



Province of Alberta

# **ALBERTA PUBLIC AGENCIES GOVERNANCE ACT**

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# **ALBERTA PUBLIC AGENCIES GOVERNANCE ACT**

## Chapter A-31.5

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**Preamble**

WHEREAS Ministers of the Crown are accountable to the public for the activities and performance of public agencies in their ministries;

WHEREAS public agencies are responsible for their activities and for the fulfilment of their mandates, and are accountable to their responsible Minister respecting their activities, successes and failures;

WHEREAS public agencies require varying degrees of authority to fulfil their mandates; and

WHEREAS clear communication and transparency are desirable with respect to the governance, mandates and activities of public agencies;

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

**Interpretation**

**Definitions and application of Act**

**1(1)** In this Act,

- (a) “adjudicative function”, in respect of a public agency, means

- (i) a function assigned or authorized to be performed by the public agency under an enactment, the performance of which includes
    - (A) the making of binding decisions in respect of applications, if the enactment authorizes the public agency to hold hearings respecting the applications,
    - (B) the making of binding decisions in respect of disputes, other than disputes respecting applications, or
    - (C) the hearing of reviews or appeals and the making of binding decisions in respect of those reviews or appeals,
  - (ii) any alternative dispute resolution process that is ancillary to a function described in subclause (i), and
  - (iii) a function specified in the regulations;
- (b) “application” means an application made under an Act for a permit, licence, approval or other benefit;
  - (c) “advisory agency” means a public agency that performs advisory functions only and that does not administer a budget;
  - (d) “chief executive officer” means the highest-ranking executive of a public agency who has primary responsibility for overseeing the day-to-day operations of the public agency, but does not include the chair of an advisory agency or of a public agency that performs only adjudicative functions and any educational or administrative functions ancillary to them;
  - (e) “department” means a department established under the *Government Organization Act*;
  - (f) “establishing enactment”, in respect of a public agency, means the Act or regulation that establishes or continues the public agency, but does not include a regulation made by a Minister;
  - (g) “Mandate and Roles Document” means a Mandate and Roles Document described in section 3;
  - (h) “member” means

- (i) in respect of a public agency that is an unincorporated body, one of the members of the public agency, and
  - (ii) in respect of a public agency that is a corporation, one of the members of the public agency or its board, council or other governing body;
- (i) “public agency” means
- (i) a corporation, other than a corporation incorporated by or under a local or private Act, all or a majority of whose members or directors are appointed or designated, either by their personal names or by their names of office, by an Act of the Legislature or regulations under an Act of the Legislature, by an order of the Lieutenant Governor in Council or of a Minister of the Crown or by any combination of those methods,
  - (ii) a corporation all of whose issued voting shares of every class are owned by the Crown or held in trust for the Crown or are partly owned by the Crown and partly held in trust for the Crown,
  - (iii) an unincorporated board, commission, council or other body that is not a department or part of a department, all or a majority of whose members are appointed or designated, either by their personal names or by their names of office, by an Act of the Legislature or regulations under an Act of the Legislature, by an order of the Lieutenant Governor in Council or of a Minister of the Crown or by any combination of those methods, and
  - (iv) a body that is specified in, or that meets the criteria set out in, the regulations;
- (j) “regulation” means a regulation as defined in section 1(1)(c) of the *Interpretation Act*, but does not include any instrument, whether of a legislative nature or not, that is made by a body other than the Lieutenant Governor in Council or a Minister;
- (k) “remuneration” means any consideration, compensation or benefit, regardless of its nature or form, that is given by the Government of Alberta or a public agency to a member or a chief executive officer in respect of services provided to a public agency, and includes honorariums.

**(2)** In this Act, a reference to the responsible Minister in respect of a public agency or to the Minister who is responsible for a public agency is a reference to

- (a) the Minister to whom the public agency reports, or
- (b) the Minister determined under subsection (3).

**(3)** The Lieutenant Governor in Council may by order decide, in respect of any particular public agency,

- (a) any question that arises as to which Minister is the responsible Minister for the purposes of subsection (2)(a), and
- (b) which Minister is the responsible Minister, if the public agency is not required to report to a Minister.

**(4)** This Act does not apply to the following:

- (a) The Provincial Court of Alberta;
- (b) a body all of whose members are elected officials;
- (c) a body excluded by the regulations.

**(5)** Subject to the regulations, this Act does not apply to the following:

- (a) a subsidiary health corporation under the *Regional Health Authorities Act*;
- (b) an advisory agency whose members receive no remuneration other than payment of or reimbursement for travelling, living or other expenses incurred while away from their ordinary places of residence and in the course of their duties as members;
- (c) a body established or continued by or under an Act of Canada;
- (d) a body established or continued by an enactment or instrument under which the body will expire or be dissolved or disestablished within one year of its establishment or continuation;
- (e) a body
  - (i) that is not empowered to perform any adjudicative functions,

- (ii) that is chaired by, or whose board, council or other governing body is chaired by, a Minister or an employee of the Government of Alberta, and
- (iii) all or a majority of whose members are Ministers or employees of the Government of Alberta.

2009 cA-31.5 s1;2013 cF-14.5 s20

### **Paramountcy**

**2(1)** Except where this Act or the regulations provide otherwise, the provisions of this Act and the regulations under this Act prevail to the extent of any inconsistency or conflict with one or more provisions of any other enactment except the *Freedom of Information and Protection of Privacy Act*, the *Health Information Act* and the *Reform of Agencies, Boards and Commissions Compensation Act*.

**(2)** The Lieutenant Governor in Council may make regulations expressly providing that another enactment, or a provision of it, prevails over this Act, a provision of it or the regulations, either generally or in respect of a specified public agency.

**(3)** A provision of an enactment that

- (a) imposes duties on a public agency or confers powers on a Minister who is responsible for a public agency that are additional to those imposed or conferred by this Act, or
- (b) imposes a maximum number of years of service for members of a public agency that is shorter than the applicable maximum number of years of service provided for in section 14(2)

is not inconsistent or in conflict with this Act for the purposes of subsection (1).

2009 cA-31.5 s2;2016 cR-8.5 s24

### **Mandate and Roles Documents**

#### **Contents of Mandate and Roles Document**

**3(1)** Every public agency must, within 3 months of its establishment or continuation, have a Mandate and Roles Document that is jointly developed by the public agency and its responsible Minister and that includes a description of each of the following:

- (a) the public agency's mandate;
- (b) the roles and responsibilities of
  - (i) the public agency,



- (ii) its members,
  - (iii) its chief executive officer, if any,
  - (iv) the responsible Minister,
  - (v) any departments or employees of the Government of Alberta that provide support or services to the public agency, and
  - (vi) any subsidiaries of the public agency,
    - including roles and responsibilities in respect of recruitment, orientation and training of members, communication with the public and evaluation of the public agency's and its members' performance;
  - (c) the accountability relationships of the public agency, including its duty to account to the responsible Minister;
  - (d) the process for administering the public agency's code of conduct;
  - (e) the public agency's and the responsible Minister's mutual expectations in respect of communication, collaboration and consultation with each other;
  - (f) the committee structure of the public agency, if any;
  - (g) the financial, staffing and administrative arrangements for the public agency;
  - (h) the public agency's planning and reporting requirements;
  - (i) any other matters specified in the regulations.
- (2) A Mandate and Roles Document may be amended at any time by the public agency and the responsible Minister.
- (3) A Mandate and Roles Document and any amendment made to it must be signed on behalf of the public agency and by the responsible Minister.

**Review of document**

**4** A Mandate and Roles Document must be reviewed and renewed, amended or replaced within 3 years after the day on which

- (a) the Mandate and Roles Document, or

- (b) the most recent amendment to the Mandate and Roles Document,

was signed.

#### **Document to be made public**

**5** A Mandate and Roles Document must be made available to the public.

### **Powers and Responsibilities of Ministers**

#### **Obligations of responsible Minister**

**6** A Minister who is responsible for a public agency shall

- (a) participate with the public agency in setting the public agency's long-term objectives and its short-term targets, if any,
- (b) advise the public agency, as the Minister considers appropriate, respecting any government policies applicable to the public agency or its activities or operations, and
- (c) monitor whether the public agency is
  - (i) acting within its mandate, and
  - (ii) achieving its long-term objectives and short-term targets, if any.

#### **Advice of public agency**

**7(1)** A Minister who is responsible for a public agency may consult with the public agency and request its advice or comments on any matter respecting the development, establishment, amendment, termination or repeal of any enactment, program, directive, guideline or policy that is related to the public agency's mandate.

**(2)** A public agency may provide advice or comments in response to a request under subsection (1), and may volunteer to provide advice or comments to the responsible Minister on any matter described in that subsection.

#### **Disclosure of information**

**8(1)** Subject to section 9 and the regulations, a Minister who is responsible for a public agency may request from the public agency any information, including personal information, that the Minister considers necessary respecting its activities and operations or that the Minister considers necessary for the development,

establishment, amendment, termination or repeal of any enactment, program, directive, guideline or policy, and the public agency shall disclose the information within the time and in the form and manner determined by the Minister.

**(2)** Subject to section 9 and the regulations, a public agency shall allow its responsible Minister or that Minister's representative

- (a) to inspect all records, accounts, reports and other documents of the public agency and to make copies of them, including, in the case of an electronic document, by printing the document or by causing it to be printed, and
- (b) to otherwise review the operations of the public agency.

**(3)** If the information disclosed under subsection (1) or contained in records, accounts, reports or other documents of the public agency inspected or copied under subsection (2)(a) is personal information as defined in the *Freedom of Information and Protection of Privacy Act*, the responsible Minister may collect and use that personal information

- (a) for the purposes of
  - (i) reviewing and monitoring the activities and operations of the public agency,
  - (ii) ensuring the public agency is acting in accordance with its Mandate and Roles Document, or
  - (iii) carrying out the responsibilities of the Minister under this Act,

and

- (b) for any other purpose authorized by the regulations.

**(4)** If the information disclosed under subsection (1) or contained in records, accounts, reports or other documents inspected or copied under subsection (2)(a) relates to labour relations, is a trade secret or is of a commercial, financial, scientific or technical nature, the information is to be treated as having been provided in confidence.

### **Restrictions**

**9(1)** Section 8(1) does not authorize a request for information

- (a) in respect of a particular matter in which the public agency has performed or is or will be performing an adjudicative

function, if complying with the request may reasonably be expected to affect the independence of the public agency respecting that matter, or

- (b) if the regulations or the public agency's establishing enactment provides that section 8(1) does not apply in respect of information of that type.

**(2)** Section 8(2)(a) does not authorize the inspection or copying of documents

- (a) in respect of a particular matter in which the public agency has performed or is or will be performing an adjudicative function, if inspecting or copying the documents may reasonably be expected to affect the independence of the public agency respecting that matter, or
- (b) if the regulations or the public agency's establishing enactment provides that section 8(2)(a) does not apply in respect of documents of that type.

#### **Policies**

**10(1)** Subject to subsection (2), a Minister who is responsible for a public agency may set policies that must be followed by the public agency in carrying out its powers, duties and functions.

**(2)** A policy must not be set under this section

- (a) in respect of a public agency's adjudicative functions, or
- (b) if an Act, the regulations under this Act or any other regulation made by the Lieutenant Governor in Council prohibits the making of policies of that type.

#### **Responsibilities of Public Agencies**

##### **Codes of conduct**

**11(1)** Every public agency shall implement

- (a) a code of conduct governing the conduct of its members, and
- (b) a code of conduct governing the conduct of its employees, if any.

**(2)** A code of conduct referred to in subsection (1) must include provisions

- (a) requiring members or employees to conduct themselves impartially in carrying out their duties,
  - (b) prohibiting members or employees from acting in self-interest or furthering their private interests by virtue of their position or through the carrying out of their duties,
  - (c) requiring members or employees to disclose real and apparent conflicts of interest, and
  - (d) respecting any other matters specified in the regulations.
- (3)** A public agency shall make its codes of conduct available to the public.

### **Responsibilities**

**12** Every public agency shall

- (a) make all reasonable efforts to fulfil its mandate,
- (b) participate with its responsible Minister in setting its long-term objectives and short-term targets, if any,
- (c) monitor its activities for the purpose of ensuring that it is
  - (i) acting within its mandate,
  - (ii) acting in accordance with any policies made under section 10(1) and any regulations respecting those policies, and
  - (iii) achieving its long-term objectives and short-term targets, if any,
- (d) inform its responsible Minister respecting its significant activities and operations and any significant events that may affect those activities or operations, and
- (e) discharge any other responsibilities set out in the regulations.

### **Members of Public Agencies**

#### **Recruitment of members**

**13(1)** The process by which a member is recruited to a public agency must

- (a) identify any skills, knowledge, experience or attributes required of the member before recruitment begins, and

(b) base the selection of a person for appointment as a member on assessment of the extent to which the person possesses the identified skills, knowledge, experience or attributes.

(2) The steps that are taken or intended to be taken in a recruitment process and any identified skills, knowledge, experience or attributes required of a member to be appointed must be made public either before or after the member is appointed.

#### **Term of office**

**14(1)** Every appointment must be for a fixed term.

(2) Subject to the regulations, no person shall be appointed as a member for a term that would result in the person serving as a member for more than

(a) 12 consecutive years, in the case of a public agency that is empowered to perform an adjudicative function, or

(b) 10 consecutive years, in any other case.

(3) Breaks in service of less than 2 years shall be disregarded in determining a number of consecutive years for the purposes of subsection (2).

(4) If in the opinion of the responsible Minister it is necessary to ensure the effective operation of a public agency, the responsible Minister may recommend to the Lieutenant Governor in Council that an order be made providing that subsection (2) does not apply in respect of a specified appointment to the public agency, and the Lieutenant Governor in Council may make an order to that effect.

#### **Reappointment**

**15** An appointed member may be reappointed for an additional term only if, in the opinion of the responsible Minister, the member meets the requirements of the position.

#### **Saving**

**16** Actions of a public agency or its governing body are valid notwithstanding any defect in compliance with section 13, 14 or 15 in the recruitment, appointment or reappointment of any member.

### **Chief Executive Officers**

#### **Remuneration of chief executive officers**

**17(1)** Subject to the regulations, and unless the Act, regulation or order that establishes or continues the public agency provides

otherwise, a public agency that appoints or engages its own chief executive officer may set the remuneration and expenses to be paid to the chief executive officer.

(2) Subsection (1) does not apply to a chief executive officer who is an employee under the *Public Service Act*.

#### **Restriction**

**18(1)** In this section, “chair” includes an acting chair.

(2) No person shall serve as both the chair and the chief executive officer of a public agency unless expressly authorized by

- (a) the public agency’s establishing enactment, or
- (b) the regulations.

(3) If a person serves as both a member and the chief executive officer of a public agency, the public agency shall establish and implement, to the satisfaction of the responsible Minister, a process by which the chief executive officer’s performance is overseen by other members of the public agency.

### **Review of Public Agencies**

#### **Review**

**19(1)** The mandate and operations of every public agency must, at least every 7 years, be reviewed by the responsible Minister, who shall report the results of the review to the Executive Council.

(2) In reviewing a public agency, the responsible Minister shall consider

- (a) whether, and the extent to which, the public agency’s mandate continues to be relevant to the goals, priorities and policies of the Government of Alberta,
- (b) whether the functions performed by the public agency are best performed by the public agency, by another public agency or by a department,
- (c) whether the public agency’s governance structure continues to be appropriate to its mandate and functions,
- (d) whether the public agency is carrying out its activities and operations in a manner that is effective and suited to achieving its mandate, and
- (e) any other matters set out in the regulations.

## Regulations

### Lieutenant Governor in Council regulations

**20** The Lieutenant Governor in Council may make regulations

- (a) specifying functions that are adjudicative functions for the purposes of section 1(1)(a)(iii);
- (b) respecting the application of this Act or any provision of this Act to a public agency, including regulations
  - (i) specifying bodies or classes of bodies that are public agencies for the purposes of this Act, including setting out criteria referred to in section 1(1)(i)(iv),
  - (ii) excluding bodies or classes of bodies from the application of this Act, and
  - (iii) exempting a public agency from the application of any provision of this Act, whether wholly or to the extent or for the period specified in the regulations;
- (c) respecting Mandate and Roles Documents, including their form and contents and the manner in which they are to be made public;
- (d) respecting evaluations referred to in section 3(1)(b);
- (e) respecting requests for information under section 8(1), the inspection and copying of documents under section 8(2) and the purposes for which a responsible Minister may collect and use personal information under section 8(3);
- (f) specifying, for the purposes of section 9(1)(b), types of information that must not be requested under section 8(1);
- (g) specifying, for the purposes of section 9(2)(b), types of documents that must not be inspected or copied under section 8(2)(a);
- (h) respecting policies referred to in section 10, including regulations prohibiting the making of specified types of policies in respect of a public agency;
- (i) respecting codes of conduct, including the contents and implementation of codes of conduct, the form and manner in which a code of conduct is to be made public and processes for administering codes of conduct;
- (j) respecting recruitment processes for members of public agencies;



- (k) respecting the reappointment of members of public agencies;
- (l) respecting the application of this Act or any provision of this Act to appointments to specified offices or classes of offices of public agencies or their governing bodies, including regulations exempting specified offices or classes of offices from the application of any provision of this Act, whether wholly or to the extent or for the period specified in the regulations;
- (m) respecting the application of any provision of this Act to specified appointments, including exempting specified appointments from the application of any provision of this Act;
- (n) respecting responsibilities of public agencies referred to in section 12;
- (o) respecting responsibilities of members of public agencies;
- (p) respecting the form and manner in which recruitment processes are to be made public for the purposes of section 13(2);
- (q) respecting remuneration of members and chief executive officers of public agencies;
- (r) respecting payment of expenses of members and chief executive officers of public agencies;
- (s) specifying public agencies in respect of which the offices of chief executive officer and chair of a public agency may be held by the same person;
- (t) respecting committees of public agencies;
- (u) respecting audit processes required in respect of public agencies;
- (v) respecting processes for the resolution of disputes between public agencies and their responsible Ministers regarding the application of this Act and the regulations;
- (w) respecting the establishment and continuation of public agencies;
- (x) respecting reviews of public agencies;
- (y) respecting the dissolution and winding-up of public agencies;

- (z) extending the time for doing anything required to be done under this Act or the regulations;
- (aa) specifying public agencies, classes of public agencies and classes of members of public agencies in respect of which regulations made under any provision of this Act apply.

### **Transitional Provisions, Consequential Amendments and Coming into Force**

#### **Transitional re Mandate and Roles Documents**

**21** If before the coming into force of section 3(1) a document is signed on behalf of a public agency and by its responsible Minister that meets the requirements set out in section 3(1)(a) to (i), the document is deemed to be a Mandate and Roles Document for the purposes of that section.

#### **Transitional re termination of appointments for indefinite term**

**22** Notwithstanding any other enactment, if on the coming into force of this Act a member of a public agency has been appointed for an indefinite term under an enactment,

- (a) the appointment terminates 2 years after the day on which this Act comes into force unless the appointment is terminated before that time, and
- (b) the person or body authorized to make the appointment may terminate it at any time without cause,

unless an order under section 24 provides otherwise.

#### **Transitional re maximum years of service**

**23(1)** Notwithstanding any other enactment, if on the coming into force of this Act a member of a public agency described in section 14(2)(a) has been appointed for a specified term and has served as a member for 12 or more consecutive years as determined in accordance with section 14, the member's appointment terminates on the expiry of that appointment unless it is terminated before that time or an order under section 24 provides otherwise.

**(2)** Notwithstanding any other enactment, if on the coming into force of this Act a member of a public agency described in section 14(2)(b) has served as a member for 10 or more consecutive years as determined in accordance with section 14, the member's appointment terminates 2 years after the day on which this Act comes into force unless the appointment is terminated or expires before that time or an order under section 24 provides otherwise.

**Orders of Lieutenant Governor in Council**

**24** The Lieutenant Governor in Council may order

- (a) that the 2-year period provided by section 22(a) be extended for a specified period in respect of a specified appointment to which that section applies,
- (b) that the term of a specified appointment to which section 23(1) or (2) applies be extended for a specified period, and
- (c) that the 2-year period provided by section 23(2) be extended for a specified period in respect of a specified appointment to which that section applies.

**Application of sections 22 to 24**

**25** For greater certainty, sections 22 to 24 and any order made under section 24 apply notwithstanding the term of office for which a member was appointed.

**26 to 36** *(These sections make consequential amendments to other Acts. The amendments have been incorporated into those Acts.)*

**37** Repealed 2012 cR-17.3 s85.

**38 to 44** *(These sections make consequential amendments to other Acts. The amendments have been incorporated into those Acts.)*

**45** Repealed 2013 cF-14.5 s20.

**46 to 52** *(These sections make consequential amendments to other Acts. The amendments have been incorporated into those Acts.)*

**53** Repealed 2013 cS-19.3 s3.

**54 to 72** *(These sections make consequential amendments to other Acts. The amendments have been incorporated into those Acts.)*

**73** Repealed 2013 cS-19.3 s3.

**74 to 80** *(These sections make consequential amendments to other Acts. The amendments have been incorporated into those Acts.)*

**Coming into force**

**81** This Act comes into force on Proclamation.

*(NOTE: Section 80(a) proclaimed in force July 8, 2009. Sections 1 to 36, 38 to 44, 46 to 52, 54 to 63, 65 to 72, 74 to 79, 80(b) to (e) proclaimed in force June 12, 2013.)*









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