

Anti-Nepotism Policies in Canada

In Nova Scotia, the *Conflict of Interest Act* has as its purpose:

Purpose of Act

- 2. The purpose of this Act is to ensure that members and public employees***
 - (a) perform their duties and functions of office and arrange their private affairs in a manner that promotes public confidence and trust in the integrity of each member and public employee; and***
 - (b) avoid conflict of interest and do not, in order to further their private interest or a private interest of their family, take advantage of their official positions or of information obtained in the course of their official duties that is not available to the public. 2010, c. 35, s. 2.***

Section 22 of the Act goes on to state that a public employee shall not act in such a way as to create a conflict of interest contrary to the Act and that he or she shall not use information acquired in the execution of their office as a public employee that is not available to the general public in order to further a private interest.

The conflict of interest legislation in Ontario is quite clear. Section 3 states that a public servant should not use or attempt to use his or her appointment by the crown to directly or indirectly benefit himself or herself or his or her spouse or children. There is no restricted definition of “children”. Section 7 deals directly with family members. Subsection 2 states a public servant shall not, on behalf of the crown, enter into a contract with his or her spouse, child, parent or sibling with a person or entity in which any of them has a substantial interest.

In *Brossard (Ville) v Québec Human Rights Commission*, the Supreme Court of Canada had ruled on the Town of Brossard's policy to refuse to hire members of the employee's immediate family of town counselors in order to avoid nepotism or favoritism or any appearance thereof in the hiring practices of the municipality. A woman applied for the position of lifeguard and was refused consideration because her mother was employed as a secretary at the municipal police station. The court found that the hiring policy was discriminatory. The court said in this case the anti-nepotism policy was overly broad and not rationally connected to the work of a lifeguard. The court did state, however, that ensuring that there were no real or potential conflicts of interest in the employment of municipal staff was a legitimate concern and the absence of a conflict of interest was a qualification rationally connected to employment with the town. The majority of the court stated at paragraph 76:

76. It should be possible, in my view, for a government employer to establish rules of conduct designed to combat not only real or potential conflicts of interest but also the appearance of such conflicts.

Dickson C.J. noted the importance of this appearance in Fraser v. Public Service Staff Relations Board, [1985] 2 S.C.R. 455, at p. 470, albeit in a very different context:

... there is a powerful reason for this general requirement of loyalty, namely the public interest in both the actual, and apparent, impartiality of the public service.

While there is a general prohibition against anti-nepotism policies which are overly broad or not rationally connected to the nature of the employment under review, there does exist the opportunity to draft such a policy which instills public confidence in the bureaucracy.