matter for the purpose of making the decision.

**Power of appointed Minister**

- (2) The Minister who is appointed pursuant to subsection (1) may act in the matter for the period of time necessary for the purpose. *1999,c.22,s.22.*

**23. Restrictions applicable to Executive Council**

- (1) The Executive Council and Ministers shall not knowingly,
- (a) award or approve a contract with, or grant a benefit to, a former Minister until 6 months have passed after the date the former Minister ceased to hold office;
  - (b) award or approve a contract with, or grant a benefit to, a former Minister who has, during the 6 months after the date the former Minister ceased to hold office, made representations to the Government of Prince Edward Island regarding the contract or benefit;
  - (c) award or approve a contract with, or grant a benefit to, a person on whose behalf a former Minister has, during the 6 months after the date the former Minister ceased to hold office, made representations to the Government of Prince Edward Island in respect of the contract or benefit.

**Exception; further duties**

- (2) Clauses (1)(a) and (b) do not apply to contracts or benefits in respect of further duties in the service of the Crown.

**Exception; same conditions**

- (3) Subsection (1) does not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled. *1999,c.22,s.23.*

**24. Restrictions applicable to former Ministers**

- (1) A former Minister shall not knowingly, during the 6 months after the date the former Minister ceased to hold office,
- (a) accept a contract or benefit that is awarded, approved or granted by the Executive Council or an employee of a department pursuant to the *Public Departments Act* R.S.P.E.I. 1988, Cap. P-29;
  - (b) make representations to the Government of Prince Edward Island on the former Minister's own behalf or on another person's behalf with respect to any contract or benefit;
  - (c) accept a contract or benefit from any person who received a contract or benefit from a department of which the former Minister was the Minister.

**Exception; further duties**

- (2) Subsection (1) does not apply to contracts or benefits in respect of further duties in the service of the Crown.

**Exception; same conditions**

- (3) Subsection (1) does not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.

**Ongoing transaction or negotiation**

- (4) A former Minister shall not make representation to the Government of Prince Edward Island in relation to a transaction or negotiation to which the Government is a party and in which the former Minister was previously involved as a Minister, where the representation could result in the conferring of a benefit not of general application.

**Offence**

- (5) Any person who contravenes subsection (1) or (4) is guilty of an offence and liable, on summary conviction, to a fine of not more than \$10,000. *1999,c.22,s.24.*

## DISCLOSURE

### 25. Private disclosure statement

- (1) Subject to subsection (9), every member shall file with the Commissioner a private disclosure statement, in the form provided by the Commissioner,
- (a) within 60 days of being elected; and
  - (b) subsequently, once in every following calendar year on or by the date established by the Commissioner.

**Contents**

- (2) The private disclosure statement shall
- (a) identify the assets and liabilities of the member and each person who belongs to the member's family, and state the value of the assets and liabilities;
  - (b) state any income the member and each person who belongs to the member's family have received during the preceding 12 months or are entitled to receive during the next 12 months, and indicate the source of the income;
  - (c) state all benefits the member, each person who belongs to the member's family, and any private company, or partnership in which any of them has an interest, have received during the preceding 12 months or are entitled to receive during the next 12 months as a result of a contract with the Government of Prince Edward Island, and describe the subject matter and nature of the contract;
  - (d) if the private disclosure statement mentions a private company or partnership,
    - (i) include any information about the activities of the private company or partnership and sources of income that the member is able to obtain by making reasonable inquiries, and
    - (ii) state the names of any other companies or partnerships that are affiliates;
  - (e) list all corporations and other organizations in which the member or a person who belongs to the member's family is an officer or director or has a similar position; and
  - (f) include any other information that the Commissioner requires.



**Exception - trustee**

- (3) The assets, liabilities or financial interests held by a member as an executor, administrator or trustee shall not be included in a private disclosure statement, a revised private disclosure statement or a statement of material change.

**Meeting with Commissioner**

- (4) After filing a private disclosure statement or a revised private disclosure statement the member shall meet with the Commissioner to ensure that adequate disclosure has been made and to receive instruction regarding the member's obligations pursuant to this Act.

**Member's spouse**

- (5) The member's spouse may attend at a meeting held pursuant to subsection (4) to ensure that adequate disclosure has been made and to receive instruction regarding the member's obligations pursuant to this Act.

**Statement of material change**

- (6) The member shall file a statement of material change with the Commissioner, in the form provided by the Commissioner, within 30 days after
- (a) a change in the income, assets or liabilities of the member or a person who belongs to the member's family; or
  - (b) an event that causes a person to become or to cease to be a family member, if the change or event would reasonably be expected to have a significant effect on the information previously disclosed.

**Revised private disclosure statement**

- (7) A member may, in respect of a calendar year, file with the Commissioner a revised private disclosure statement indicating the relevant changes for that calendar year in respect of the matters stated in the last private disclosure statement or revised private disclosure statement filed by the member for the immediately preceding calendar year.

**Requirements**

- (8) A revised private disclosure statement must
- (a) include such information referred to in subsection (2) as is required by the Commissioner; and
  - (b) be filed in the form provided or approved by the Commissioner on or by the date established under clause (1)(b).

**Exemption**

- (9) A member who files a revised private disclosure statement is exempt from the requirement to file a private disclosure statement under subsection (1) if the Commissioner is satisfied that adequate disclosure is provided by the revised private disclosure statement. *1999, c.22, s.25; 2002, c.24, s.2.*

**26. Public disclosure statement**

- (1) After the meeting referred to in subsection 25(4), the Commissioner shall prepare a public disclosure statement on the basis of the information provided by the member.

**Contents**

- (2) The public disclosure statement shall,

- (a) state the source and nature, but not the value, of the income, assets and liabilities referred to in subsection 25(2), except those that are described in subsection (4) of this section;
- (b) list the names and addresses of all the persons who have an interest in those assets and liabilities;
- (c) identify any contracts with the Government of Prince Edward Island referred to in the private disclosure statement or revised private disclosure statement filed for that calendar year, and describe their subject matter and nature;
- (d) list the names of any affiliated companies or partnerships shown in the private disclosure statement or revised private disclosure statement filed for that calendar year; and
- (e) contain a statement of any gifts or benefits that have been disclosed to the Commissioner pursuant to subsection 13(3).

**Public disclosure - Minister**

- (3) In the case of a Minister, the public disclosure statement shall also state whether the Minister has obtained the approval of the Commissioner pursuant to section 20 for an activity that would otherwise be prohibited and, if the Minister has done so, shall
  - (a) describe the activity;
  - (b) describe the manner in which the activity was to be carried out pursuant to the specifications of the Commissioner required by clause 20(c); and
  - (c) in the case of a business activity, list the name and address of each person who has a 10 per cent or greater interest in the business, and describe the relationship of the person to the Minister.

**Excluded private interests**

- (4) The following assets, liabilities and sources of income shall not be shown in the public disclosure statement:
  - (a) an asset or liability worth less than \$5,000;
  - (b) a source of income that yielded less than \$5,000 during the 12 months preceding the relevant date;
  - (c) real property that the member or a person who belongs to the member's family uses primarily as a residence or for recreational purposes;
  - (d) personal property that the member or a person who belongs to the member's family uses primarily for transportation, household, educational, recreational, social or aesthetic purposes;
  - (e) cash on hand, or on deposit with a financial institution that is lawfully entitled to accept deposits;
  - (f) fixed value securities issued or guaranteed by a government or by a government agency;
  - (g) a registered retirement savings plan or a registered educational savings plan that is not self-administered, or a registered home ownership savings plan;
  - (h) an interest in a pension plan, employee benefit plan, annuity or life insurance policy;
  - (i) an investment in an open-ended mutual fund that has broadly based investments not limited to one industry or one sector of the economy;
  - (j) a guaranteed investment certificate or similar financial instrument;
  - (k) support payments; and





- (l) any other asset, liability or source of income that the Commissioner approves as an excluded private interest.

**Information withheld**

- (5) The Commissioner may withhold information from the public disclosure statement if, in the Commissioner's opinion,
  - (a) the information is not relevant to the purpose of this Act; and
  - (b) a departure from the general principle of disclosure is justified.

**Filing**

- (6) The Commissioner shall file the public disclosure statement with the Clerk of the Legislative Assembly.

**Amendment**

- (7) Where a statement of material change is filed pursuant to subsection 25(6) the Commissioner shall, if warranted, file an amendment to the public disclosure statement.

**Public access**

- (8) The Clerk shall make the public disclosure statement and any amendment available for examination by members of the public, and shall provide a copy of it to any person who pays the fee fixed by the Clerk. *1999, c.22, s.26; 2002, c.24, s.3.*

**27. Destruction of records**

- (1) The Commissioner shall destroy any record in the Commissioner's possession that relates to a member or former member or a family member of the member or former member, during the 12 month period following the tenth anniversary of the creation of the record.

**Exception**

- (2) If an inquiry to which a record may relate is being conducted pursuant to this Act, or if the Commissioner is aware that a charge to which it may relate has been laid pursuant to the *Criminal Code* (Canada) against the member or former member or a family member of the member or former member, the record shall not be destroyed until the inquiry or the charge has been finally disposed of. *1999, c.22, s.27.*

## ENFORCEMENT

**28. Matter referred by member**

- (1) A member who has reasonable and probable grounds to believe that another member has contravened
  - (a) this Act; or
  - (b) Prince Edward Island parliamentary convention,may request that the Commissioner give an opinion as to the matter.

**Request**

- (2) The request shall
  - (a) be in writing;
  - (b) set out the grounds for the belief and the contravention alleged; and

- (c) be supported by affidavit evidence.

**Tabling**

- (3) The member making the request shall promptly give a copy of the request to the Speaker, who shall cause the request to be laid before the Legislative Assembly if it is sitting or, if not, within 10 days after the beginning of the next sitting.

**Matter referred by Legislative Assembly**

- (4) The Legislative Assembly may, by resolution, request that the Commissioner give an opinion as to whether a member has contravened this Act or Prince Edward Island parliamentary convention.

**Matter referred by Premier**

- (5) The Premier may request that the Commissioner give an opinion as to whether a Minister has contravened
- (a) this Act;
  - (b) any additional written guidelines established by the Premier for the guidance of Ministers; or
  - (c) Prince Edward Island parliamentary convention.

**Inquiry by Legislative Assembly**

- (6) The Legislative Assembly and its committees shall not conduct an inquiry into any matter that has been referred to the Commissioner pursuant to subsection (1) or (4).

**Limitation period**

- (7) No matter may be referred to or considered by the Commissioner if more than two years have elapsed from the date of the alleged contravention of this Act or Prince Edward Island parliamentary convention. *1999,c.22,s.28.*

**29. Inquiry by Commissioner**

- (1) When a matter is referred to the Commissioner pursuant to section 28, the Commissioner may conduct an inquiry, after giving reasonable notice to the member whose conduct is concerned.

**Powers**

- (2) Where a matter is referred to the Commissioner by a member or by the Legislative Assembly
- (a) the Commissioner may make such inquiries as the Commissioner deems appropriate and may elect to exercise some or all of the powers of a commissioner pursuant to the *Public Inquiries Act* R.S.P.E.I. 1988, Cap. P-31; and
  - (b) the Commissioner shall make a report providing the opinion of the Commissioner on the matter to the Speaker.

**Duties of Speaker**

- (3) The Speaker shall
- (a) give a copy of the report made pursuant to subsection (2) to the member whose conduct is concerned and to the leader of each political party that is represented in the Legislative Assembly;
  - (b) where the matter was referred by a member, give a copy of the report to that member; and



- (c) cause the report to be laid before the Legislative Assembly if it is sitting or, if not, within 10 days after the beginning of the next sitting.

**Report and opinion**

- (4) Where the matter is referred by the Premier, the Commissioner shall make a report providing the opinion of the Commissioner on the matter to the Clerk of the Executive Council.

**Refusal to conduct inquiry**

- (5) If the Commissioner is of the opinion that
- (a) the referral of a matter is frivolous, vexatious or not made in good faith; or
  - (b) that there are no grounds or insufficient grounds for an inquiry
- the Commissioner shall not conduct an inquiry and shall state the reasons for not doing so in the report.

**Member not blameworthy**

- (6) Where the Commissioner determines
- (a) that there has been no contravention of this Act or of Prince Edward Island parliamentary convention;
  - (b) that a contravention occurred although the member took all reasonable measures to prevent it; or
  - (c) that a contravention occurred that was trivial or committed through inadvertence or an error of judgement made in good faith,
- the Commissioner shall
- (d) make a report stating the Commissioner's determination on the matter; and
  - (e) recommend that no penalty be imposed.

**Reliance on Commissioner's advice**

- (7) Where the Commissioner determines
- (a) that there was a contravention of this Act or of Prince Edward Island parliamentary convention; and
  - (b) that, despite the contravention,
    - (i) the member was acting in accordance with the Commissioner's recommendations; and
    - (ii) that member had, before receiving those recommendations, disclosed to the Commissioner all the relevant facts that were known to the member,
- the Commissioner shall
- (c) make a report stating the Commissioner's determination on the matter; and
  - (d) recommend that no penalty be imposed. *1999,c.22,s.29; 2002,c.24,s.4.*

**30. Police investigation or charge**

If the Commissioner, when conducting an inquiry, discovers that the subject matter of the inquiry is being investigated by police or that a charge has been laid, the Commissioner shall

- (a) suspend the inquiry until the police investigation or charge has been finally disposed of; and
- (b) shall report the suspension of the inquiry to the Speaker. *1999,c.22,s.30.*

**31. Reference to appropriate authorities**

If the Commissioner, when conducting an inquiry, determines that there are reasonable grounds to believe that there has been a contravention of any other Act or of the *Criminal Code* (Canada), the Commissioner shall

- (a) immediately refer the matter to the appropriate authorities;
- (b) suspend the inquiry until any resulting police investigation or charge has been finally disposed of; and
- (c) report the suspension of the inquiry to the Speaker. *1999,c.22,s.31.*

**32. Recommendation re penalty**

(1) Where the Commissioner conducts an inquiry pursuant to subsection 29(1) or (2) and finds that the member has

- (a) contravened any of sections 9 to 11, 13 to 15, 17 to 19 or 21 to 25;
- (b) failed to file a private disclosure statement, revised private disclosure statement or a statement of material change within the time provided by section 25;
- (c) failed to disclose relevant information in a private disclosure statement or a revised private disclosure statement; or
- (d) contravened Prince Edward Island parliamentary convention,

the Commissioner shall recommend in the report

- (e) that no penalty be imposed;
- (f) that the member be reprimanded;
- (g) that the member's right to sit and vote in the Legislative Assembly be suspended, with or without indemnity and allowance, for a specified period or until a condition imposed by the Commissioner is fulfilled; or
- (h) that the member's seat be declared vacant.

**Duty of Legislative Assembly**

(2) The Legislative Assembly shall consider and respond to a report made pursuant to subsection (1) within 30 days after the day the report is laid before it.

**Response**

(3) If the Commissioner recommends that a penalty be imposed, the Legislative Assembly may approve the recommendation and order that the penalty be imposed, or may reject the recommendation, in which case no penalty shall be imposed.

**Power of Legislative Assembly**

(4) Notwithstanding any provision of the *Legislative Assembly Act* R.S.P.E.I. 1988, Cap. L-7, the Legislative Assembly does not have power to

- (a) inquire further into a contravention;
- (b) impose a penalty if the Commissioner recommended that none be imposed; or
- (c) impose a penalty other than the one recommended.

**Decision final**

(5) The Legislative Assembly's decision is final and conclusive.



**Vacancy**

- (6) If the member's seat is declared vacant, section 26 of the *Legislative Assembly Act* applies, with necessary modifications. *1999,c.22,s.32; 2002,c.24,s.5.*

**33. Effect on other government business**

No decision or transaction, and no procedure undertaken by the government or any Crown agency with respect to a decision or transaction, is void or voidable by reason of a violation of this Act. *1999,c.22,s.33.*

**34. Regulations**

Subject to the approval of the Lieutenant Governor in Council, the Commissioner may make regulations. *1999,c.22,s.34.*