

C O N F L I C T O F I N T E R E S T

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Ministerial Administrative  
Procedures

Government Library

Section: 2  
Title : Conflict  
of Interest

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Guidelines

1. The Conflict of Interest provisions of the Legislative Assembly and Executive Council Act and the Elections Act apply to all Members of the Legislative Assembly including Ministers.
2. The behaviour of the Executive Council must go beyond simply obeying the law. There is an obligation to act in a manner that will bear public scrutiny. A Minister should not have a pecuniary interest that could conflict in any manner with the discharge of his/her official duties.
3. No conflict should exist between the private interests of Ministers and their official duties.
4. Ministers should exercise care in the management of their private affairs so as not to benefit from use of information acquired during the course of their official duties, which information is not generally available to the public.
5. Ministers should not place themselves in a position where they could derive any direct or indirect pecuniary benefit or interest from any government contracts or other matters respecting which they can influence decisions.
6. Ministers should hold no outside office or membership that could place on them demands inconsistent with their official duties or call into question their capacity to perform those duties in an objective manner.
7. Ministers should not buy or sell property, or transact any business with the Government of the N.W.T., even though they themselves do not set the price on a given transaction. Excluded from this section are interests of a Minister where he is in the same position as the rest of the general population.

Procedures

1. Following appointment to the Executive Council, Ministers are expected to arrange their private affairs in a manner that will eliminate or prevent conflicts of interest from arising.
2. Ministers shall disclose in writing to the Government Leader, in a manner suitable to him or her, all assets, interests or memberships which could give rise to a conflict of interest and confirm that the necessary action has been taken by the Minister to divest themselves of any financial holdings or interests and positions (paid or unpaid) which would be in violation of the letter of the Legislative Assembly and Executive Council Act or Elections Act and the spirit of these Ministerial guidelines.
3. Such confirmation shall be completed within ninety (90) days of taking office.
4. Ministers shall not conduct themselves in a manner which brings their office into disrepute.
5. Ministers shall not abuse the privileges of office.
6. In addition to the requirements outlined above, the Government Leader may, if he or she deems necessary, set out further procedures as required from time to time.

Attachments

Summary of the Conflict of Interest Legislation affecting MLA's.

Contacts

For further information contact:

1. Government Leader - 873-7112
2. Deputy Minister of the Executive Council - 873-7100

## CONFLICT OF INTEREST LEGISLATION AFFECTING MLA'S

The following is a summary of the Conflict of Interest Legislation in the Northwest Territories which applies to Members of the Legislative Assembly. Unless otherwise specifically noted, the section numbers referred to are in the Legislative Assembly and Executive Council Act. Copies of the relevant legislation are attached, and should be reviewed where greater clarification and detail is required.

### How to Identify a Conflict of Interest

#### Business of the Legislative Assembly

When the MLA has any direct or indirect pecuniary interest in any matter in which the Legislative Assembly is concerned, there is a conflict of interest. s.16(1)

This includes an interest which the MLA has on his own behalf or while acting for, by, or with another. s.16(1)

This also includes the interest, known to the MLA, of a dependant, spouse, son, daughter, or other relative who shares the same accommodation as the MLA. s.16(2)

This does not include interests of the MLA where he is in the same position as the rest of the population, such as those of a voter or a user of public utilities, etc. Also excluded are interests that the MLA has by reason of his purchasing or owning a debenture or being a member of a cooperative association. s.16(3)

Also excepted from the definition of conflict of interest are questions relating to any allowance, remuneration or benefits to which the MLA is entitled by virtue of being an MLA. s.22

Indirect pecuniary interest covers situations where the MLA is a shareholder, director, or senior officer of a private corporation; has a controlling interest in or is a director or senior officer of a public corporation; or is a member of a body that has a pecuniary interest in any matter in which the Legislative Assembly is concerned. It also includes being a partner of a person who has a pecuniary interest in any matter in which the Legislative Assembly is concerned. s.17

#### Office or Employment

A person who holds any office, commission, or employment with the Government of Canada or the Government of the Northwest Territories, and is entitled to payment for same, has a conflict of interest.

This applies to either permanent or temporary positions.

There is an exception where the MLA has been appointed to the position on the recommendation of the Legislative Assembly. Other exceptions are for justices of the peace, notaries, commissioners for oaths, and members of the Armed Forces Reserve.

In addition, the Chief Electoral Officer, the Returning Officers from all electoral districts, Members of Parliament, and Members of the Legislative Assemblies of other provinces or territories, are identified as positions inconsistent with membership in the Legislative Assembly.

These "conflicts" are found in the provisions of the Elections Act which set out the criteria for eligibility for nomination to a seat in the Legislative Assembly. s.52(3) and (4) of the Elections Act

### Consequences of a Conflict of Interest

#### Business of the Legislative Assembly

If the MLA is present at a sitting of the Legislative Assembly, or a meeting of the Committee of the Legislative Assembly, where a matter in which the MLA has a pecuniary interest is the subject of consideration, the MLA must disclose the interest and the extent and nature of it as early as practicable after the sitting or meeting begins. The MLA must not take part in the consideration or discussion of the matter, must not vote on any question with respect to the matter, and must not try to influence the voting on any such question. s.16(1)

Failure to declare a conflict, participation in the consideration or discussion of a matter where the MLA has a conflict, voting on a matter where the MLA has a conflict, or attempting to influence the vote on any matter where the MLA has a conflict can result in an application to the Supreme Court of the Northwest Territories. If a conflict is found, the Court must declare the seat in the Legislative Assembly vacant, and may also disqualify the MLA from sitting in the Assembly for up to five years, or impose a fine of up to five thousand dollars. s.18-21

#### Office or Employment

If a Member of the Legislative Assembly accepts government employment or an appointment to a government office or commission which would make that person ineligible to stand for nomination, the MLA cannot continue to be or sit as an MLA. s.8

## CONFLICT OF INTEREST

Duty to disclose interest and other conduct

16.(1) Where a member, either on his own behalf or while acting for, by, with or through another, has any direct or indirect pecuniary interest in any matter in which the Legislative Assembly is concerned and is present at a sitting of the Legislative Assembly or a meeting of a committee of the Legislative Assembly at which the matter is the subject of consideration, he shall, as soon as practicable after the commencement of the sitting or meeting, disclose his interest and the extent and nature of it and shall not take part in the consideration or discussion of or vote on any question with respect to the matter, or attempt in any way whether before, during or after the meeting to influence the voting on any such question.

Interest of dependants and relatives

(2) The interest of a dependant, spouse, son, daughter or other relative of a member who shares the same accommodation as the member shall, if known to the member, be deemed for the purpose of this section to be also an interest of the member.

Exception

(3) Subsections (1) and (2) do not apply to an interest in any matter that a person may have

- (a) as a voter or a user of any public utility service supplied to him in like manner and subject to the like conditions as are applicable to a person who is not a member;
- (b) by reason of his being entitled to receive on terms common to other persons any service or commodity or any subsidy, loan or other such benefit;
- (c) by reason of his purchasing or owning a debenture;
- (d) by reason of his having made a deposit the whole or part of which is or may be returnable to him in like manner as such a deposit is or may be returnable to all other ratepayers; or
- (e) by reason of his being a member of a co-operative association.

Recording a disclosure

(4) Every disclosure of interest pursuant to subsection (1) shall be recorded in the minutes of the sitting or meeting.

Failure to comply

(5) The failure of a person to comply with subsection (1) does not of itself invalidate proceedings in respect of any matter mentioned in subsection (1). 1985(3), c. 7, s. 2 B.

LEGISLATIVE ASSEMBLY AND EXECUTIVE COUNCIL  
ACT

Controlling  
interest

17.(1) For the purposes of subparagraph (2)(a)(i), a member shall be deemed to have a controlling interest in a corporation if he beneficially owns directly or indirectly, or exercises control or direction over, shares of the corporation carrying more than ten per cent of the voting rights attached to all shares of the corporation for the time being outstanding.

Indirect  
pecuniary  
interest

(2) For the purposes of this Act, a member has an indirect pecuniary interest in any matter in which the Legislative Assembly is concerned,

(a) if he or his nominee

(i) is a shareholder in, or a director or senior officer of, a private corporation that does not offer its securities to the public,

(ii) has a controlling interest in, or is a director or senior officer of, a public corporation that offers its securities to the public, or

(iii) is a member of a body that has a pecuniary interest in any matter in which the Legislative Assembly is concerned; or

(b) if he is a partner or employee of a person who has a pecuniary interest in any matter in which the Legislative Assembly is concerned.

Exception

(3) A member does not have an indirect pecuniary interest by reason only that he is

(a) a director or senior officer of a corporation incorporated for the purposes of carrying on business for or on behalf of the Legislative Assembly;

(b) a member of a board, commission or other body as an appointee of the Legislative Assembly; or

(c) a nominal director of, or the owner of one share in, a private corporation that does not offer its securities to the public.

LEGISLATIVE ASSEMBLY AND  
EXECUTIVE COUNCIL ACT

Ineligibility  
of member

7.(1) A person who is elected as a member but who, at the time of his election, was not eligible to be a candidate at the election shall not be or sit as a member.

Idem

(2) A member who, subsequent to his election, would not be eligible to be a candidate at an election shall not be or sit as a member.

Determination of a contravention

18. The question of whether or not a member has contravened subsection 16(1) may be tried and determined by the Court.

Court procedure

19.(1) Any person who is qualified as an elector under the Elections Act may, within three months after the fact comes to his knowledge that a member may have contravened subsection 16(1), apply to the Court by way of originating notice in the manner provided in The Supreme Court Rules for a determination of the question of whether or not a member has contravened subsection 16(1).

Contents of originating notice

(2) A person making an application under subsection (1) shall state in his originating notice the grounds for finding a contravention by the member of subsection 16(1). 1986(2), c. 2, s. 247.

Penalty

20.(1) Where the Court determines that a member has contravened subsection 16(1), the Court shall subject to subsection (2), declare the seat of the member vacant and may  
(a) disqualify him from being a member for period not exceeding five years, or  
(b) impose a fine not exceeding five thousand dollars,  
or both.

Exception

(2) Where the Court finds that a member contravened subsection 16(1) through inadvertence or by reason of a bona fide error in judgment, the Court shall not declare the member's seat vacant or impose a penalty under paragraph (1)(a) or (b).

Appeal

21. An appeal lies from any order made under section 20 to the Court of Appeal in accordance with the Judicature Act and the rules for the Court of Appeal made pursuant to it.

Exception

22. Nothing in sections 16 to 21 prevents a member from taking part in the consideration or discussion of or from acting on any question in respect of an indemnity, allowance, honorarium, remuneration, expense or benefit to which he may be entitled by reason of being a member.



Ineligible  
candidates

52.(1) Every person who has been found guilty of an offence that is a corrupt practice at an election shall not be eligible as a candidate at an election during the period of seven years after the date of his being convicted.

Idem

(2) Every person who has been found guilty of an offence that is an illegal practice at an election shall not be eligible as a candidate at an election during the period of five years after the date of his being convicted.

Idem

(3) Every person who

(a) accepts or holds any office, commission or employment, permanent or temporary, in the service of the Government of Canada or of the Government of the Northwest Territories, to which any salary, fee, wages, allowance, emolument or profit of any kind is attached, during the time he is holding any such office, commission or employment;

(b) is declared by subsection 28(3) to be not qualified to vote, during the time that he is not qualified to vote; or

(c) is a member of the Parliament of Canada or of a legislature of any province or the Yukon Territory, during the time he is such a member,

shall not be eligible as a candidate at an election.

(4) Paragraph (3)(a) does not render ineligible any person who

(a) is or was immediately before dissolution of the Legislative Assembly prior to a general election, a member of the Legislative Assembly, and

(i) is a member of the Executive Council, or

(ii) holds any office, commission or employment to which he was appointed on the recommendation of the Legislative Assembly;

(b) is a member of Her Majesty's Forces while he is on active service as a consequence of war;

(c) is a member of the reserve force of the Canadian Forces who is not on full-time service other than active service as a consequence of war;

(d) is an employee, as defined in the Public Service Act, who under that Act has been granted and is on leave of absence without pay to seek nomination as a candidate and to be a candidate at an election; or

(e) is a justice of the peace, coroner, notary public or commissioner for oaths.

Nullity

(5) The election of any person who is ineligible as a candidate is void.