

Table of Contents

Foreword	iii
Foreword to the First Edition	v
Acknowledgements	vii
Acknowledgements in the First Edition	ix
Table of References	xix
Cases	xix
Reports, Books and Articles	xxvii
CHAPTER 1: INTRODUCTION	1
The Rise of Government Ethics Law	1
Method of the Book	3
Broad Overview of the Purpose and Methods of Government Ethics Law	3
Moving Forward	5
CHAPTER 2: CONFLICT OF INTEREST AND INTEGRITY IN MODERN ETHICS LAW	7
Introduction	7
Key Concepts	8
Conflict of Interest	9
Corruption	13
Integrity.....	14
Codes of Conduct related to Conflict of Interest and Integrity.....	15
Purposes and Principles	16
Conflict of Interest	18
Inappropriate Behaviour.....	21
Influence of Office	22
Receipt of Gifts	23
Insider Information	25
Enforceability — Application.....	27
Who Ethics Codes Apply to	27
Interests Affected by Ethics Codes	29
Enforcement — Types of Controls and Sanctions	30
Control Techniques	30
Disclosure.....	31
Disclosure of an Interest in a Specific Matter	31
Disclosure of Financial Interests	33
Disclosure of Gifts and Extra Benefits	35
Disclosure of Use of Resources.....	35
Avoidance	36

Withdrawal or Recusal	37
Education	38
Sanctions	38
Enforcement Agencies — Ethics Commissions	39
Appointment of Commissioners — Independence and Skills	40
Independence.....	40
Skills.	41
The Commissioners' Functions	42
Monitoring	42
Advising	43
Investigating and Inquiring.....	44
Reporting and Recommending.....	45
The Commissioners' Powers and Obligations	46
Inquiry Powers	47
Confidentiality.....	47
Accountability	49
Conclusion	49
CHAPTER 3: ADMINISTRATIVE JUSTICE AND THE OMBUDSMAN PLAN IN CANADA..... 51	
Introduction	51
Key Concepts	52
Unfairness and the Rise of Administrative Fairness	52
Injustice, Maladministration and Administrative Justice.....	54
Administrative Justice Codes	55
Seeking Redress for Administrative Inaction and	
Maladministration	60
Suing	61
Petitioning and Complaining.....	61
Enforceability — Application.....	62
Who or Which Institutions	62
What is Monitored	64
Acts Done, Omitted or Decisions Taken.....	64
Administrative Activity.....	64
Aggrieve or Affect	65
Person	65
Enforcement — The Role and Work of the Ombudsman.....	66
Definition	66
Purpose and Role of the Parliamentary Ombudsman	68
Purpose, History and Development.....	68
Appointing an Ombudsman.....	69
Independence and Impartiality.....	69

Table of Contents	xiii
Skills and Experience	69
Role and Obligation of the Ombudsman.....	70
Limits on Actions	72
Mandatory Limitations.....	72
Prohibition of Investigation re Statutory Appeals on the Merits of a Case	72
Investigating Counsel Prohibited.....	72
Attorney General Certification.....	73
Discretionary Limitations	73
Frivolous, Trivial and Vexatious Complaints	75
Adequate and Available Remedy	75
Powers of the Ombudsman	76
Investigation.....	76
Report and Recommendation	77
Reporting in respect of Specific Investigations	77
Annual Reports	79
Recommendations	79
Protecting the Ombudsman Process	79
Confidentiality.....	80
Respecting those who Encounter Ombudsmen	80
Privileges	80
No Reprisal.....	80
Accountability	81
Conclusion	82
 CHAPTER 4: LOBBYING, TRANSPARENCY AND THE CONDUCT OF INFLUENCE IN CANADIAN ETHICS LAW.....	83
Introduction	83
Key Concepts	84
Lobbying.....	84
Legitimate Lobbying and Corruption Distinguished.....	88
Lobbyists.....	90
Lobbyist Registration and Disclosure	92
Lobbyist Prohibition.....	95
Lobbyist Regulation and “Control”.....	95
Registration Systems and Codes of Conduct	96
Registration and Disclosure Systems.....	96
Registration	96
Disclosure.....	96
Comparison	97
Code of Conduct	100
Purpose	100

Principles and Rules	101
Enforceability — Application.....	102
Who is Subject to Lobbyist Regulation.....	102
Lobbyist Registration	102
Lobbyists' Code of Conduct	103
What is Subject to Lobbyist Regulation.....	103
Lobbying Activity.....	103
Lobbying Behaviour	105
Enforcement — Transparency, Controls and Sanctions.....	105
Control and Regulation	105
Transparency through Filing.....	105
Filing.....	105
Display and Opening of Records to the Public.....	106
Education	106
Sanctions	107
Failure to Register	107
Violation of Code	108
Enforcement Agencies — Registrars and Commissioners	108
Appointment	108
Independence	109
Knowledge and Skills	110
Functions	111
Supervising the Registry	111
Monitoring the Registry	111
Advising	111
Investigation and Verification	112
Reporting	112
Registrar's Powers and Obligations.....	113
Verification and Investigation	113
Confidentiality	113
Accountability	114
Conclusion	114
CHAPTER 5: ACCESS TO INFORMATION AND THE QUEST FOR TRANSPARENCY AND PARTICIPATORY DEMOCRACY	117
Introduction	117
Key Concepts	119
Openness and Transparency.....	119
Secrecy, Confidentiality and Privacy	120
Information and Records.....	122
Access and Disclosure.....	123

Table of Contents

xv

Summary	124
Access — Purpose, Right and Limitation.....	124
Stated Purpose.....	124
Right of Access	127
Who May Request Information	128
Officials and Institutions from which Access is Possible	129
What is Accessible	129
Summary	131
Limitations on Access	131
Embedded Exclusions	131
Third-Party Information Exemption/Third-Party Business	
Information Exemption	133
Policy Advice Exemption/Exception.....	136
Summary	139
External Exclusions	139
Limitation on the Limitations.....	140
Access Systems	142
General.....	142
Requests	143
Requesters' Obligations	143
Governmental and Administrative Obligations.....	144
Summary	144
Enforcement — Independent Reviewer; Review Processes and Powers.....	145
The Reviewers	145
The Ombudsman Model	145
The Tribunal Model	146
The Reviewers' Processes	147
Complaint, Investigation and Report	147
Complaint	147
Investigation	148
Report and Recommendation	149
Review Request, Inquiry and Order.....	149
Review or Appeal Request.....	150
Inquiry	151
Orders	151
The Reviewers' Powers	152
Review and Accountability of the Reviewers.....	152
General.....	152
Annual Reporting.....	153
Adjudication related to Commissioners.....	153
Judicial Review.....	154

The Federal Scene	154
The British Columbia and Ontario Scenes	154
Conclusion	155
CHAPTER 6: PRIVACY PROTECTION AND THE INFORMATION STATE.....	
Introduction	157
Key Concepts	158
Privacy	158
Personal Information.....	160
Invasion of Privacy.....	162
Privacy Breach.....	164
Consent	165
Disclosure.....	166
Privacy Protection	167
Preventing Access to Personal Information by Third Parties	167
Circumstances Where Release of Personal Information is Acceptable.....	168
Standards and Factors in Assessing Whether or Not Release of Information would be an Unreasonable or Unjustified Invasion of Privacy.....	168
The Curious Standards	168
The Factors	169
Presumed Invasion of Privacy	170
Limits on the Presumption.....	170
Access to Personal Information	171
Access	171
Corrections	173
Privacy Protection through Fair Information Practices	174
Collection of Personal Information	175
Authority for Collection	175
Manner of Collection.....	176
Use of Personal Information.....	176
Disclosure of Personal Information.....	177
Summary	179
Enforceability — Application.....	179
Who is Covered by Privacy Legislation.....	179
General Access System Protection of Personal Information....	179
Access to and Correction of Personal Information.....	180
Privacy Protection Practices.....	180
What is Covered by Privacy Legislation.....	180

Table of Contents	xvii
Enforcement — Controls and Sanctions.....	182
Influences and Controls	182
Reviews of Access and Correction Decisions.....	182
Investigations and Audits	183
Investigation.....	183
Privacy Impact Assessments and Privacy Audits	183
Reports and Orders	184
Agencies	184
Appointment	185
Independence.....	185
Skills	185
Commissioner Roles, Powers and Obligations.....	186
Roles	186
Powers.....	188
Accountability	189
Reports.....	189
Reviewing the Reviewers.....	190
Conclusion	191
CHAPTER 7: CONCLUSION	193
The Interrelation of the Laws	193
Trends in the Law	194
INDEX	195