

Office of the Conflict of Interest Commissioner

# QUINQUENNIAL REPORT

*Members' Conflict of Interest Act*



2011

October 4, 2011

Hon. Dale Graham, Chair and Members of the  
Legislative Administration Committee  
Legislative Building  
P. O. Box 6000  
Fredericton, NB  
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Dear Chair and Members of the Legislative Administration Committee:

I have the honour of submitting the first five year report under the *Members' Conflict of Interest Act*.

My report contains a number of changes ranging from important to modernization to housekeeping.

Among the important changes are recommendations concerning Deputy Ministers and an expansion of the meaning of what constitutes a conflict of interest.

In addition you may wish to consider recommending the implementation of a Code of Conduct for members of the Legislative Assembly as a useful tool in avoiding conflicts and evidencing transparency. The Code could be altogether separate from the *Act* or be legislated as a part of the *Act*.

Respectfully,

Hon. Patrick A.A. Ryan, Q.C.  
Commissioner

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# QUINQUENNIUM REPORT

## A. INTRODUCTION

Under the provisions of the *Members' Conflict of Interest Act* the Conflict of Interest Commissioner is mandated to initiate a review of the Act in 2008 and thereafter quinquennially following reviews by the Legislative Administration Committee. The provision of the Act legislating the initial review is found in section 43.1 as follows:

### **Review of Act**

43.1(1) The Commissioner shall initiate a review of this Act within five years after the coming into force of this section and subsequently within five years after each time the committee submits a report under subsection (3).

43.1(2) When the Commissioner has completed a review under subsection (1), the Commissioner shall prepare a report on the review and submit it to the Legislative Administration Committee or to such other committee of the Assembly as may be determined by a resolution of the Assembly.

43.1(3) The committee which has received the Commissioner's report under subsection (2) shall review it and then prepare and submit a report on its review, including any recommendations for amendments to this Act, to the Assembly within one year after the committee has received the Commissioner's report.

As an introduction to the changes recommended by me in this five-year report, it is important to recount the principles upon which conflict of interest is based. The full purpose of the current legislation and the matters under consideration is to guard the public interest. A primary manner in demonstrating that the public interest is guarded is by assuring the public that a member's private interest does not impinge in anyway upon the member's duties and responsibilities to the public that put the member in office.

In preparation for my review I first concluded that certain tenets of office had to be explored and adopted in order to put the legislation in proper perspective. I found that a code of conduct adopted by the House of Commons is an appropriate model and would put New Brunswick in the forefront in relation to transparency, a theme advanced by the former Premier Graham in addresses in the Legislature when he was leader of the Opposition.

For example, while addressing the Legislature in order to advance an amendment prohibiting members of the Executive Council from accepting a salary, financial assistance or other benefit from a political party or district association, he said that "[e]ven the appearance of a conflict of interest is to be avoided"<sup>i</sup> emphasizing:

Cabinet ministers should avoid, at all costs, even the **perception of a conflict of interest**. New Brunswickers demand a higher level of accountability from Cabinet ministers, and we believe that this bill achieves this.<sup>ii</sup> [Emphasis added.]

Subsequent to a change in government in 2006 an amendment dealing with the level of public accountability of Cabinet ministers was proposed in which the then Honourable Mr. Jamieson stated that “[New Brunswick is] on the leading edge of something that we feel needs to be done in all of Canada.”<sup>iii</sup> He also stated:

As the people’s representatives in the People’s House, Members of the Legislative Assembly must have ethical standards that are above reproach.

[...]

[...] It is about integrity of the member’s office. It is about being a Canadian leader in ensuring the accountability of a Member of the Legislative Assembly.<sup>iv</sup>

In 2007 Mr. Jody Carr, a member of the Opposition, now Minister of Education and Early Childhood Development, spoke of the problem of perception and stated that “...the opposition supports raising the bar of the standards for those who are elected.”<sup>v</sup>

Borrowing from the federal Conflict of Interest Code I perceive that the objectives of the New Brunswick legislation ought to be elevated in purpose as follows:

- To maintain and enhance public confidence and trust in the integrity of Members as well as the respect and confidence that the public places in the New Brunswick Legislative Assembly as an institution;
- To demonstrate to the public that members are held to standards that place the public interest ahead of their private interests and to provide a transparent system by which the public may judge this to be the case;
- To provide for greater certainty and guidance for members in how to reconcile their private interests with their public duties and functions; and
- By establishing common standards and a means by which questions relating to proper conduct may be answered by an independent non-partisan adviser.<sup>vi</sup>

These tenets are important because service in the Legislature of New Brunswick is a public trust and there are certain expectations incumbent upon each member in relation to this public trust. Again, borrowing from the federal code, I now set forth that to which I believe all members of New Brunswick’s legislature fully subscribe:

- To serve the public interest and represent constituents to the best of their abilities;
- To fulfill their public duties honestly while upholding the highest standards in order to avoid real or apparent conflicts of interest;
- To maintain and enhance public confidence and trust in the integrity of each member and of the Legislature of New Brunswick;
- To perform their official duties and functions and arrange their private affairs in a manner that bears close public scrutiny;

- To arrange their private affairs so that foreseeable real or apparent conflicts of interest may be prevented from arising, but if such conflict does arise, to resolve it in such a way that protects the public interest; and
- Except in accordance with the *Members' Conflict of Interest Act*, not to accept any gift or personal benefit connected with their position that might reasonably be seen to compromise their personal judgment or integrity.<sup>vii</sup>

Allegations of conflict of interest reach beyond the mere member. They taint the party. Appearances of impropriety are no less damaging to the usefulness of the member of the Legislative Assembly and to the member's leader and party than an actual impropriety. Appearances may indicate a tolerance of improprieties about which the leader does not intend to act.

In my annual report for the year 2008, I referred to the importance of New Brunswick being in the vanguard of leadership in the Atlantic Provinces with respect to ethics and the public interest. Indeed, the inclusion of apparent conflicts of interest under the umbrella of the *Members' Conflict of Interest Act* would show leadership to those Provinces that have not yet expanded this role of ethics the implementation of which is inevitable nationally and is already closer than the horizon.<sup>viii</sup>

Think of it as a further development of the political infrastructure. It has logical integrity.

## **B. FOCAL POINTS (and where to find the details)**

- ONE ADMINISTRATION FOR *COI* AND *MEMBERS' COI* pages 4, 5, 6, 43
- "APPARENT" CONFLICT OF INTEREST pages 1, 3, 6, 7, 8, 9, 10, 12, 13, 18, 19, 23, 26, 34, 44, 45, 46, 47
- BLIND MANAGEMENT AGREEMENT/BLIND TRUSTS pages 13, 15, 16, 17, 30, 31, 38, 44, 46, 47
- BENEFITS DIRECT/INDIRECT PROHIBITED pages 14, 25, 26, 44
- EMPLOYMENT CONTRACTS PROHIBITED FOR SPOUSE, COMMON-LAW PARTNER, CHILD, SIBLING OR PARENT OF ANOTHER MEMBER pages 14 and 44
- CONTRACT BETWEEN THE PUBLIC SECTOR ENTITY FOR WHICH A MEMBER IS RESPONSIBLE AND HIS OR HER SPOUSE, COMMON LAW PARTNER, CHILD, SIBLING OR PARENT PROHIBITED pages 14, 15 and 44
- INFLUENCE PROHIBITED pages 17, 18, 40 and 45
- PREFERENTIAL TREATMENT PROHIBITED pages 19, 36, 45

- ADVICE pages 19, 20, 21, 27, 35, 36, 44, 46
- “SPECIAL” CONFLICT OF INTEREST COMMISSIONER pages 24 and 45
- TERM OF APPOINTMENT - 7 YEARS pages 22, 45
- “FORMER” COMMISSIONERS PROHIBITED FROM DISCLOSING CONFIDENTIAL INFORMATION pages 24 and 46
- GIFTS TO MEMBER’S SPOUSE, COMMON-LAW PARTNER, CHILD, SIBLING OR PARENT OF ANOTHER MEMBER PROHIBITED pages 26, 46
- PUBLIC DISCLOSURE STATEMENTS ONLINE pages 21, 46
- TRUSTS TO BE DISCLOSED pages 15, 46
- ARREARS OF MAINTENANCE PAYABLE INCLUDING LEGAL COSTS/INTEREST/PENALTIES TO BE DISCLOSED pages 30 and 46
- NAMES OF OTHER CORPORATIONS AFFILIATED WITH A MEMBER’S PRIVATE CORPORATION TO BE DISCLOSED pages 16, 30
- NO RETALIATION AGAINST INFORMANTS pages 32 and 47
- FORMER MEMBER MAY SEEK COMPLETION OF INVESTIGATION pages 33 and 47
- POST EMPLOYMENT RESTRICTIONS, TWO YEARS pages 33, 35 and 47
- ADDITIONAL POST EMPLOYMENT RESTRICTIONS pages 34, 35
- LOBBYING RESTRICTIONS pages 36, 37 and 47
- DEFINITIONS pages 37, 47

## **C. RECOMMENDATIONS**

### **I. CONFLICT OF INTEREST ACT AND MEMBERS’ CONFLICT OF INTEREST ACT**

#### **Recommendation 1**

As outlined in my previous four Annual Reports, I recommend that this office administer the *Conflict of Interest Act*. If the recommendation is accepted, the Members of the Legislative Assembly as well as executive staff members, deputy ministers, heads of Crown Corporations and others would be served by this office. The governing legislation would remain separate and

distinct but the administration would be guided by the Commissioner and not by a sitting Justice of the Court of Queen's Bench.

The previous Commissioner made a similar recommendation in 2005. His comments, augmented by mine, are as follows:

By a recent amendment to the *Members' Conflict of Interest Act*, a section was added to provide for the mandatory review of the Act every five years to monitor its effectiveness and to determine whether public attitudes about standards of conduct in public life have changed.

The recommendation makes eminently good sense for several reasons other than simply the convenience mentioned by the previous Commissioner. For example, (1) there would be consistency in decision making; (2) executive staff members could be accorded the benefit of advice in order to avoid conflict before the fact rather than obtaining ineffective and obsolete advice after the fact; (3) as it now stands, the secondary legislation for executive staff and others, comes under the aegis of a Justice of the Court of Queen's Bench who must interrupt the Justice's judicial responsibilities or, alternatively, postpone any accommodation of the staff member's conflict of interest problem until a time convenient to the court. David Lloyd George, in a speech at the Paris Peace Conference in 1919, said: The finest eloquence is that which gets things done; the worst is that which delays them.<sup>ix</sup>

The availability for consultation and timely provision of advice are essential components for the assurance of the maintenance of ethical standards of conduct in public life. The Conflict of Interest Commissioner is accessible for this purpose. The office is now staffed on a daily basis so that there is ready access to the Commissioner for advice and consultation. On the other hand, the Court of Queen's Bench judge's availability is impacted by various time constraints created by the execution of judicial responsibilities.

Considering the urgency in which certain public service decisions must be made, delays in the provision of advice may result in questionable outcomes. Since gaining public trust through transparency is one of the principal objectives of this legislation, Deputy Ministers, executive staff members and heads of Crown Corporations should also have the right to seek similar counsel when faced with potential conflict of interest situations.

The actions of senior government personnel can have a serious impact on the public's trust in government since their actions can affect civil servants' trust in their superiors. If the core government employees have difficulty trusting their leaders, the public at large may find it even more difficult.

In 2009, while in opposition, Mr. Fitch, now the Honorable Mr. Fitch on behalf of the leader, Mr. Alward, now the Premier, moved Bill 61, An Act to Amend the *Members' Conflict of Interest Act*. It was defeated by the government of the day at second reading. If the government of Premier Alward continues to hold the same view, the deputy ministers and others may be

accommodated in one of two ways: (1) bring the *Conflict of Interest Act* under the Commissioner's jurisdiction or (2) Amend the *Members' Conflict of Interest Act* to include the deputy ministers and others.

Incorporating the *Conflict of Interest Act* within the *Members' Conflict of Interest Act*, or bringing the administration and supervision of it under the Conflict of Interest Commissioner, would ensure that the heads of public service have timely access to provisions of advice and consultation which in turn would diminish the possibility of questionable conduct and growth of public distrust.

## II. APPARENT CONFLICT OF INTEREST

The New Brunswick legislation does not have a preamble whereas other jurisdictions do. Although I am not making a recommendation for the incorporation of a preamble in our Act, it is noteworthy that other jurisdictions include the term "apparent" when referencing the avoidance of conflicts of interests in their preamble. For example, in Appendix 1 to *Standing Orders, Conflict of Interest Code for Members of the House of Commons* the following is outlined at section 2:

2. Given that service in Parliament is a public trust, the House of Commons recognizes and declares that Members are expected  
[...]  
(b) **to fulfill their public duties with honesty and uphold the highest standards so as to avoid real or apparent conflicts of interests**, and maintain and enhance public confidence and trust in the integrity of each Member and in the House of Commons;  
[...]  
(d) **to arrange their private affairs so that foreseeable real or apparent conflicts of interest may be prevented from arising**, but if such a conflict does arise, to resolve it in a way that protects the public interest; and  
[...] [Emphasis added.]

The *Conflict of Interest Code for Senators* outlines the following:

1. The purposes of this Code are to  
[...]  
(b) provide for greater certainty and guidance for Senators when dealing with issues that may present **foreseeable real or apparent conflicts of interest**; and  
[...] [Emphasis added.]

The *Values and Ethics Code for the Public Service (the Code)* for the Canadian public service which was adopted by the Government of Canada in 2003 outlines the following in Chapter 2 which deals with "Measures to prevent Conflict of Interest":

**Avoiding and preventing situations that could give rise to a conflict of interest, or the appearance of a conflict of interest**, is one of the primary means by which a public servant maintains public confidence in

the impartiality and objectivity of the Public Service. [Emphasis added.]

In the same Chapter, the following is outlined regarding measures to Prevent Conflict of Interests:

There will be instances, however, where other measures will be necessary. These include the following:

- a. avoiding or withdrawing from activities or situations that would place the public servant in **real, potential or apparent conflict of interest** with his or her official duties; and
- b. having an asset sold at arm's length or placed in a blind trust where continued ownership would constitute a **real, apparent or potential conflict of interest** with the public servant's official duties.

[Emphasis added.]

The Public Servants' part of Chapter 1 goes on to require reporting if changes in the public servant's circumstances occur:

(b) Every time a major change occurs in the personal affairs or official duties of public servants, they must review their obligations under this Code. **If a real, apparent or potential conflict of interest exists**, they must file a new Confidential Report with their Deputy Head. [Emphasis added.]

Chapter 4 of the Code outlines the following:

Failure to Comply

A public servant who does not comply with the requirements of this Code is subject to appropriate disciplinary action, up to and including termination of employment.

In 2002, Prime Minister Chrétien announced new guidelines for the Ministry relating to activities for personal political purposes<sup>x</sup>. These guidelines include the following:

*The Conflict of Interest and Post-Employment Code for Public Office Holders (Conflict of Interest Code)*, specifically its principles, places an obligation on Ministers, Ministers of State and Secretaries of State to ensure that any leadership campaign, official or unofficial, **be organized on their behalf in a manner that will prevent "real, potential or apparent conflicts of interest from arising."**

[...]

**Public Interest**

(5) On appointment to office, and thereafter, **public office holders shall arrange their private affairs in a manner that will prevent real, potential or apparent conflicts of interest from arising**, but if such a conflict does arise between the private interests of a public office holder and the official duties and responsibilities of that public office holder, the conflict shall be resolved in favour of the public interest.<sup>xi</sup> [Emphasis added.]

The preamble of the *Consolidated Code of Toronto* also incorporates the “apparent” conflict of interest standard:

**PREAMBLE:**

Improving the quality of public administration and governance can be achieved by encouraging high standards of conduct on the part of all government officials. In particular, the public is entitled to expect the highest standards of conduct from the members that it elects to local government. In turn, adherence to these standards will protect and maintain the City of Toronto’s reputation and integrity.

To these ends, during its first term as a unified City, the City of Toronto, as one of several initiatives, adopted a *Code of Conduct for Members of Council*. Subsection 157(1) of the *City of Toronto Act, 2006* now requires the City to establish codes of conduct for members of Council and of certain local boards of the City. In response to this requirement, the City has revised and updated the original *Code of Conduct*. It is intended to supplement and be compatible with the laws governing the conduct of members.

The key statements of principle that underline the *Code of Conduct* are as follows:

- Members of Council shall serve and be seen to serve their constituents in a conscientious and diligent manner
- Members of Council should be committed to performing their functions with integrity and to avoiding the improper use of the influence of their office, and **conflicts of interest, both apparent and real;**
- Members of Council are expected to perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny; and ;
- Members of Council shall seek to serve the public interest by upholding both the letter and the spirit of the laws and policies established by the Federal Parliament, Ontario Legislature, and the City Council. [Emphasis added.]

British Columbia’s legislation has had provisions dealing with “apparent” conflicts of interest since 1992 which apply to both Ministers and members.<sup>xii</sup> The British Columbia Attorney General of that day, Colin Gabelmann, outlined the following when the “apparent conflict of interest” amendment was passed by the Legislature:

Cabinet made the decision to recommend to the House that we proceed with this section based on our view that this is what the public wants. The principle was raised in the Sinclair Stevens affair, and in that case Judge Parker talked about apparent conflict of interest and gave it a definition. We borrowed extensively--in fact, we borrowed the words almost precisely from Judge Parker in respect of the definition of apparent conflict of interest.

It gets back to a fundamental tenet of western parliamentary democracies, the old cliché about justice must not only be done, it must be seen to be done. **So the appearance is as bad as the actuality.**<sup>xiii</sup> [Emphasis added.]

In his report, the Honourable Mr. Justice W. D. Parker, who presided at the inquiry into conflict of interest allegations against the Honourable Sinclair Sevens, defined a “real” conflict of interest as a “situation in which a minister of the Crown has knowledge of a private economic interest that is sufficient to influence the exercise of his or her public duties and responsibilities.”<sup>xiv</sup> An “apparent” conflict of interest“ exists when there is a reasonable apprehension, which reasonably well-informed persons could properly have, that a conflict of interest exists.”<sup>xv</sup>

Other jurisdictions such as Alberta, Saskatchewan and Yukon also include a provision which deals with the “appearance” of a conflict of interest. Their legislation prohibits Ministers from engaging in business or professional activity if to do so creates or appears to create a conflict between the private interest of the Minister and the Minister’s public duty.<sup>xvi</sup>

In 2009, the Auditor-General of Prince Edward Island pointed out that the ethics rules of government in that Province did not stop sitting politicians and deputy ministers from accessing money from an immigrant investor program. After these individuals were cleared by the Conflict of Interest Commissioner the Auditor-General noted that certain provisions of the Act were broad and open to interpretation and that the rules should be reviewed:

The rules as they stand didn’t stop these individuals from gouging the money, right. But people across PEI perceive it as not being acceptable.

[...]

**We feel there’s appearance of conflict of interest...and we feel they should strengthen the rules for deputy ministers,**<sup>xvii</sup> [Emphasis added.]

In New Brunswick, the majority of civil servants must comply with the policies listed in the *Administration Manual System*. Included in these policies is the Conflict of Interest Policy (Policy Number AD-2915) in which these civil servants are prohibited from “appearing” to be in any conflict between their private interest and their responsibility to the public.<sup>xviii</sup> It outlines the following:

The removal of conflicts of interest by public officials is central to the maintenance of public trust and confidence in government.

Employees shall not engage in any business or transaction of a financial or personal nature that would compromise the fair and honest discharge of their official duties.

**There must not be, nor appear to be, any conflict between the private interest of the employee and the employee’s responsibility to the public.** [Emphasis added.]

As stated previously, debaters in the House in New Brunswick also repeatedly share the view that “apparent” conflicts of interests should be avoided in order to instill the confidence of the public in its government:

We know that the people of New Brunswick want stronger accountability from elected members, especially members of Cabinet. **Part of this accountability is giving assurance to members of the public that members of Cabinet are free of any conflict of interest or appearance of conflict of interest when they make decisions.**<sup>xix</sup>  
[Emphasis added.]

New Brunswick should therefore continue to lead the way and include provisions dealing with the “appearance” of a conflict of interest in its legislation.

### **Recommendation 2**

A summary procedure should be implemented in the Act to allow the timely resolution of claims of apparent conflicts of interest.

#### Immediate Ruling

30.1(1) Any person may request the Commissioner to make an immediate ruling with respect to claims of apparent conflicts of interest.

30.1(2) The Commissioner may require that the person’s request be made in writing or in the form of an affidavit and shall set out the grounds for the belief and the nature of the alleged breach.

30.1(3) The Commissioner may make such inquiries that the Commissioner considers appropriate and shall provide the person with a written and immediate ruling which

(a) shall state the material facts either expressly or by incorporating the facts provided by the person,

(b) shall be based on the facts referred to in paragraph (a), and

(c) may be based on any other considerations the Commissioner considers appropriate.

30.1(4) The decision of the Commissioner is confidential until the ruling is filed with the Speaker of the Legislative Assembly.

### **III. MINISTERS<sup>xx</sup>**

The New Brunswick *Members’ Conflict of Interest Act* (hereinafter called “Act”) contains the following provisions which apply to Ministers:

#### **Prohibited activities**

14(1) A member of the Executive Council shall not

- (a) engage in any trade, occupation or employment or in the practice of any profession,
- (b) engage in the management of a business carried on by a corporation,
- (c) carry on business through a partnership or sole proprietorship,
- (d) hold or trade in securities, stocks, futures or commodities, or
- (e) hold an office or directorship, unless holding the office or directorship is one of the member's duties as a member of the Executive Council.

**Approval by Commissioner**

14(2) A member of the Executive Council may engage in an activity prohibited by subsection (1) if

- (a) the member 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 member's private interest and public duty,
- (c) the Commissioner has given the member his or her written approval and has specified the manner in which the activity may be carried out, and
- (d) the member carries out the activity in the specified manner.

**Payments from political party or district association**

14(2.1) A member of the Executive Council shall not accept a salary, financial assistance or other benefit from a registered political party or a registered district association.

14(2.2) Notwithstanding subsection (2.1), a member of the Executive Council may be reimbursed by a registered political party or a registered district association for reasonable expenses incurred by the member on behalf of the registered political party or registered district association.

**Blind trust**

14(3) A member of the Executive Council may comply with paragraphs (1)(c) or (d) if the member entrusts his or her interest in the property to one or more trustees in a blind trust.

**Time for compliance**

14(4) A person who becomes a member of the Executive Council shall comply with subsections (1) and (2.1), or obtain the Commissioner's approval under subsection (2), within sixty days after the appointment.

**Procedure on conflict of interest**

15 A member of the Executive Council who has reason to believe that he or she has a conflict of interest with respect to a matter that requires that member's decision shall

report that possible conflict to the President of the Executive Council and ask the Premier or Deputy Premier to appoint another member of the Executive Council to perform the member's duties in the matter for the purpose of making the decision, and the member who is appointed may act in the matter for the period of time necessary for the purpose.

**Restrictions applicable to Executive Council**

16(1) The Executive Council or a member of the Executive Council shall not knowingly award a contract to or approve a contract with, or grant a benefit to, a former member of the Executive Council until twelve months have expired after the date on which the former member ceased to hold office.

16(2) Subsection (1) does not apply

(a) to contracts or benefits with respect to further duties in the service of the Crown, or

(b) if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.

**Restrictions applicable to former members**

17(1) No former member of the Executive Council shall, unless twelve months have expired after the date when he or she ceased to hold office as a member of the Executive Council,

(a) accept a contract or benefit that is awarded, approved or granted by the Executive Council, a member of the Executive Council or an employee of a department or office of the Government of New Brunswick or a Crown corporation, or

(b) make representations on his or her own behalf or on behalf of any other person with respect to a contract or benefit.

**Exceptions**

17(2) Subsection (1) does not apply

(a) to contracts or benefits with respect to further duties in the service of the Crown, or

(b) if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.

**Penalty**

17(3) A person who violates or fails to comply with subsection (1) commits an offence punishable under Part II of the *Provincial Offences Procedure Act* as a Category I offence.

Discussion

For the reasons outlined in the preceding part, the “apparent” standard should be applied to Ministers. As such, Ministers should be prohibited from engaging in business or professional activity if to do so creates or appears to create a conflict between the private interest of the Minister and the Minister's public duty.

### **Recommendation 3**

14(5) A Minister breaches this Act if the Minister, after the expiration of the relevant period referred to in subsection 14(4),

(a) engages in employment or in the practice of a profession,

(b) carries on a business, or

(c) holds an office or directorship other than in a social club, religious organization or political party, that creates or appears to create a conflict between a private interest of the Minister and the Minister's public duty.

14(6) A Minister may carry on an activity referred to in subsection (1) in a way approved by the Ethics Commissioner if

(a) the Minister has disclosed the material facts to the Ethics Commissioner, and

(b) the Ethics Commissioner is satisfied that the activity, if carried on in a way approved by the Ethics Commissioner, will not create or appear to create a conflict between a private interest of the Minister and the Minister's public duty.

14(7) For the purposes of this section,

(a) the management of routine personal financial interests does not constitute carrying on a business, and

(b) maintaining qualifications in a profession or occupation as required by the profession or occupation does not constitute carrying on a business or engaging in employment or in the practice of a profession.

### **Discussion**

For the reasons discussed in the sections dealing with Contracts with the Crown, Blind Trusts and Disclosure Statements later in this report, I recommend that the term "blind management agreement" be included where blind trusts apply.

Since the selling of a business would also be an acceptable mechanism for the compliance with paragraphs 14(1)(c) or (d), section 14(3) should be amended to incorporate this.

### **Recommendation 4**

#### **Blind trust**

14(11) A member of the Executive Council may comply with paragraphs (1)(c) or (d) if the member divests his or her business interest or entrusts his or her interest in the property to one or more trustees in a blind trust or a blind management agreement.

## IV. CONTRACTS WITH THE CROWN

Subsection 9 of the Act deals with Contracts with the Crown:

### **Contracts with the Crown**

9(1) No member shall be a party to a contract with the Crown under which the member receives a benefit.

9(2) No member shall have an interest in a partnership or private corporation or be the officer or director of a corporation that is a party to a contract with the Crown under which the partnership or corporation receives a benefit.

9(3) Subsections (1) and (2) do not apply to a contract that existed before the member's election to the Assembly, or before the member's appointment to the Executive Council if the member is not elected to the Assembly, but do apply to its renewal or extension.

9(4) Subsection (2) does not apply if the Commissioner is of the opinion that the interest or position of the member will not create a conflict between the member's private interest and public duty.

9(5) Subsection (2) does not apply if the member has entrusted his or her interest in the partnership or corporation to one or more trustees in a blind trust.

9(6) Subsection (1) does not prohibit a member from receiving benefits under any Act that provides for retirement benefits funded wholly or in part by the Province of New Brunswick.

9(7) Subsection (2) does not apply until the first anniversary of the acquisition if the member's interest in the partnership or corporation was acquired by inheritance.

### Discussion

The intent of this provision is the prevention of a conflict of interest resulting from the receipt of a benefit by means of a contract with the Crown. Whether such a benefit is acquired directly or indirectly, the end result is the receipt of a benefit which is inappropriate. In the interest of clarity, section 9 should be amended to include indirect receipt of a benefit.

### **Recommendation 5**

#### **Contracts with the Crown**

9(1) No member shall be a party to a contract with the Crown under which the member receives a direct or indirect benefit.

9(2) No member shall have an interest in a partnership or private corporation or be the officer or director of a corporation that is a party to a contract with the Crown under which the partnership or corporation receives a direct or indirect benefit.

### Discussion

To give employment to a spouse, common-law partner, child, sibling or parent of another member is also a benefit to the member which is inappropriate. The House of Commons has addressed this issue by incorporating a specific provision that deals with such conflicts in the *Federal Accountability Act*.<sup>xxi</sup> The *Members' Conflict of Interest Act* should also include such a provision outlining restrictions with respect to employment contracts with the Crown.

### **Recommendation 6**

9 (2.1) No member shall permit anyone acting on his or her behalf to enter into a contract or employment relationship with a spouse, common-law partner, child, sibling or parent of another member, except in accordance with an impartial administrative process in which the member plays no part.

#### Discussion

In the same vein, it would be improper for a member who has the authority to permit the public sector entity for which he or she is responsible, or to which he or she is assigned to enter into a contract with his or her spouse, common law partner, child, sibling or parent.<sup>xxii</sup>

### **Recommendation 7**

9(2.2) No member who otherwise has the authority shall permit the public sector entity for which he or she is responsible, or to which he or she is assigned, to enter into a contract with his or her spouse, common-law partner, child, sibling or parent.

#### Discussion

Subsection 9(5) deals with situations where the member entrusts his or her interest in the partnership or corporation to one or more trustees in a blind trust as an acceptable means to prevent conflicts of interest. Since blind management agreements also serve this purpose, these should be included throughout the Act where blind trust applies. Also see the sections dealing with Ministers, Disclosure Statements and Blind Trusts.

### **Recommendation 8**

9(5) Subsection (2) does not apply if the member has entrusted his or her interest in the partnership or corporation to one or more trustees in a blind trust or a blind management agreement.

## **V. TRUSTS (BLIND AND MANAGEMENT)**

The following provisions deal with trusts:

#### **Definitions**

1 In this Act

“blind trust” means a trust that meets the requirements of section 3;

#### **Blind trust**

3 For the purposes of this Act, a trust is a blind trust if a member entrusts his or her interest in the property in the trust 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) subject to paragraph (e), annually, the trustees shall give the Commissioner a written report stating the nature of the assets in the trust, the trust's net income for the preceding year and the trustees' fees, if any;

(e) where the assets in a trust consist of securities, stocks, futures or commodities, the trustees annually give the Commissioner and the member a written report stating the value, but not the nature, of the assets in the trust; and

(f) with respect to the assets described in paragraph (e), the trust shall provide that the member may, at any time, instruct the trustees to liquidate all or part of the trust and pay the proceeds over to the member.

#### **Contracts with the Crown**

9(2) No member shall have an interest in a partnership or private corporation or be the officer or director of a corporation that is a party to a contract with the Crown under which the partnership or corporation receives a benefit.

9(5) Subsection (2) does not apply if the member has entrusted his or her interest in the partnership or corporation to one or more trustees in a blind trust.

#### **Prohibited activities**

14(1) A member of the Executive Council shall not

(c) carry on business through a partnership or sole proprietorship,

(d) hold or trade in securities, stocks, futures or commodities, or

#### **Blind trust**

14(3) A member of the Executive Council may comply with paragraphs (1)(c) or (d) if the member entrusts his or her interest in the property to one or more trustees in a blind trust.

#### **Private disclosure statement**

18(5) The following is not required to be disclosed in a private disclosure statement with respect to a member or the member's spouse or minor children:

(e) any property that has been placed in a blind trust.

#### Discussion

As discussed in the sections dealing with Ministers, Disclosure Statements and Contract with the Crown, the term "blind management agreement" should be added where the term "blind trust" is used.

#### **Recommendation 9**

1 In this Act

“blind trust” and blind management agreement means a trust that meets the requirements of section 3;

**Blind trust**

3 For the purposes of this Act, a trust is a blind trust or blind management agreement if a member entrusts his or her interest in the property in the trust to one or more trustees on the following terms:

9(5) Subsection (2) does not apply if the member has entrusted his or her interest in the partnership or corporation to one or more trustees in a blind trust or blind management agreement.

14(3) A member of the Executive Council may comply with paragraphs (1)(c) or (d) if the member entrusts his or her interest in the property to one or more trustees in a blind trust or blind management agreement.

18(5) The following is not required to be disclosed in a private disclosure statement with respect to a member or the member’s spouse or minor children:

- (e) any property that has been placed in a blind trust or blind management agreement.

Discussion

As stated in the Ministers section, selling a business interest would also be an acceptable mechanism for the compliance with paragraphs 14(1) (c) or (d).

**Recommendation 10**

14(3) A member of the Executive Council may comply with paragraphs (1)(c) or (d) if the member divest his or her business interest or entrusts the business interest in the property to one or more trustees in a blind trust or blind management agreement.

VI. OBLIGATIONS

The following provisions deal with the obligations of members:

**Conflict of interest**

4 A member shall not make a decision or participate in making a decision in the execution of his or her office if the member knows or reasonably should know that in the making of the decision there is the opportunity to further the member’s private interest or to further another person’s private interest.

**Insider information**

5(1) A member shall not use information that is obtained in his or her capacity as a member and that is not available to the general public to further or to seek to further the member’s private interest or to further or seek to further another person’s private interest.

5(2) A member shall not 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.

### **Influence**

6 A member shall not use his or her office to seek to influence a decision made by another person so as to further the member's private interest or to further another person's private interest.

### **Activities on behalf of constituents**

7 This Act does not prohibit the activities in which members of the Assembly normally engage on behalf of constituents.

### **Procedure on conflict of interest**

15 A member of the Executive Council who has reason to believe that he or she has a conflict of interest with respect to a matter that requires that member's decision shall report that possible conflict to the President of the Executive Council and ask the Premier or Deputy Premier to appoint another member of the Executive Council to perform the member's duties in the matter for the purpose of making the decision, and the member who is appointed may act in the matter for the period of time necessary for the purpose.

### Discussion

The Canadian Federal Public Service<sup>xxiii</sup> and other jurisdictions such as Alberta, Saskatchewan, Yukon<sup>xxiv</sup> and British Columbia<sup>xxv</sup> have recognized that the appearance of conflicts of interest must be avoided if public confidence in government is to be restored. Provisions have therefore been incorporated in their legislation to deal specifically with the appearance of conflicts of interest. Even the City of Toronto has incorporated such prohibitions in its legislation.

As discussed previously, New Brunswick also shares the view that the appearance of conflict of interests should be avoided<sup>xxvi</sup>. Thus, provisions should be included in the Act to deal with this. In particular, section 4 of the Act should be amended as follows:

### **Recommendation 11**

#### **Conflict of interest**

4 A member shall not make a decision or participate in making a decision in the execution of his or her office if the member knows or reasonably should know that in the making of the decision that

(a) there is the opportunity to further the member's private interest or to further another person's private interest; or

(b) there is a reasonable perception, which a reasonably well informed person could properly have, that there is the opportunity to further the member's private interest or to further another person's private interest.

### Discussion

The purpose of section 6 is to prohibit the use of influence in the decision making process. The wording in the Act only encompasses decisions made in the past. For clarity, this provision should be amended to apply to all decisions.

Section 4 of the Ontario *Members' Integrity Act*<sup>xxvii</sup> is identical to section 6 of our Act but includes the words: "or to be made" as does section 11 of the Prince Edward Island *Conflict of Interest Act*<sup>xxviii</sup> which broadens the application of the provision to "all" decisions. The same wording should be used in our Act.

### **Recommendation 12**

#### **Influence**

6 A member shall not use his or her 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 to further another person's private interest.

#### **Discussion**

Canadian federal legislation<sup>xxix</sup>, Ontario legislation<sup>xxx</sup> and the City of Toronto's legislation<sup>xxxi</sup> also include prohibitions regarding the provision of preferential treatment. In order to avoid real or apparent conflicts of interest, similar provisions should be included in our legislation.

### **Recommendation 13**

#### **Giving preferential treatment**

6.1 (1) When performing his or her duties to the Crown, a member shall not give preferential treatment to any person or party, including a person or party in which the member or a member of his or her family or a friend has an interest.

(2) When performing his or her duties to the Crown, a member shall endeavour to avoid creating the appearance that preferential treatment is being given to a person or party that could benefit from it.

(3) A member shall not offer assistance to a person or party in dealing with the Crown other than assistance given in the ordinary course of the member's employment.

#### **Seeking preferential treatment**

6.2 A former member shall not seek preferential treatment by, or privileged access to, members, a ministry or a public body.

#### **Discussion**

Section 15 should be amended to include the appearance of a conflict of interest for the reasons outlined.

### **Recommendation 14**

#### **Procedure on conflict of interest or appearance of conflict of interest**

15 A member of the Executive Council who has reason to believe that he or she has a real or apparent conflict of interest with respect to a matter that requires that member's decision shall report that possible conflict to the President of the Executive Council and ask the Premier or Deputy Premier to appoint another member of the Executive Council to perform the member's duties in the matter for the purpose of making the decision, and the member who is appointed may act in the matter for the period of time necessary for the purpose.

## VII. ADVICE AND RECOMMENDATIONS

Section 30 of the Act provides the following:

### **Advice and recommendations**

30(1) A member or former member may request the Commissioner to give advice and recommendations on any matter respecting the obligations of the member or former member under this Act.

30(2) The Commissioner may make such inquiries that the Commissioner considers appropriate and shall provide the member or former member with written advice and recommendations which

(a) shall state the material facts either expressly or by incorporating the facts provided by the member or former member,

(b) shall be based on the facts referred to in paragraph (a), and

(c) may be based on any other considerations the Commissioner considers appropriate.

30(3) The advice and recommendations of the Commissioner are confidential until released by the member or former member or with his or her consent.

30(4) If a member or former member has, with respect to the advice and recommendations,

(a) communicated the material facts to the Commissioner, and

(b) complied with any recommendations contained in the advice and recommendations of the Commissioner, no proceeding or prosecution shall be taken against the member or former member under this Act by reason only of the facts so communicated and the member's or former member's compliance with the recommendations.

30.1(1) The Premier may request the Commissioner to give advice and recommendations on any matter respecting the obligations under this Act of a member of the Executive Council.

30.1(2) The Commissioner may make such inquiries that the Commissioner considers appropriate and shall provide the Premier with written advice and recommendations which

(a) shall state the material facts either expressly or by incorporating the facts provided by the Premier,

(b) shall be based on the facts referred to in paragraph (a), and

(c) may be based on any other considerations the Commissioner considers appropriate.

30.1(3) The advice and recommendations of the Commissioner are confidential unless released by the Premier or with his or her consent.

## Discussion

The purpose of this provision is to enable the Commissioner to provide advice and recommendations to the Premier (s. 30.1(1)) and to the members (s. 30(1)) on any matter dealing with their obligations under this Act. The specific facts of each case will not only determine the relevance and application of the provisions of the Act, but they will also be determinative of the advice and recommendations given.

The advice will only be useful to the Premier or the member seeking the advice if the relevant issues and factual background are considered in its preparation. It should also be noted that although in certain instances, the background and issues of a matter may appear clear to the individual requesting the advice or recommendation, the possibility of miscommunication or misunderstanding could result in the provision of unsatisfactory advice or recommendations that do not necessarily address the specific issues of the case.

A written request for advice ensures a clear understanding of the material facts and specific issues which are relevant to the case and also enables the Commissioner to identify other specific information which may be relevant to the advice. The Commissioner should therefore be authorized to require that the request for advice be in writing in order to ensure that the Premier's or member's specific issues are addressed precisely.

### **Recommendation 15**

30(2) The Commissioner may require that the member's request be made in writing and the Commissioner may make such inquiries that the Commissioner considers appropriate and shall provide the member or former member with written advice and recommendations which

(a) shall state the material facts either expressly or by incorporating the facts provided by the member or former member,

(b) shall be based on the facts referred to in paragraph (a), and

(c) may be based on any other considerations the Commissioner considers appropriate.

30.1(2) The Commissioner may require that the Premier's request be made in writing and the Commissioner may make such inquiries that the Commissioner considers appropriate and shall provide the Premier with written advice and recommendations which

(a) shall state the material facts either expressly or by incorporating the facts provided by the Premier,

(b) shall be based on the facts referred to in paragraph (a), and

(c) may be based on any other considerations the Commissioner considers appropriate.

## VIII. COMMISSIONER

Section 22 of the Act deals with the appointment of the Commissioner:

### **Appointment**

**22(1)** There shall be a Conflict of Interest Commissioner who shall be appointed by the Lieutenant- Governor in Council on recommendation of the Assembly.

**22(1.1)** The Commissioner is an officer of the Assembly.

**22(2)** The Premier shall consult with the leader of the opposition and the leaders of the other political parties in the Assembly before a recommendation is made under subsection (1).

**22(3)** The person appointed shall hold office for a term of five years and may be reappointed.

**22(4)** The person appointed continues to hold office after the expiry of the term until reappointed, or until a successor is appointed.

### Discussion

The term of appointment varies from jurisdiction to jurisdiction from four to seven years.<sup>xxxii</sup> For instance, the Senate Ethics Commissioner's term of seven years is pursuant to s. 20.2 of the *Conflict of Interest Code for Senators*:

**20.1** The Governor in Council shall, by commission under the Great Seal, appoint a Senate Ethics Officer after consultation with the leader of every recognized party in the Senate and after approval of the appointment by resolution of the Senate.

**20.2 (1)** The Senate Ethics Officer holds office during good behaviour **for a term of seven years** and may be removed for cause by the Governor in Council on address of the Senate. He or she may be reappointed for one or more terms of up to seven years each.

(2) In the event of the absence or incapacity of the Senate Ethics Officer, or if that office is vacant, the Governor in Council may appoint a qualified person to hold that office in the interim for a term of up to six months. [Emphasis added.]

The term of office for the Conflict of Interest and Ethics Commissioner of the House of Commons is also seven years pursuant to the *Parliament of Canada Act*:

**81. (1)** The Governor in Council shall, by commission under the Great Seal, appoint a Conflict of Interest and Ethics Commissioner after consultation with the leader of every recognized party in the House of Commons and approval of the appointment by resolution of that House.

(2) In order to be appointed under subsection (1), a person must be  
(a) a former judge of a superior court in Canada or of any other court whose members are appointed under an Act of the legislature of a province;

(b) a former member of a federal or provincial board, commission or tribunal who, in the opinion of the Governor in Council, has demonstrated expertise in one or more of the following:

- (i) conflicts of interest,
  - (ii) financial arrangements,
  - (iii) professional regulation and discipline,
- or
- (iv) ethics; or

(c) a former Senate Ethics Officer or former Ethics Commissioner.

(3) The Commissioner is eligible to be reappointed for one or more **terms of up to seven years each**. [Emphasis added.]

To demonstrate transparency, impartiality and the public interest, the term of appointment of the Commissioner should be seven years so that it does not coincide with the dates of general elections thus avoiding the appearance of a political affiliation in the appointment.

### **Recommendation 16**

22(3) The person appointed shall hold office for a term of seven years and may be reappointed.

### **Discussion**

Section 25 of the Act deals with vacancy:

#### **Vacancy**

25(1) The Lieutenant-Governor in Council may appoint an acting Commissioner if

(a) the office of Commissioner becomes vacant during a sitting of the Assembly, but the Assembly does not make a recommendation under section 22 before the end of the sitting, or

(b) the office of Commissioner becomes vacant while the Assembly is not sitting.

25(2) The appointment of the acting Commissioner comes to an end when a new Commissioner is appointed under section 22.

25(3) 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 Commissioner is again able to act or when the office becomes vacant.

#### **Confidentiality**

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

(a) by the person to whom the information relates or with his or her consent,

(b) in a criminal proceeding, as required by law, or

(c) for the purposes of this Act.

### Discussion

Subsection 25(2) deals with situations in which the Commissioner is unable to act because of illness. It does not address the possibility of the Commissioner's inability or unavailability to act or for any other reason such as a conflict of interest. Under such circumstances, the Commissioner's duties related to the issue should be assigned to an impartial decision-maker in order to assure fairness and objectivity.

This can be done by authorizing the Conflict of Interest Commissioner to appoint a "Special" Conflict of Interest Commissioner on the recommendation of the Lieutenant-Governor in Council to act with respect to the issue.

In the alternative, the "designated judge" under the *Conflict of Interest Act* could be authorized to act in such circumstances. The various time constraints already affecting the "designated judge" created by the execution of judicial responsibilities along with those related to the administration of the *Conflict of Interest Act*, does not make this the best alternative.

### Recommendation 17

#### **First Alternative:**

25(3) If the Commissioner is unable to act because of

(a) illness, the Lieutenant-Governor in Council may appoint an acting Commissioner, whose appointment comes to an end when the Commissioner is again able to act or when the office becomes vacant; or

(b) any reason for which the Commissioner determines that he or she should not or cannot act in respect of any particular matter under this Act, the Commissioner, on the recommendation of the Lieutenant-Governor in Council may appoint a Special Commissioner to act in the place of the Commissioner in respect of that matter.

(c) A Special Commissioner holds office until the conclusion of the matter in respect of which he or she has been appointed.

#### **Second Alternative:**

25(3) If the Commissioner is unable to act because of

(a) illness, the Lieutenant-Governor in Council may appoint an acting Commissioner, whose appointment comes to an end when the Commissioner is again able to act or when the office becomes vacant; or

(b) any reason for which the Commissioner determines that he or she should not act in respect of any particular matter under this Act, the designated judge

under the *Conflict of Interest Act* shall act with respect to that matter.

### Discussion

Section 33 stipulates that the information disclosed to the Commissioner is confidential. This provision should be expanded to include its application to former Commissioners who otherwise might be at liberty to disclose confidential information upon completion of their term. For consistency with other relevant legislation dealing with confidentiality, a provision should also be included outlining exceptions to this rule.

### **Recommendation 18**

#### **Confidentiality**

33 Except as otherwise permitted under this Act or by law, the Information disclosed to the Commissioner or former Commissioner under this Act is confidential and shall not be disclosed to any person except

- (a) by the person to whom the information relates or with his or her consent,
- (b) in a criminal proceeding, as required by law, or
- (c) for the purposes of this Act.

### **IX. GIFTS AND BENEFITS**

Section 8 deals with gifts and benefits:

8(1) A member shall not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of the member's duties of office.

8(2) Subsection (1) does not apply to a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office.

8(3) Where a gift or personal benefit mentioned in subsection (2) is greater than two hundred and fifty dollars in value, or where the total value received from one source in any twelve month period is greater than two hundred and fifty dollars, the member shall file a gift disclosure statement with the Commissioner without delay.

8(4) The gift disclosure statement shall

(a) be in the form prescribed by the Commissioner, and

(b) indicate the nature of the gift or personal benefit, its source and the circumstances under which it was given and accepted.

### **Observations**

1. To accept that the figure of \$250 is the basic criterion for determining whether something received is a gift is a false criterion. If the gift is inappropriate, the value is not the determinative factor, appropriateness is the determinative factor. If the gift is

inappropriate it remains inappropriate at any amount \$1, \$X, or even no dollars. Remember: “gift” includes any benefit.

2. It is worthwhile to inform the Commissioner of the gift or intended gift for the purpose of clarification of its status. Your best course of action is prevention.

### Discussion

In order to avoid the appearance of a conflict of interest, the legislation should clearly prohibit the member’s spouse or dependants from accepting gifts or benefits. Otherwise, the perception of a back door approach to exert influence would persist.

### **Recommendation 19**

8(1) A member, the member’s spouse, common-law partner, child, sibling, parent or dependant shall not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of the member’s duties of office.

### **X. DISCLOSURE STATEMENTS**

The relevant provisions in the Act dealing with disclosure are the following:

8(3) Where a gift or personal benefit mentioned in subsection (2) is greater than two hundred and fifty dollars in value, or where the total value received from one source in any twelve month period is greater than two hundred and fifty dollars, the member shall file a gift disclosure statement with the Commissioner without delay.

8(4) The gift disclosure statement shall

(a) be in the form prescribed by the Commissioner, and

(b) indicate the nature of the gift or personal benefit, its source and the circumstances under which it was given and accepted.

#### **Private disclosure statement**

18(1) Every member shall file with the Commissioner a private disclosure statement in the form provided by the Commissioner.

18(2) A private disclosure statement shall be filed

(a) within sixty days after becoming a member of the Assembly,

(b) within sixty days after being appointed to the Executive Council, if the member has not filed a current disclosure statement as a member of the Assembly, and

(c) in each subsequent year at the time specified by the Commissioner.

18(3) Every person who is a member on the coming into force of this section shall file a private disclosure statement within sixty days after the coming into force of this section.

18(4) Subject to subsection (5), a private disclosure statement shall contain  
(a) a statement of the nature of the assets, liabilities and financial and business interests of the member and, so far as is known by the member, of the member's spouse and minor children, and of private controlled by the member, the member's spouse and minor children, or any of them, and

(b) any salary, financial assistance or other benefit the member has received from a registered political party or a registered district association during the preceding twelve months, or is likely to receive during the next twelve months.

18(5) The following is not required to be disclosed in a private disclosure statement with respect to a member or the member's spouse or minor children:

(a) the primary residence owned or controlled by any such person;

(b) the primary recreational property owned or controlled by any such person;

(c) automobiles owned or controlled by any such person;

(d) items of domestic, household or personal use or ownership, including cash, non-convertible bonds, trust and bank certificates and registered retirement savings plans which are not self-administered; and

(e) any property that has been placed in a blind trust.

18(6) After a private disclosure statement is filed under this section, the Commissioner shall consult with the member, and the member's spouse, if available, to ensure that adequate disclosure has been made and to provide advice on the member's obligations under this Act.

18(7) A member shall file a statement of material change with the Commissioner, in the form provided by the Commissioner, within thirty days

(a) after a change in the assets, liabilities or financial or business interests of the member or his or her spouse and minor children, or any private corporation controlled by any of them,

(b) after a change in the salary, financial assistance or benefits received by the member from a registered political party or registered district association, or

(c) after an event causes a person to become or cease to be a member of the member's family,

if the change or event would reasonably be expected to have a significant effect on the information previously disclosed.

**Failure to file private disclosure statement**

19(1) Where a member fails to file a private disclosure statement within the period of time prescribed in subsection 18(2), the Commissioner shall request the member to file the statement by a date specified by the Commissioner.

19(1.1) Where a member fails to consult with the Commissioner under subsection 18(6), the Commissioner shall request the member to appear for consultation by a date specified by the Commissioner.

19(2) Where a member fails to file a private disclosure statement by the date specified by the Commissioner under subsection (1) or fails to appear for consultation by the date specified by the Commissioner under subsection (1.1), the Commissioner shall prepare a report with the name of the member concerned and file it with the Speaker, who shall table the report before the Assembly if it is then sitting, or if it is not sitting, within fifteen days after it next sits.

**Public disclosure statement**

20(1) After consulting with the member under subsection 18(6), the Commissioner shall prepare a public disclosure statement on the basis of the information provided by the member.

20(2) A public disclosure statement shall

(a) subject to subsection (5), state the source and nature, but not the value, of the assets, liabilities and financial and business interests referred to in subsection 18(4),

(b) state any salary, financial assistance or other benefit the member has received from a registered political party or a registered district association during the preceding twelve months, or is likely to receive during the next twelve months, and

(c) state any gifts or benefits that have been disclosed to the Commissioner by the member under subsection 8(2) within the preceding twelve months.

20(3) The Commissioner may identify the value of assets, liabilities and financial and business interests as nominal, significant or controlling if, in the opinion of the Commissioner, such knowledge is necessary to protect the public interest.

20(4) In the case of a member of the Executive Council, the public disclosure statement shall also state whether the member has obtained the Commissioner's approval under subsection 14(2) for an activity that would otherwise be prohibited and, if the member has done so, shall

(a) describe the activity, and

(b) in the case of a business activity, list the name and address of each person who has a ten per cent or greater interest in the business, and describe the person's relationship to the member.

20(5) The following assets, liabilities and financial and business interests shall not be shown in the public disclosure statement:

(a) an asset or liability worth less than two thousand five hundred dollars;

(b) an interest in a pension plan, employee benefit plan, annuity or life insurance policy;

(c) an investment in an open-ended mutual fund that has broadly based investments not limited to one industry or one sector of the economy; and

(d) any other asset, liability or financial or business interest that the Commissioner approves for exclusion.

20(6) The Commissioner may withhold information from the public disclosure statement if, in his or her opinion,

(a) the information is not relevant to the purpose of this Act, and

(b) a departure from the general principle of public disclosure is justified.

20(7) The Commissioner shall file the public disclosure statement with the Clerk of the Legislative Assembly.

20(8) The Clerk of the Legislative Assembly shall make each public disclosure statement available for public inspection during the normal business hours of the office of the Clerk and shall provide a copy of it to any person who pays the reasonable copying fee fixed by the Clerk.

### Discussion

In Ontario, the members' public disclosure statements are available from the Office of the Integrity Commissioner's web site<sup>xxxiii</sup>. These public disclosure statements should be easily accessible by public if transparency and growing public confidence in government are the objective.

### **Recommendation 20**

Once filed with the Clerk of the Legislature, the public disclosure statements should be available on the Office of the Conflict of Interest web site for public access.

### Discussion

Further to the recommendation 19, the gift disclosure statement should also apply to the member's spouse or dependants.

### **Recommendation 21**

8(3) Where a gift or personal benefit mentioned in subsection (2) is greater than two hundred and fifty dollars in value, or where the total value received from one source in any twelve month period is greater than two hundred and fifty dollars, the member shall file a gift disclosure statement with the Commissioner without delay.

8(4) The gift disclosure statement shall for every gift given to the member, the member's spouse or any of his or her dependants,

(a) be in the form prescribed by the Commissioner,

(b) indicate the nature of the gift or personal benefit, its source and the circumstances under which it was given and accepted, except

(i) gifts from a family member,

(ii) gifts disclosed in any previous statement filed under section 18, and (iii) gifts

received before the member was first elected to the Legislative Assembly.

### Discussion

Subsection 18(4) outlines the required contents for the disclosure statement. In order to provide complete information, it should specify whether there are arrears of maintenance payable including legal costs interest and penalties in respect of a maintenance order or agreement. If a private corporation is mentioned in the statement, it should also specify the names of any other corporation with which that corporation is affiliated as is done in the House of Commons legislation.

### **Recommendation 22**

18(4) Subject to subsection (5), a private disclosure statement shall

(a) contain statement of the nature of the assets, liabilities and financial and business interests of the member and, so far as is known by the member, of the member's spouse and minor children, and of private corporations controlled by the member, the member's spouse and minor children, or any of them, and

(b) specify any salary, financial assistance or other benefit the member has received from a registered political party or a registered district association during the preceding twelve months, or is likely to receive during the next twelve months.

(c) specify whether the Member is in arrears of maintenance payable, including legal costs, interest and penalties, in respect of a maintenance order or agreement,

18(4.1) If a statement mentions a private corporation, it shall state the names of any other corporations with which that corporation is affiliated.

### Discussion

As discussed in the Ministers, Contract with the Crown and Blind Trusts sections, the term "blind management agreement" should be added in the legislation where blind trusts apply.

### **Recommendation 23**

18(5) The following is not required to be disclosed in a private disclosure statement with respect to a member or the member's spouse or minor children:

(a) the primary residence owned or controlled by any such person;

(b) the primary recreational property owned or controlled by any such person;

(c) automobiles owned or controlled by any such person;

(d) items of domestic, household or personal use or ownership, including cash, non-convertible bonds, trust and bank certificates and registered retirement savings plans which are not self-administered; and

(e) any property that has been placed in a blind trust or in a blind management agreement.

### **Discussion**

Legislation in Nova Scotia stipulates that the disclosure statement must disclose any trust established for the member or the member's spouse or dependent children, or any trust from which a payment is made to the member or the member's spouse or dependent children and the names of the trustees and the contributors to any such trust, other than a trust established by the member or the member's spouse for the member's dependent children.<sup>xxxiv</sup>

A similar provision should be included in our legislation.

### **Recommendation 24**

18(8) The appropriate disclosure statement shall disclose any trust established for the member or the member's spouse or dependent children, or any trust from which a payment is made to the member or the member's spouse or dependent children and the names of the trustees and the contributors to any such trust, other than a trust established by the member or the member's spouse for the member's dependent children.

## **XI. INVESTIGATIONS/OPINIONS**

The following provisions deal with investigations:

### **Request for investigation**

36(1) Any person may request in writing that the Commissioner investigate an alleged breach of this Act by a member.

36(2) A request under subsection (1) shall be in the form of an affidavit and shall set out the grounds for the belief and the nature of the alleged breach.

36(3) The Assembly may, by resolution, request that the Commissioner investigate any matter respecting an alleged breach of this Act by a member.

36(4) Where a matter has been referred to the Commissioner under this section, neither the Assembly nor a committee of it shall inquire into the matter.

### **Investigation and inquiry**

37(1) On receiving a request under section 36, the Commissioner may conduct an investigation with or without conducting an inquiry.

37(2) The Commissioner shall provide the member who is the subject of the investigation with reasonable notice and shall give the member an opportunity to respond to the allegation.

37(2.1) When the Commissioner conducts an investigation or an inquiry under this section, the member who is the subject of the request under section 36 shall respond promptly and completely to all of the Commissioner's questions and requests for information.

37(3) Where the Commissioner elects to conduct an inquiry under this section, the Commissioner has all the powers, privileges and immunities conferred on a commissioner under the *Inquiries Act*.

37(4) If the Commissioner is of the opinion that the request is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the Commissioner may refuse to conduct an investigation, or may cease the investigation.

37(5) If the Commissioner refuses to conduct an investigation or ceases an investigation, the Commissioner shall inform

(a) the member against whom the allegation was made, and

(b) the person who made the request or, if the request was made by the Assembly, the Speaker.

### Discussion

Having all relevant information dealing with an investigation brought forth during the course of an investigation is in everyone's best interest. Since individuals may be reticent to speak out for fear of retaliation, provisions should be included in the Act to provide protection to such individuals. This would encourage them to come forth and give information and/or testify before the Conflict of Interest Commissioner. This amendment would bring this Act in line with the provisions of the *Public Interest Disclosure Act*.<sup>xxxv</sup>

The power imbalance between employee and employer can be addressed by the imposition of a fine for retaliatory behavior.

### **Recommendation 25**

37.1 (1) No person who, in good faith, provides information to or testifies before the Commissioner is liable for loss or damage caused by the provision of the information or the testimony.

(2) No one, shall directly or indirectly take or threaten any action with respect to the employment of a person because the person has, in good faith, provided information to or testified before the Commissioner.

(3) A person who contravenes subsection (1) is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding \$10,000.

### Discussion

A provision should be included in our legislation which would authorize a former member who was the subject of an investigation or inquiry to request that the investigation be completed in order to clear his or her name.

### **Recommendation 26**

36(5) An investigation or inquiry of a Member who ceases to be a Member is permanently suspended unless the former Member requests that the investigation or inquiry be completed.

36(6) Where it appears to the Commissioner that a report may adversely affect a member or former member, the Commissioner shall inform the member or former member of the particulars and give the member the opportunity to make representations before the Commissioner completes the report.

## **XII. POST EMPLOYMENT**

The following provisions in our legislation deal with post employment restrictions:

### **Restrictions applicable to Executive**

16(1) The Executive Council or a member of the Executive Council shall not knowingly award a contract to or approve a contract with, or grant a benefit to, a former member of the Executive Council until twelve months have expired after the date on which the former member ceased to hold office.

16(2) Subsection (1) does not apply

(a) to contracts or benefits with respect to further duties in the service of the Crown, or

(b) if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.

### **Restrictions applicable to former members**

17(1) No former member of the Executive Council shall, unless twelve months have expired after the date when he or she ceased to hold office as a member of the Executive Council,

(a) accept a contract or benefit that is awarded, approved or granted by the Executive Council, a member of the Executive Council or an employee of a department or office of the Government of New Brunswick or a Crown corporation, or

(b) make representations on his or her own behalf or on behalf of any other person with respect to a contract or benefit.

### **Exceptions**

17(2) Subsection (1) does not apply

(a) to contracts or benefits with respect to further duties in the service of the Crown, or

(b) if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.

### **Penalty**

17(3) A person who violates or fails to comply with subsection (1) commits an offence punishable under Part II of the *Provincial Offences Procedure Act* as a Category I offence.

### Discussion

Other jurisdictions include additional provisions.<sup>xxxvi</sup> For instance, the House of Commons imposes post employment restrictions for a period of two years rather than 12 months as is the case in New Brunswick:

28. Subject to section 29, and to the object of this Code, former public office holders, except for ministers for whom the prescribed period is two years, shall not, within a period of one year after leaving office:

(1) accept services contracts, appointment to a board of directors of, or employment with, an entity with which they had direct and significant official dealings during the period of one year immediately prior to the termination of their service in public office; or

(2) (a) make representations whether for remuneration or not, for or on behalf of any other person or entity to any department, organization, board, commission or tribunal with which they had direct and significant official dealings during the period of one year immediately prior to the termination of their service in public office; and

(b) in the case of former ministers, make representations to a minister in the Cabinet who had been a Cabinet colleague of the former minister;

provided that nothing in this section will act so as to prevent a former minister or parliamentary secretary from engaging in activities which, as a member of Parliament, he or she is normally asked to carry out on behalf of constituents.

Extending the time period to two years would reduce the possibilities of apparent or real conflicts of interest arising by ensuring that there is greater distance between the government and the former Minister.

### **Recommendation 27**

#### **Restrictions applicable to Executive**

16(1) The Executive Council or a member of the Executive Council shall not knowingly award a contract to or approve a contract with, or grant a benefit to, a former member of the Executive Council until 2 years have expired after the date on which the former member ceased to hold office.

17(1) No former member of the Executive Council shall, unless two years have expired after the date when he or she ceased to hold office as a member of the Executive Council,

(a) accept a contract or benefit that is awarded, approved or granted by the Executive Council, a member of the Executive Council or an employee of a department or office of the Government of New Brunswick or a Crown corporation, or

(b) make representations on his or her own behalf or on behalf of any other person with respect to a contract or benefit.

### Discussion

The House of Commons incorporates post employment provisions that apply to all public office holders:

3. Every public office holder shall conform to the following principles:

(10) Public office holders shall not act, after they leave public office, in such a manner as to take improper advantage of their previous office.

27. Public office holders shall not act, after they leave public office, in such a manner as to take improper advantage of their previous public office. Observance of this Part will minimize the possibilities of:

- (a) allowing prospects of outside employment to create a real, potential or apparent conflict of interest for public office holders while in public office;
- (b) obtaining preferential treatment or privileged access to government after leaving public office;
- (c) taking personal advantage of information obtained in the course of official duties and responsibilities until it has become generally available to the public; and
- (d) using public office to unfair advantage in obtaining opportunities for outside employment.

29. (1) At no time shall a former public office holder switch sides by acting for or on behalf of any person, commercial entity, association or union in connection with any specific ongoing proceeding, transaction, negotiation or case to which the Government is a party and where the former public office holder acted for or advised the Government.

(2) Nor shall former public office holders give advice to their clients using information that is not available to the public concerning the programs or policies of the departments with which they were employed, or with which they had a direct and substantial relationship.

Similar provisions should be incorporated in our legislation. Doing so could diminish the likelihood of improper conduct and increase public confidence in its members.

### **Recommendation 28**

16(3) Members shall not act, after they leave public office, in such a manner as to take improper advantage of their previous office.

16(4) Members shall not act, after they leave public office, in such a manner as to take improper advantage of their previous public office. Observance of this provision will minimize the possibilities of:

- (a) allowing prospects of outside employment to create a real or apparent conflict of interest for members while in public office;
- (b) obtaining preferential treatment or privileged access to government after leaving public office;
- (c) taking personal advantage of information obtained in the course of official duties and responsibilities until it has become generally available to the public; and
- (d) using public office to unfair advantage in obtaining opportunities for outside employment.

16(5) At no time shall a former member switch sides by acting for or on behalf of any person, commercial entity, association or union in connection with any specific ongoing proceeding, transaction, negotiation or case to which the Government is a party and where the former member acted for or advised the Government.

16(6) Nor shall former member give advice to their clients using information that is not available to the public concerning the programs or policies of the departments with which they were employed, or with which they had a direct and substantial relationship.<sup>xxxvii</sup>

### **Discussion**

Because there is no legislation in effect in the province prohibiting or regulating lobbying, we recommend that a provision such as the one incorporated in the Standing Orders of The House of Commons be incorporated in our legislation:

- 29.(1) In addition to the limitations set out in section 28, former ministers, senior public servants and ministerial staff designated under section 24 may not act as consultant lobbyists, or accept employment as in-house lobbyists, for a period of five years after leaving public office.
- (2) For the purposes of this section, acting as a “consultant lobbyist” means engaging in any activity for which subsection 5(1) of the *Lobbyists Registration Act* requires a return to be filed, and accepting employment as an “in-house lobbyist” means accepting any employment for which subsection 7(1) of that Act requires a return to be filed.

## **Recommendation 29**

14(5) In addition to the limitations set out in section 16, former Ministers may not act as lobbyists, or accept employment as in-house lobbyists, for a period of five years after leaving public office.

14(6) For the purposes of 14(5) “lobbyist” means to communicate with a public office holder in an attempt to influence

(a) the development of any legislative proposal by the Government of New Brunswick or by a member of the Legislative Assembly,

(b) the introduction of any bill or resolution in the Legislative Assembly or the passage, defeat or amendment of any bill or resolution that is before the Legislative Assembly,

(c) a decision by the Executive Council to transfer from the Crown for consideration all or part of, or any interest in or asset of, any business, enterprise or institution that provides goods or services to the Crown or to the public,

(d) a decision by the Executive Council, a committee of the Executive Council or a minister of the Crown to have the private sector instead of the Crown provide goods or services to the Crown,

(e) the awarding of any grant, contribution or other financial benefit by or on behalf of the Crown.

## **XIII. MISCELLANEOUS DEFINITIONS**

Section 1 of the Act outlines the following definitions:

### **Definitions**

**1** In this Act

“Assembly” means the Legislative Assembly of New Brunswick;

“blind trust” means a trust that meets the requirements of section 3;

“child” includes a child to whom a member has demonstrated a settled intention to treat as a child of his or her family;

“Commissioner” means the Conflict of Interest Commissioner appointed under section 22;

“Crown” means Her Majesty the Queen in right of New Brunswick and includes Crown corporations;

“member” means a member of the Legislative Assembly and includes a member of the Executive Council;

“private corporation” means a corporation none of whose shares are publicly traded securities;

“private interest” does not include an interest in a matter

(a) that is of general public application,

(b) that affects a person as one of a broad class of persons, or

(c) that concerns the remuneration and benefits of a member or an officer or employee of the Assembly;

“registered district association” means a district association that has been registered under section 135 of the *Elections Act*;

“registered political party” means a political party that has been registered under section 133 of the *Elections Act*;

“Speaker” means the Speaker of the Legislative Assembly of New Brunswick;

“spouse” means a person who is married to a member or a person who, not being married to a member, is co-habiting in a conjugal relationship with the member, but does not include a person who, being married to a member, is separated and living apart from the member and who

(a) has entered into a written agreement with the member under which they have agreed to live apart, or

(b) is subject to an order of the court recognizing the separation.

### Discussion

The definition of blind trust should also include “blind management agreement” for the reasons discussed in the sections dealing with Ministers, Contracts with the Crown, Disclosure Statements and Blind Trusts.

### **Recommendation 30**

“blind trust” or “blind management agreement” means a trust or agreement that meets the requirements of section 3;

### Discussion

Other jurisdictions include definitions which are not included in our legislation.<sup>xxxviii</sup> Of particular interest are the definitions of conflict of interest and apparent conflict of interest outlined in British Columbia’s *Members’ Conflict of Interest Act*:

2 (1) For the purposes of this Act, a member has a conflict of interest when the member exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that in the performance of the duty or function or in the exercise of the power there is the opportunity to further his or her private interest.

(2) For the purposes of this Act, a member has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest.

Similar provisions should be incorporated in our statute.

### **Recommendation 31**

“conflict of interest” occurs where a member has a conflict of interest when the member exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that in the performance of the duty or function or in the exercise of the power there is the opportunity to further his or her private interest.

“apparent conflict of interest” occurs where a member has an apparent conflict of interest if there is a reasonable perception that the member's exercise of an official power or ability to perform an official duty or function must have been affected by his or her private interest.

## **D. PROVISIONS CONSIDERED/NO RECOMMENDATIONS**

### **XIV. MISCELLANEOUS PROVISIONS**

The following are miscellaneous provisions contained in the Act:

#### **MISCELLANEOUS**

Review of Act  
2003, c.8, s.9.

43.1(1) The Commissioner shall initiate a review of this Act within five years after the coming into force of this section and subsequently within five years after each time the committee submits a report under subsection (3).

43.1(2) When the Commissioner has completed a review under subsection (1), the Commissioner shall prepare a report on the review and submit it to the Legislative Administration Committee or to such other committee of the Assembly as may be determined by a resolution of the Assembly.

43.1(3) The committee which has received the Commissioner's report under subsection (2) shall review it and then prepare and submit a report on its review, including any recommendations for amendments to this Act, to the Assembly within one year after the committee has received the Commissioner's report.

45(1) Any application made under subsection 8(4) of the *Conflict of Interest Act* with respect to a member of the Legislative Assembly or a Cabinet Minister before the commencement of this subsection shall be disposed of in accordance with the law as it existed immediately before the commencement of this subsection.

45(2) Where a member of the Legislative Assembly or a Cabinet Minister is alleged to have a conflict of interest under the *Conflict of Interest Act* or is alleged to have not complied with the *Conflict of Interest Act*, and the alleged conflict or non-compliance occurred before the commencement of this subsection, the matter shall be dealt with in accordance with the law as it existed immediately before the commencement of this subsection.

#### **Commencement**

**46** *This Act or any provision of it comes into force on a day or days to be fixed by proclamation.*

**N.B.** Sections 22 and 26 of this Act were proclaimed and came into force February 1, 2000.

**N.B.** Sections 1-21, 23-25 and 27-45 of this Act were proclaimed and came into force May 1, 2000.

**N.B.** This Act is consolidated to December 19, 2008.

#### Discussion

Newfoundland's legislation contains provisions dealing with audits which are worthy of note.<sup>xxxix</sup> These provisions are included in the endnotes.

#### *XV. PRIVATE INTEREST*

The following provisions deal with private interest:

1 In this Act

"private interest" does not include an interest in a matter

(a) that is of general public application,

(b) that affects a person as one of a broad class of persons, or

(c) that concerns the remuneration and benefits of a member or an officer or employee of the Assembly;

#### **Conflict of interest**

4 A member shall not make a decision or participate in making a decision in the execution of his or her office if the member knows or reasonably should know that in the making of the decision there is the opportunity to further the member's private interest or to further another person's private interest.

#### **Insider information**

5(1) A member shall not use information that is obtained in his or her capacity as a member and that is not available to the general public to further or to seek to further the member's private interest or to further or seek to further another person's private interest.

#### **Influence**

6 A member shall not use his or her office to seek to influence a decision made by another person so as to further the member's private interest or to further another person's private interest.

**Contracts with the Crown**

9(4) Subsection (2) does not apply if the Commissioner is of the opinion that the interest or position of the member will not create a conflict between the member's private interest and public duty.

**XVI. OFFICES AND EMPLOYMENT**

The following provisions deal with offices and employment:

**Offices and employment**

10 A member, after being sworn in, shall not be employed by the Crown in right of Canada on a full-time basis, or be the holder of any permanent office by reason of an appointment by or at the nomination of the Governor-General in Council or a Minister of the Crown in right of Canada, and to which a salary is attached.

11(1) A member, after being sworn in, shall not be employed by the Crown in right of New Brunswick, whether the employment is permanent or temporary or on a fulltime or part-time basis, or be the holder of any office by reason of an appointment by or at the nomination of the Lieutenant-Governor in Council or a Minister of the Crown in right of New Brunswick, and to which a salary is attached.

11(2) A member does not contravene this section by reason of being appointed to an office in the member's capacity as Minister, if the member receives no remuneration as the holder of that office other than reasonable travelling and living expenses incurred in the course of serving in that office.

11(3) Employment with the Crown held under a contract of employment shall be governed by this section and not section 9.

**XVII. RECORDS MANAGEMENT /FREEDOM OF OR ACCESS TO INFORMATION**

The following are the relevant provisions which deal with records management:

**Destruction of records**

21(1) The Commissioner shall destroy any record in his or her possession that relates to a former member, or to the spouse or minor child of the former member, twelve months after the person ceased to be a member of the Assembly or, if the person was not a member of the Assembly, ceased to be a member of the Executive Council.

21(2) If an inquiry to which a record may relate is being conducted under this Act, or if the Commissioner is aware that a charge to which it may relate has been laid under the *Criminal Code* (Canada) against the former member or a person who belongs to his or her family, the record shall not be destroyed until the inquiry or charge has been finally disposed of.

***Right to Information and Protection of Privacy Act***

1 In this Act

“government body” means

- (a) any board, Crown corporation, commission, association, agency or similar body, whether incorporated or unincorporated, all the members of which, or all the members of the board of management or governing board of which, are appointed by an Act of the Legislature or by the Lieutenant-Governor in Council, and
- (b) any other body that is designated in Schedule A as a government body. (organisme gouvernemental)

### *Members’ Conflict of Interest Act*

#### **Confidentiality**

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

- (a) by the person to whom the information relates or with his or her consent,
- (b) in a criminal proceeding, as required by law, or
- (c) for the purposes of this Act.

#### Discussion

Legislation in the Northwest Territories excludes the Office of the Legislative Assembly or the office of a member of the Legislative Assembly or a member of the Executive Council from the meaning of “public body”:

2 In this Act,  
“public body” means

- (a) a department, branch or office of the Government of the Northwest Territories, or
- (b) an agency, board, commission, corporation, office or other body designated in the regulations, but does not include
- (c) the Office of the Legislative Assembly or the office of a member of the Legislative Assembly or a member of the Executive Council;

In Nova Scotia the *Freedom of Information and Protection of Privacy Act*:

(2) Notwithstanding subsection (1), this Act does not apply to

- (e) a record that is created by or is in the custody of the Conflict of Interest Commissioner designated pursuant to the *Members and Public Employees Disclosure Act*, the Ombudsman or the Review Officer and that relates to the exercise of that person's functions pursuant to an enactment;

## XVIII. PERSONS COVERED BY THE ACT

The following provisions outline the persons covered by the Act:

1 In this Act

“child” includes a child to whom a member has demonstrated a settled intention to treat as a child of his or her family;

“member” means a member of the Legislative Assembly and includes a member of the Executive Council;

“private corporation” means a corporation none of whose shares are publicly traded securities;

“spouse” means a person who is married to a member or a person who, not being married to a member, is co-habiting in a conjugal relationship with the member, but does not include a person who, being married to a member, is separated and living apart from the member and who

(a) has entered into a written agreement with the member under which they have agreed to live apart, or

(b) is subject to an order of the court recognizing the separation.

## **E. SUMMARY OF RECOMMENDATIONS**

### I. CONFLICT OF INTEREST ACT AND MEMBERS' CONFLICT OF INTEREST ACT

#### **Recommendation 1**

My first recommendation consists of incorporating the administration of the *Conflict of Interest Act* and the *Members' Conflict of Interest Act* under the Commissioner.

Senior government personnel can have a serious impact on the public's trust in government with their actions being a direct reflection of the leadership which guides them.

It is essential that these individuals have access to the timely provision of advice in order to avoid conflict before the fact rather than obtaining ineffective and obsolete advice after the fact.

With the Office of the Conflict of Interest Commissioner now being staffed on a daily basis, there is ready access to the Commissioner for advice and consultation. Remember, the advice is free; to fail to heed it or to fail to ask for it may be costly.

### II. APPARENT CONFLICT OF INTEREST

#### **Recommendation 2**

The “apparent” standard of conflict of interest should be incorporated in the Act with a summary procedure established for the prompt resolution of an apparent conflict of interest.

Whether a conflict of interest is actual or is apparent, the stigma of an underlying conflict pervades and must be dealt with logically rather than left dangling in the rumour mill with a perception by the public that all is not so transparent as is claimed by various political forces.

This would be in each member's best interest as well as that of the Legislature and would emphasize to the public that transparency is one of the Legislature's paramount concerns.

### III. MINISTERS

#### **Recommendation 3**

Section 14 of the Act should be amended to incorporate and apply the "apparent" standard to Ministers.

Ministers should be prohibited from engaging in business or professional activity if to do so creates or appears to create a conflict between the private interest of the Minister and the Minister's public duty.

#### **Recommendation 4**

A "blind management agreement," like a blind trust, would be an acceptable means to prevent conflicts of interest. Selling a business would also be an acceptable mechanism for the compliance with paragraphs 14(1)(c) or (d).

Section 14 should be amended to include the term "blind management agreement" and divestment of a business.

### IV. CONTRACTS WITH THE CROWN

#### **Recommendation 5**

Benefits acquired directly or indirectly by means of contracts with the Crown should be prohibited. In the interest of clarity, section 9 should be amended to include indirect receipt of a benefit.

#### **Recommendation 6**

A provision should be included in the Act prohibiting employment contracts to a spouse, common-law partner, child, sibling or parent of another member.

#### **Recommendation 7**

A provision should be included prohibiting a member who has the authority to permit the public sector entity for which he or she is responsible, or to which he or she is assigned to enter into a contract with his or her spouse, common law partner, child, sibling or parent.

**Recommendation 8**

Section 9 should be amended to include the term “blind management agreement”.

**V. TRUSTS (BLIND AND MANAGEMENT)**

**Recommendation 9**

Sections 1, 3, 9, 14, 18 should incorporate the term “blind management agreement.”

**Recommendation 10**

Section 14 should include selling a business interest as an acceptable method for the compliance with paragraphs 14(1) (c) or (d). (See recommendation 4.)

**VI. OBLIGATIONS**

**Recommendation 11**

Section 4 should be amended to incorporate the “apparent” standard.

**Recommendation 12**

Section 6 should be amended to prohibit the use of influence in “all” decision making not only decisions made in the past.

**Recommendation 13**

Preferential treatment should be prohibited in order to avoid real or apparent conflicts of interest. Section 6 should be amended to incorporate this prohibition.

**Recommendation 14**

Section 15 should be amended to include the “appearance” of a conflict of interest standard.

**VII. ADVICE AND RECOMMENDATIONS**

**Recommendation 15**

The Commissioner should have the authority to require that the request for advice be in writing. A written request for advice would ensure a clear understanding of the material facts and specific issues which are relevant to the case and would enable the Commissioner to identify other specific information which may be relevant to the advice. Sections 30 and 30.1 should therefore be amended accordingly.

## VIII.COMMISSIONER

### **Recommendation 16**

To demonstrate transparency, impartiality and the public interest, the term of appointment of the Commissioner should be seven years so that it does not coincide with the dates of general elections thus avoiding the appearance of a political affiliation in the appointment.

### **Recommendation 17**

The Commissioner should have the authority to appoint a “Special” Conflict of Interest Commissioner on the recommendation of the Lieutenant-Governor in Council to act if the Commissioner is unable to act for any other reason such as a conflict of interest.

Section 25 of the Act should be amended accordingly.

### **Recommendation 18**

Section 33 should be amended to stipulate that the information disclosed to the Commissioner “or former Commissioner” is confidential. Otherwise “former” Commissioners would be at liberty to disclose confidential information upon completion of their term. For consistency with other relevant legislation dealing with confidentiality, a provision should also be included outlining exceptions to this rule.

## IX. GIFTS AND BENEFITS

### **Recommendation 19**

In order to avoid the appearance of a conflict of interest, subsection 8(1) should be amended to prohibit the member’s spouse or dependants from accepting gifts or benefits. Otherwise, the perception of a back door approach to exert influence would persist.

## X.DISCLOSURE STATEMENTS

### **Recommendation 20**

The public disclosure statements should be posted on the Office of the Conflict of Interest Commissioner’s web site for public access.

### **Recommendation 21**

Further to recommendation 18, subsection 8(4) dealing with the gift disclosure statement should apply to the member’s spouse or dependants.

### **Recommendation 22**

Subsection 18(4) should be amended to specify whether there are arrears of maintenance payable including legal costs interest and penalties in respect of a maintenance order or

agreement. A provision should also be included to deal with specifying the names of any other corporation affiliated with any private corporation mentioned in the statement.

**Recommendation 23**

Subsection 8(5) should include the term “blind management agreement.”

**Recommendation 24**

A provision should be added requiring the disclosure of any trust established for the member or the member's spouse or dependent children, or any trust from which a payment is made to the member or the member's spouse or dependent children and the names of the trustees and the contributors to any such trust, other than a trust established by the member or the member's spouse for the member's dependent children.

**XI. INVESTIGATIONS/ OPINIONS**

**Recommendation 25**

Section 37 should be amended to include a provision to provide protection to individuals who come forth to provide information and/or testify before the Conflict of Interest Commissioner. This amendment would bring this Act in line with the provisions of the *Public Interest Disclosure Act*.

Imposing a fine for retaliatory behavior would address the power imbalance between employee and employer.

**Recommendation 26**

Section 36 should be amended to authorize a former member who was the subject of an investigation or inquiry to request that the investigation be completed in order to clear his or her name.

**XII. POST EMPLOYMENT**

**Recommendation 27**

Sections 16 and 17 should be amended to extend post employment restrictions to two years. This would reduce the possibilities of apparent or real conflicts of interest from arising by ensuring that there is greater distance between the government and the former Minister.

**Recommendation 28**

Section 16 should be amended to apply post employment provisions to “all” public office holders. This would also diminish the likelihood of improper conduct and increase public confidence in its members.

## **Recommendation 29**

Since there is no legislation in effect in the Province prohibiting or regulating “lobbying,” section 14 should be amended to restrict this activity.

## **XIII.MISCELLANEOUS DEFINITIONS**

### **Recommendation 30**

The definition of “blind trust” at section 1 should be amended to include “blind management agreement.”

### **Recommendation 31**

Section 1 should also include the definitions of “conflict of interest” and “apparent conflict of interest” as is done in British Columbia’s *Members’ Conflict of Interest Act*.

## **Endnotes**

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<sup>i</sup> *Journal of Debates*, 3<sup>rd</sup> Sess., 55<sup>th</sup> Leg., New Brunswick, April 13, 2006, at 20.

<sup>ii</sup> *Journal of Debates*, 3<sup>rd</sup> Sess., 55<sup>th</sup> Leg., New Brunswick, April 13, 2006, at 31.

<sup>iii</sup> *Journal of Debates*, 1<sup>st</sup> Sess., 56<sup>th</sup> Leg., New Brunswick, June 6, 2007, at 76.

<sup>iv</sup> *Journal of Debates*, 1<sup>st</sup> Sess., 56<sup>th</sup> Leg., New Brunswick, February 21, 2007, at 30.

<sup>v</sup> *Journal of Debates*, 1<sup>st</sup> Sess., 56<sup>th</sup> Leg., New Brunswick, June 14, 2007, at 63.

<sup>vi</sup> *Appendix 1 To Standing Orders, Conflict Of Interest Code For Members Of The House Of Commons*, section 1.

<sup>vii</sup> *Appendix 1 To Standing Orders, Conflict Of Interest Code For Members Of The House Of Commons*, section 2.

<sup>viii</sup> The Honourable Patrick A.A. Ryan , Q.C., *Annual Report 2008*, Office of the Conflict of Interest Commissioner, at p. 4.

<sup>ix</sup> The Honourable Stuart G. Stratton, Q.C., *Annual Report 2004-2005*, Office of the Conflict of Interest Commissioner, pp. 7-8.

<sup>x</sup> *The Report of the Ethics Counsellor on the Activities’ of the Office of the Ethics Counsellor to September 30, 2002*, p. 11.

<sup>xi</sup> *The Ministry and Activities for Personal Political Purposes Guidelines*, June 2002, p. 1.

<sup>xii</sup> Ethics Bulletin, Issue No 2, Published by the Office of the Ethics Commissioner, Province of Alberta , April 1996, p. 1.

<sup>xiii</sup> *Ethics Bulletin*, Issue No 2, Published by the Office of the Ethics Commissioner, Province of Alberta, April 1996, p.1.

<sup>xiv</sup> Parker, W.D. Justice, *Commission of Inquiry into the Facts of Allegations of Conflict of Interest Concerning the Honourable Sinclair M. Stevens*, Minister of Supply and Services Canada, 1987, p. 29.

<sup>xv</sup> Parker, W.D. Justice, *Commission of Inquiry into the Facts of Allegations of Conflict of Interest Concerning the Honourable Sinclair M. Stevens*, Minister of Supply and Services Canada, 1987, p. 35.

<sup>xvi</sup> *Select Special Conflicts of Interest Act Review Committee, Final Report*, Legislative Assembly of Alberta, May 2006, p. 37. *Alberta’s Conflict of Interest Act*:

21(1) A Minister breaches this Act if the Minister, after the expiration of the relevant period referred to in section 22,

- (a) engages in employment or in the practice of a profession,
- (b) carries on a business, or

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(c) holds an office or directorship other than in a social club, religious organization or political party,  
that creates or appears to create a conflict between a private interest of the Minister and the Minister's public duty.

(2) A Minister may carry on an activity referred to in subsection (1) in a way approved by the Ethics Commissioner if

- (a) the Minister has disclosed the material facts to the Ethics Commissioner, and
- (b) the Ethics Commissioner is satisfied that the activity, if carried on in a way approved by the Ethics Commissioner, will not create or appear to create a conflict between a private interest of the Minister and the Minister's public duty.

(3) For the purposes of this section,

- (a) the management of routine personal financial interests does not constitute carrying on a business, and
- (b) maintaining qualifications in a profession or occupation as required by the profession or occupation does not constitute carrying on a business or engaging in employment or in the practice of a profession.

In British Columbia, *The Members' Conflict of Interest Act* outlines the following:

9 (1) A member of the Executive Council must not

- (a) engage in employment or in the practice of a profession,
- (b) carry on a business, or
- (c) hold an office or directorship other than in a social club, religious organization or political party

if any of these activities are likely to conflict with the member's public duties.

(2) A person who becomes a member of the Executive Council must comply with subsection (1) within 60 days of being appointed.

(3) The commissioner may extend the period referred to in subsection (2) by giving the member a written notice to that effect, and may impose on the extension conditions that the commissioner considers just.

(4) If a member of the Executive Council complies with subsection (1) (b) by entrusting his or her business to one or more trustees,

- (a) the provisions of the trust must be approved by the commissioner,
- (b) the trustees must be persons who are at arm's length with the member and approved by the commissioner,
- (c) the trustees must not consult with the member with respect to managing the trust property, and
- (d) within 60 days after the formation of the trust, and after that annually, the trustees must provide the commissioner with a confidential report, in a form acceptable to the commissioner, disclosing the assets, liabilities and financial interests contained in the trust.

(5) For the purposes of this section, the management of routine personal financial interests does not constitute carrying on a business.

In Saskatchewan, *the Members' Conflict of Interest Act* provides the following:

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- 9(1)** If, in the opinion of the commissioner, a conflict with official duties and responsibilities is likely to result or to be seen to result, a member of the Executive Council shall not:
- (a) engage in any trade, occupation or employment or in the practice of any profession;
  - (b) manage or operate a business;
  - (c) hold an office or directorship in any corporation, organization or association.
- (2) A person who becomes a member of the Executive Council shall fully disclose his or her affairs to the commissioner in order to comply with subsection (1) within 90 days following his or her appointment.
- (3) Persons who are members of the Executive Council when this section comes into force shall fully disclose their affairs to the commissioner in order to comply with subsection (1) within 90 days of the coming into force of this section.
- (4) The commissioner may extend the period mentioned in subsection (2) or (3) by giving the member written notice to that effect, and may impose any terms and conditions on the extension that the commissioner considers just.
- (5) The commissioner shall file with the Clerk of the Assembly a copy of any notice given and any terms and conditions imposed pursuant to subsection (4), and the Clerk shall make the copy of the notice and the terms and conditions available for public inspection at the office of the Clerk during normal business hours of the Clerk.
- (6) A member of the Executive Council may apply to the commissioner for advice respecting compliance with this section.
- (7) On receipt of an application pursuant to subsection (6), the commissioner:
- (a) shall advise the member respecting compliance with this section; and
  - (b) may issue directions to the member respecting compliance with this section.
- (8) If a member of the Executive Council complies with subsection (1) by entrusting his or her business to one or more trustees:
- (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 are approved by the commissioner;
  - (c) the trustees shall not consult with the member with respect to managing the trust property; and
  - (d) the trustees shall report all material changes in assets, liabilities and financial interests contained in the trust to the member and the commissioner, in writing, immediately after the changes have occurred.
- (9) For the purpose of this section, the management of routine personal financial interests does not constitute managing or operating a business.

Yukon's *Conflict of Interest (Members and Ministers) Act* provides the following:

- 8(1)** A Minister must not
- (a) carry on business through a partnership or sole proprietorship;
  - (b) engage in employment or the practice of a profession;
  - (c) engage in the management of a business carried on by a corporation; or
  - (d) hold an office or directorship, unless holding the office or directorship is one of the Minister's duties as a member of the Cabinet, or the office or directorship is in a social club, religious organization or political party if any such activity is likely to
  - (e) conflict with the Minister's duties as Minister;

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(f) create a reasonable apprehension that the Minister is in violation of sections 2 or 3;

or

(g) interfere unreasonably with the performance of the Minister's duties.

(2) In this section the expressions "business", "employment" and "office" have the same meaning as in the *Income Tax Act* (Canada).

<sup>xvii</sup> The Globe and Mail, Friday April 3, 2009, page A6.

<sup>xviii</sup> Policy Number AD-2915 dealing with Conflicts of Interest and listed in Volume 2 of the *Administration Manual System* applies to all employees of Parts I, II and III of the Public Service (as listed in the schedule of the [Public Service Labour Relations Act](#)) who are not specifically covered by the [Conflict of Interest Act](#).

<sup>xix</sup> Leader of the Official Opposition, Shawn Graham, Journal of Debates (Hansard), Legislative Assembly Province of New Brunswick, Third Session, 55<sup>th</sup> Assembly, Daily sitting 23, Thursday, April 13, 2006, page 18.

<sup>xx</sup> The *Conflict of Interest and Post-Employment Code for Public Office Holders, 2006* which applies to the House of Commons provides the Commissioner with the authority to advise where a member of Executive Council is not in compliance with the Act:

23.(1) Where the Ethics Commissioner advises that a public office holder is not in compliance with the Code, the public office holder is subject to such appropriate measures as may be determined by the Prime Minister, including, where applicable, discharge or termination of appointment.

(2) Where the Ethics Commissioner finds that a public office holder is not in compliance with this Code, or issue a report pursuant to the *Parliament of Canada Act*, such a finding or report is final, and may not be altered.

<sup>xxi</sup> From the *Federal Accountability Act (Conflict of Interest Act extract)*:

14. (1) No public office holder who otherwise has the authority shall, in the exercise of his or her official powers, duties and functions, enter into a contract or employment relationship with his or her spouse, common-law partner, child, sibling or parent.

(2) No public office holder, other than a minister of the Crown, minister of state or parliamentary secretary, who otherwise has the authority shall permit the public sector entity for which he or she is responsible, or to which he or she is assigned, to enter into a contract or employment relationship with his or her spouse, common-law partner, child, sibling or parent except in accordance with an impartial administrative process in which the public office holder plays no part.

(3) No minister of the Crown, minister of state or parliamentary secretary who otherwise has the authority shall permit the public sector entity for which he or she is responsible, or to which he or she is assigned, to enter into a contract or employment relationship with his or her spouse, common-law partner, child, sibling or parent.

(4) No minister of the Crown, minister of state or parliamentary secretary who otherwise has the authority shall permit anyone acting on his or her behalf to enter into a contract or employment relationship with a spouse, common-law partner, child, sibling or parent of another minister of the Crown, minister of state or parliamentary secretary or party colleague in Parliament, except in accordance with an impartial administrative process in which the minister of the Crown, minister of state or parliamentary secretary plays no part.

(5) Subsection (4) does not apply in respect of the appointment of a member of ministerial staff or a ministerial adviser.

(6) This section does not apply to a contract for goods or services offered by a public sector entity on the same terms and conditions as to the general public.

<sup>xxii</sup> From the *Federal Accountability Act (Conflict of Interest Act extract)*:

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14. (1) No public office holder who otherwise has the authority shall, in the exercise of his or her official powers, duties and functions, enter into a contract or employment relationship with his or her spouse, common-law partner, child, sibling or parent.

(2) No public office holder, other than a minister of the Crown, minister of state or parliamentary secretary, who otherwise has the authority shall permit the public sector entity for which he or she is responsible, or to which he or she is assigned, to enter into a contract or employment relationship with his or her spouse, common-law partner, child, sibling or parent except in accordance with an impartial administrative process in which the public office holder plays no part.

(3) No minister of the Crown, minister of state or parliamentary secretary who otherwise has the authority shall permit the public sector entity for which he or she is responsible, or to which he or she is assigned, to enter into a contract or employment relationship with his or her spouse, common-law partner, child, sibling or parent.

(4) No minister of the Crown, minister of state or parliamentary secretary who otherwise has the authority shall permit anyone acting on his or her behalf to enter into a contract or employment relationship with a spouse, common-law partner, child, sibling or parent of another minister of the Crown, minister of state or parliamentary secretary or party colleague in Parliament, except in accordance with an impartial administrative process in which the minister of the Crown, minister of state or parliamentary secretary plays no part.

(5) Subsection (4) does not apply in respect of the appointment of a member of ministerial staff or a ministerial adviser.

(6) This section does not apply to a contract for goods or services offered by a public sector entity on the same terms and conditions as to the general public.

<sup>xxiii</sup> Values and Ethics Code for the Public Service – Chapter 2

Objective

The objective of these measures is to establish rules of conduct respecting conflict of interest and to minimize the possibility of conflicts arising between private interests and public service duties of public servants. These measures serve to uphold the Public Service Values set out in Chapter 1, as well as the Post-Employment Measures in Chapter 3.

Measures to Prevent Conflict of Interest

Avoiding and preventing situations that could give rise to a conflict of interest, or the appearance of a conflict of interest, is one of the primary means by which a public servant maintains public confidence in the impartiality and objectivity of the Public Service.

These Conflict of Interest Measures are adopted both to protect public servants from conflict of interest allegations and to help them avoid situations of risk. Conflict of interest does not relate exclusively to matters concerning financial transactions and the transfer of economic benefit. While financial activity is important, it is not the sole source of potential conflict of interest situations.

It is impossible to prescribe a remedy for every situation that could give rise to a real, apparent or potential conflict. When in doubt, public servants should seek guidance from their manager, from the senior official designated by the Deputy Head, or from the Deputy Head, and refer to the Public Service Values stated in Chapter 1 as well as the following measures as benchmarks against which to gauge appropriate action.

Public servants have the following overall responsibilities:

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- a) In carrying out their official duties, public servants should arrange their private affairs in a manner that will prevent real, apparent or potential conflicts of interest from arising.
  - b) If a conflict does arise between the private interests and the official duties of a public servant, the conflict should be resolved in favour of the public interest.

Public servants also have the following specific duties:

- a) They should not have private interests, other than those permitted pursuant to these measures, that would be affected particularly or significantly by government actions in which they participate.
- b) They should not solicit or accept transfers of economic benefit.
- c) They should not step out of their official roles to assist private entities or persons in their dealings with the government where this would result in preferential treatment to the entities or persons.
- d) They should not knowingly take advantage of, or benefit from, information that is obtained in the course of their official duties and that is not generally available to the public.
- e) They should not directly or indirectly use, or allow the use of, government property of any kind, including property leased to the government, for anything other than officially approved activities.

#### Methods of Compliance

For a public servant to comply with these measures, it will usually be sufficient to submit a Confidential Report to the Deputy Head. The Confidential Report outlines the public servant's ownership of assets, receipt of gifts, hospitality or other benefits, or participation in any outside employment or activities that could give rise to a conflict of interest.

There will be instances, however, where other measures will be necessary. These include the following:

- a) avoiding or withdrawing from activities or situations that would place the public servant in real, potential or apparent conflict of interest with his or her official duties; and
- b) having an asset sold at arm's length or placed in a blind trust where continued ownership would constitute a real, apparent or potential conflict of interest with the public servant's official duties.

In such cases, the Deputy Head will make the decision and communicate it to the public servant. In determining appropriate action, the Deputy Head will try to achieve mutual agreement with the public servant in question and will take into account such factors as:

- a) the public servant's specific responsibilities;
- b) the value and types of assets and interests involved; and
- c) the actual costs to be incurred by divesting the assets and interests, as opposed to the potential that the assets and interests represent for a conflict of interest.

<sup>xxiv</sup> See section on "Apparent Conflict of Interest" beginning at page 5.

<sup>xxv</sup> From *Values and Ethics Code for the Public Service*:

#### Public Servants

This Code forms part of the conditions of employment in the Public Service of Canada. At the time of signing their letter of offer, public servants acknowledge that the *Values and Ethics Code*

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for the Public Service is a condition of employment. All public servants are responsible for ensuring that they comply with this Code and that they exemplify, in all their actions and behaviours, the values of public service. In particular, they have the following obligations:

[...]

b) Every time a major change occurs in the personal affairs or official duties of public servants, they must review their obligations under this Code. If a real, apparent or potential conflict of interest exists, they must file a new Confidential Report with their Deputy Head.

*Members' Conflict of Interest Act of British Columbia*

**2** (1) For the purposes of this Act, a member has a conflict of interest when the member exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that in the performance of the duty or function or in the exercise of the power there is the opportunity to further his or her private interest.

(2) For the purposes of this Act, a member has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest.

3 A member must not exercise an official power or perform an official duty or function if the member has a conflict of interest or an apparent conflict of interest.

11 (1) If, during the exercise of any official power or the performance of any official duty or function by a member of the Executive Council, a matter arises with respect to which the member has a conflict of interest or apparent conflict of interest, the member must

(a) refrain at all times from attempting to influence the matter, and

(b) at any subsequent meeting of the Executive Council or a committee of the Executive Council at which the matter is considered, disclose the general nature of the private interest and withdraw from the meeting without voting or participating in the discussion.

(2) The Lieutenant Governor in Council may appoint a member of the Executive Council to act in the place of a member referred to in subsection (1) for any matter with respect to which the member referred to in subsection (1) has a conflict of interest or apparent conflict of interest.

<sup>xxvi</sup> See pages 1, 2 and 9 of this Report.

<sup>xxvii</sup> *Ontario's Members' Integrity Act:*

4. A member of the Assembly shall not use his or her 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.

<sup>xxviii</sup> *Prince Edward Island's Conflict of Interest Act:*

11. 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.

<sup>xxix</sup> *Conflict of Interest Act, SC 2006, c 9, s 2*

7. No public office holder shall, in the exercise of an official power, duty or function, give preferential treatment to any person or organization based on the identity of the person or organization that represents the first-mentioned person or organization.

*From Values and Ethics Code for the Public Service:*

Avoidance of Preferential Treatment

When participating in any decision making related to a staffing process, public servants shall ensure that they do not grant preferential treatment or assistance to family or friends.

When making decisions that will result in a financial award to an external party, public servants shall not grant preferential treatment or assistance to family or friends.

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Public servants should not offer any assistance to entities or persons that have dealings with the government, where this assistance is not part of their official duties, without obtaining prior authorization from their designated superior and complying with the conditions for that authorization.

Providing information that is easily accessible to the public to relatives or friends or to entities in which public servants or their family members or friends have interests is not considered preferential treatment.

<sup>xxx</sup> In Ontario, the Conflict of Interest Rules for Public Servants (Ministry) and Former Public Servants (Ministry) outlines the following:

Giving preferential treatment

6. (1) When performing his or her duties to the Crown, a public servant shall not give preferential treatment to any person or entity, including a person or entity in which the public servant or a member of his or her family or a friend has an interest.

(2) When performing his or her duties to the Crown, a public servant shall endeavour to avoid creating the appearance that preferential treatment is being given to a person or entity that could benefit from it. O. Reg. 381/07, s. 6 (2).

(3) A public servant shall not offer assistance to a person or entity in dealing with the Crown other than assistance given in the ordinary course of the public servant's employment. O. Reg. 381/07, s. 6 (3).

<sup>xxxi</sup> From the *City of Toronto Act, 2006*:

**VIII. IMPROPER USE OF INFLUENCE:**

No member of Council shall use the influence of her or his office for any purpose other than for the exercise of her or his official duties.

Examples of prohibited conduct are the use of one's status as a member of Council to improperly influence the decision of another person to the private advantage of oneself, or one's parents, children or spouse, staff members, friends, or associates, business or otherwise. This would include attempts to secure preferential treatment beyond activities in which members normally engage on behalf of their constituents as part of their official duties. Also prohibited is the holding out of the prospect or promise of future advantage through a member's supposed influence within Council in return for present actions or inaction.

<sup>xxxii</sup> In Alberta, the *Conflicts of Interest Act* outlines the following:

**34(1)** Unless the office sooner becomes vacant, a person appointed as Ethics Commissioner **holds office for 5 years** from the date of that person's appointment under section 33.

(2) A person holding office as Ethics Commissioner continues to hold office after the expiry of that person's term of office until that person is reappointed, a successor is appointed or a period of 6 months has expired, whichever occurs first.

In British Columbia, the *Members' Conflict of Interest Act* outlines the following:

14 (1) There must be appointed a commissioner who is an officer of the Legislative Assembly.

(2) On the motion of the Premier in the Legislative Assembly and on the recommendation of 2/3 of the members present, the Lieutenant Governor in Council must appoint the person so recommended to the office of commissioner.

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- (3) The commissioner holds office **for a term of 5 years** and may be reappointed for a further term or terms. .
- (4) The commissioner may be removed or suspended before the end of the term of office by the Lieutenant Governor in Council for cause on the recommendation of the Legislative Assembly.
- (5) The commissioner must be paid compensation as may be set by the Lieutenant Governor in Council.
- 6) If
- (a) the commissioner is removed or suspended or the office of the commissioner becomes vacant when the Legislature is sitting but no recommendation under this Act is made by the Legislative Assembly before the end of that session, or
  - (b) the commissioner is suspended or the office of the commissioner is or becomes vacant when the Legislature is not sitting,
- the Lieutenant Governor in Council may appoint an acting commissioner.
- (7) The appointment of an acting commissioner under this section terminates
- (a) on the appointment of a new commissioner under subsection (2),
  - (b) at the end of the period of suspension of the commissioner, or
  - (c) immediately after the expiry of 20 sitting days after the day on which he or she was appointed,
- whichever the case may be and whichever occurs first.
- (8) The commissioner may employ or retain persons that the commissioner considers necessary and may
- (a) specify their duties and responsibilities, and
  - (b) establish their remuneration and other terms and conditions of employment, or retainer.
- (9) The *Labour Relations Code* and the *Public Service Labour Relations Act* do not apply to a person employed or retained under subsection (8).

The Senate outlines the following in the *Parliament of Canada Act*, RSC 1985, P-1:

**20.1** The Governor in Council shall, by commission under the Great Seal, appoint a Senate Ethics Officer after consultation with the leader of every recognized party in the Senate and after approval of the appointment by resolution of the Senate.

**20.2 (1)** The Senate Ethics Officer holds office during good behaviour for a term of seven years and may be removed for cause by the Governor in Council on address of the Senate. He or she may be reappointed **for one or more terms of up to seven years each.**

(2) In the event of the absence or incapacity of the Senate Ethics Officer, or if that office is vacant, the Governor in Council may appoint a qualified person to hold that office in the interim for a term of up to six months.

In Manitoba, the *Legislative Assembly and Executive Council Conflict of Interest Act* outlines the following regarding appointment of the Commissioner but it does not specify the term of appointment:

Appointment of commissioner

[19.5\(1\)](#) On the recommendation of the Standing Committee of the Assembly on Legislative Affairs, the Lieutenant Governor in Council shall appoint a Conflict of Interest Commissioner for the purpose of this Act. The commissioner is to be appointed on a part-time basis.

Annual report

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[19.5\(2\)](#) The commissioner shall make an annual report to the Speaker of the Assembly about the exercise of the commissioner's responsibilities under this Act. The Speaker must lay the report before the Assembly.

In Newfoundland, the *House of Assembly Act* stipulates the following:

- 34.** (1) There shall be a Commissioner for Legislative Standards who is an officer of the House of Assembly.
- (2) The commissioner shall be appointed by the House of Assembly on the motion of the Premier following consultation with the Leader of the Official Opposition and representatives of other registered political parties having representation in the House of Assembly.
- (3) The person appointed shall hold office during good behaviour for **a term of 5 years** and may be reappointed for further terms. .
- (4) The person appointed as commissioner may be removed before the expiration of the term of office by the Lieutenant-Governor in Council for cause on the recommendation of the House of Assembly.
- (5) The commissioner shall be paid the remuneration and allowances that are fixed by the Internal Economy Commission of the House of Assembly where he or she is not receiving a salary paid out of the Consolidated Revenue Fund.
- (6) The commissioner may, subject to the approval of the Commission of Internal Economy, appoint for the term and on the conditions that the commissioner may determine those employees and officers that are necessary for the performance of the duties of the commissioner.
- (7) The commissioner and every person employed by the commissioner shall swear an oath or make a solemn declaration to keep confidential information relating to the personal interests and property of members received or obtained under this Part.

In the Northwest Territories, the *Legislative Assembly and Executive Council Act* outlines the following:

91. (1) The Commissioner, on the recommendation of the Legislative Assembly, shall appoint a Conflict of Interest Commissioner to exercise the powers and perform the duties set out in this Part.
- (2) The Conflict of Interest Commissioner may not be a member of the public service.
- (3) Subject to section 92, the Conflict of Interest Commissioner holds office during good behavior **for a term of four years**.
- (4) A person holding office as Conflict of Interest Commissioner continues to hold office after the expiry of his or her term of office until he or she is reappointed, a successor is appointed or a period of six months has expired, whichever first occurs.
92. (1) The Conflict of Interest Commissioner may resign at any time by notifying the Speaker in writing or, if the Speaker is absent or unable to act or the office of the Speaker is vacant, by so notifying the Clerk.
- (2) The Commissioner, on the recommendation of the Legislative Assembly, may, for cause or incapacity, suspend or remove from office the Conflict of Interest Commissioner.
- (3) If the Legislative Assembly is not sitting, the Commissioner, on the recommendation of the Board of Management, may suspend the Conflict of Interest Commissioner for cause or incapacity.

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In Nova Scotia, the *Members and Public Employees Disclosure Act* outlines the following but does not specify the term of appointment:

**26** The Governor in Council in consultation with the Chief Justice of the Supreme Court of Nova Scotia shall designate a judge of the Supreme Court of Nova Scotia or a retired or supernumerary judge of the Supreme Court to be the designated person for the purpose of this Act.

**27** For the purposes of exercising jurisdiction pursuant to this Act, the designated person has all the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act* and the designated person may establish rules of procedure for the purpose of this Act.

**27A (1)** The designated person for the purpose of this Act shall be known as the "Conflict of Interest Commissioner".

**(2)** Subsection (1) does not apply to the Chief Electoral Officer where the Chief Electoral Officer is the designated person for the purpose of Part II.

In Nunavut, the *Integrity Act* outlines the following:

**24. (1)** The Commissioner, on the recommendation of the Legislative Assembly, shall appoint an Integrity Commissioner who shall be an officer of the Legislative Assembly.

**(2)** The Integrity Commissioner shall perform any duties set out in this Act, and in addition may undertake any other assignments that are requested by the Legislative Assembly or the Management and Services Board and that the Integrity Commissioner considers appropriate.

**(3)** The Integrity Commissioner shall hold office during good behaviour **for a term of five years** and may be reappointed for a further term or terms. .

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

**(5)** The Integrity Commissioner may be removed for cause or incapacity, before the expiry of the term of office, by the Commissioner on the recommendation of the Legislative Assembly.

**(6)** The Integrity Commissioner may resign, at any time, by notifying the Clerk in writing.

**(7)** The person who, on the coming into force of this subsection, was the Conflict of Interest Commissioner appointed under section 79 of the *Legislative Assembly and Executive Council Act* is deemed to have been appointed as the Integrity Commissioner under subsection (1), but with an initial term of office expiring on the day that his or her term as Conflict of Interest Commissioner would have expired.

In Ontario, the *Members' Integrity Act* outlines the following:

**23. (1)** There shall be an Integrity Commissioner who is an officer of the Assembly.

**(2)** The Lieutenant Governor in Council shall appoint a person to the office of Integrity Commissioner on the address of the Assembly.

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

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

**(5)** The person appointed may be removed for cause, before the expiry of the term of office, by the Lieutenant Governor in Council on the address of the Assembly.

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- (6) The Lieutenant Governor in Council may appoint an acting Integrity Commissioner if,
- (a) the office of Integrity Commissioner becomes vacant during a session of the Assembly, but the Assembly does not make a recommendation under subsection (2) before the end of the session;
  - or
  - (b) the office of Integrity Commissioner becomes vacant while the Assembly is not sitting.
- (7) The appointment of the acting Commissioner comes to an end when a new Integrity Commissioner is appointed under subsection (2).
- (8) If the Integrity 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 Integrity Commissioner is again able to act or when the office becomes vacant.
- (9) The Commissioner shall be paid the remuneration and allowances that are fixed by the Lieutenant Governor in Council.
- (10) The employees who are necessary for the performance of the Commissioner's duties shall be members of the staff of the Office of the Assembly.

In Prince Edward Island, the *Conflict of Interest Act* outlines the following:

2. (1) There shall be a Conflict of Interest Commissioner who is an officer of the Legislative Assembly.
- (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.
- (3) The Commissioner shall hold office **for a term of five years** and may be reappointed for a further term or terms.
- (4) The Commissioner continues to hold office after the expiry of the term until reappointed, or until a successor is appointed.
- (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.
- (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.
- (7) The appointment of the acting Commissioner comes to an end when a new Commissioner is appointed pursuant to subsection (2).
- (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.
- (9) The Commissioner shall be paid the remuneration and allowances that are fixed by the Standing Committee on Legislative Management.

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(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.

In Quebec, the following is outlined in *An Act respecting the National Assembly*:

77. **The term of office of the jurisconsult is five years or less.** At the expiry of his term, he remains in office until he is reappointed or replaced.

In Saskatchewan, the *Members' Conflict of Interest Act* outlines the following:

14(1) Subject to subsections (2) and (3), any information included in a member's disclosure statement filed pursuant to section 11 and not included in the member's public disclosure statement prepared pursuant to section 12 is confidential and shall not be disclosed to any person other than the member to whom the information relates or the commissioner.

(2) Notwithstanding subsection (1), the commissioner may disclose, in an opinion prepared pursuant to this Act, any information that the commissioner considers necessary to disclose in order to establish grounds for the findings and recommendations in the opinion.

(3) Notwithstanding subsection (1), the commissioner may disclose to the Attorney General for Saskatchewan or the Attorney General for Canada information that relates to the commission of an offence against:

- (a) an Act or regulation; or
- (b) an Act of the Parliament of Canada or a regulation made pursuant to an Act of the Parliament of Canada.

18(1) The office of conflict of interest commissioner is established.

(2) The commissioner is an officer of the Assembly.

(3) The commissioner shall be appointed by resolution of the Assembly.

(4) Subject to sections 19 and 20, the commissioner holds office **for a term of not more than five years** from the day of appointment and may be reappointed. .

(5) The commissioner may resign the office at any time by giving written notice:

- (a) to the Speaker; or
- (b) if there is no Speaker or if the Speaker is absent from Saskatchewan, to the President of the Executive Council.

In Yukon, the *Conflict of Interest (Members and Ministers) Act* outlines the following:

17 There shall be a Conflict of Interest Commission to be appointed by and be accountable to the Legislative Assembly, and the commission shall

- (a) advise Members, Ministers, and former Ministers, at their request, about whether or not they are or would be in a conflict of interest;
- (b) advise the Government Leader, at that official's request, about whether or not a Minister or former Minister is or would be in a conflict of interest;
- (c) advise the Government Leader, at that official's request, about appropriate rules of conduct for Ministers;
- (d) investigate complaints made to it by a Member that a Member or Minister is or was in a conflict;
- (e) investigate charges made to it by a Member that there were no reasonable grounds for the complaint made by a Member under paragraph (d);

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(f) report and make recommendations to the Legislative Assembly on investigations conducted by the commission under paragraphs (d) and (e).

(g) perform any duties assigned to the commission by the *Public Service Act* and the *Cabinet and Caucus Employees Act*.

**18(1)** The commission shall consist of up to three members each of whom shall be appointed by resolution of the Legislative Assembly **for a term of up to three years** and be eligible for reappointment for one or more further terms of up to three years each.

(2) A member of the commission may only be removed from office during their term by resolution of the Legislative Assembly.

(3) A vacancy in the membership of the commission does not impair the capacity of the remaining members to act.

(4) In order to take effect, a resolution of the Legislative Assembly for the appointment or removal of a Member of the commission must be supported in a recorded vote by at least two-thirds of the Members present for the vote.

<sup>xxxiii</sup> Ontario Office of the Integrity Commissioner:

<<http://www.oico.on.ca/oic/OICweb2.nsf/OICFramesEn?OpenFrameset>>

<sup>xxxiv</sup> In Nova Scotia, the *Members and Public Employees Disclosure Act* outlines the following:

6 (1) The appropriate disclosure statement shall disclose

[...]

(f) any trust established for the member or the member's spouse or dependent children, or any trust from which a payment is made to the member or the member's spouse or dependent children and the names of the trustees and the contributors to any such trust, other than a trust established by the member or the member's spouse for the member's dependent children;

<sup>xxxv</sup> Public Interest Disclosure Act:

31 No person shall take a reprisal against an employee or direct that one be taken against an employee because the employee has, in good faith,

(a) sought advice about making a disclosure from his or her supervisor, designated officer or chief executive, or the Commissioner,

(b) made a disclosure, or (b) if a fait une divulgation;

(c) cooperated in an investigation under this Act.

<sup>xxxvi</sup> In Newfoundland, the *House of Assembly Act* incorporates the following provision dealing with post employment:

30. (1) Except in accordance with a waiver or variance granted by the commissioner under section 31, a minister or an officer or employee of a department of government or an agency of the Crown shall not knowingly award to, or approve a contract with, or grant a benefit to,

(a) a person who within the previous year was a minister; or

(b) a corporation or other entity

(i) in which the person holds 10% or more of the shares, or

(ii) of which he or she is an employee, director or partner.

(2) Subsection (1) does not apply to a contract awarded by public tender under which no special preference or treatment was given because the person to whom it was awarded was, within the previous year, a minister, or because the corporation or other entity to which it was awarded is one in which the person holds 10% or more of the shares or of which he or she is an employee, director or partner.

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(3) Except in accordance with a waiver or variance granted by the commissioner under section 31, a person who was a minister shall not, within 1 year after ceasing to hold that office,

(a) be employed by, or serve on the board of directors of, a person or entity with which the former minister had significant official dealings during the last year of service in that office;

(b) make representations to or otherwise have dealings with a department or entity for which the former minister was responsible during the last year of service in that office; or

(c) accept, directly or indirectly, a contract or benefit from a department or entity for which the former minister was responsible during the last year of service in that office.

(4) A person who was a minister shall not advise or represent a person or entity, in return for a fee or other benefit, concerning a proceeding, transaction, negotiation or case to which the government of the province is a party, and in respect of which the former minister acted for or advised the government of the province while in office, where the matter might result in the conferring of a benefit of a commercial or private nature on a person, or a benefit of another nature on a person or class of persons that is other than the general public or a broad class.

(5) For purposes of this section, "significant official dealings" means substantial involvement over a period of time of the former minister personally.

*In Nova Scotia, the Members and Public Employees Disclosure Act* outlines the following:

24 No person who was a member or public employee shall, within six months of ceasing to be a member or public employee, act for or on behalf of any person or entity in connection with any proceeding, transaction, negotiation or case to which a department is a party, if the former member or public employee acted for or advised the department in connection therewith while holding either such office or employment and if the matter might result in the conferring on a person of a benefit of a purely commercial or private nature or of any other nature on a person or class of persons that is other than the general public or a broad class. 1991, c. 4, s. 24.

25 The Executive Council or a minister or an officer or employee of a department shall not knowingly award to or approve a contract with, or grant a benefit to, a person who was a member or public employee, or to a corporation or other entity controlled by such a person or of which such a person is an employee, director or partner, in circumstances where acceptance of the contract or benefit would constitute a contravention of Section 24 unless the designated person has specifically authorized such award or contract or benefit.

In Nunavut, the *Integrity Act* outlines the following:

21. (1) The Executive Council or a Minister shall not knowingly

(a) award or approve a contract with, or grant a benefit to, a former Minister until six months have passed after the date he or she ceased to be a Minister;

(b) award or approve a contract with, or grant a benefit to, a former Minister who has, during the six months after the date he or she

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ceased to be a Minister, made representations to the Government in respect of 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 six months after the date he or she ceased to be a Minister, made representations to the Government in respect of the contract or benefit.

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

(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.

In Ontario, the *Members' Integrity Act* in Ontario outlines the following:

17. (1) The Executive Council and its members shall not knowingly,

(a) award or approve a contract with, or grant a benefit to, a former member of the Executive Council until 12 months have passed after the date he or she ceased to hold office;

(b) award or approve a contract with, or grant a benefit to, a former member of the Executive Council who has, during the 12 months after the date he or she ceased to hold office, made representations to the Government of Ontario in respect of the contract or benefit;

(c) award or approve a contract with, or grant a benefit to, a person on whose behalf a former member of the Executive Council has, during the 12 months after the date he or she ceased to hold office, made representations to the Government of Ontario in respect of the contract or benefit.

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

(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.

18. (1) A former member of the Executive Council shall not knowingly, during the 12 months after the date he or she ceased to hold office,

(a) accept a contract or benefit that is awarded, approved or granted by the Executive Council, a member of the Executive Council or an employee of a ministry (other than an employee of an agency, board or commission);

(b) make representations to the Government of Ontario on his or her own behalf or on another person's behalf with respect to such a contract or benefit;

(c) accept a contract or benefit from any person who received a contract or benefit from a ministry of which the former member was the minister.

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

(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.

(4) A former member of the Executive Council shall not make representations to the Government of Ontario in relation to a transaction or negotiation to

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which the Government is a party and in which he or she was previously involved as a member of the Executive Council, if the representation could result in the conferring of a benefit not of general application.

(5) A person who contravenes subsection (1) or (4) is guilty of an offence and liable, on conviction, to a fine of not more than \$50,000.

In Prince Edward Island, the *Conflict of Interest Act* outlines the following:

**23.** (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.

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

(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.

**24.** (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.

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

(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.

(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.

(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.

In Saskatchewan, the *Members' Conflict of Interest Act* contains the following provisions:

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8(1) In this section and in section 34:

(a) “associate”, with respect to a former member, means:

- (i) a partner of the former member; or
- (ii) a corporation, if the former member is an officer or director of the corporation or a shareholder holding 10% or more of voting shares having the right to elect the board of directors of the corporation;

(b) “government decision-maker” means:

- (i) the Executive Council;
- (ii) a member of the Executive Council; or
- (iii) an employee of:
  - (A) a department, secretariat or office of the Government of Saskatchewan;
  - (B) a Crown corporation; or
  - (C) a corporation in which the Government of Saskatchewan owns a majority of shares.

(2) No government decision-maker shall knowingly:

- (a) award a contract to, approve a contract with, or grant a benefit to a former member of the Executive Council until 12 months have passed after the date the former member ceased to hold office;
- (b) award a contract to, approve a contract with, or grant a benefit to a former member of the Executive Council who has, during the 12 months after the date the former member ceased to hold office, made representations to the government decision-maker with respect to the contract or benefit;
- (c) award a contract to, approve a contract with, or grant a benefit to a person on whose behalf a former member of the Executive Council has, during the 12 months after the date the former member ceased to hold office, made representations to the government decision-maker with respect to the contract or benefit; or
- (d) award a contract to, approve a contract with, or grant a benefit to an associate of a former member of the Executive Council until 12 months have passed after the date the former member ceased to hold office.

(3) Subsection (2) does not apply to contracts of employment with respect to further duties in the service of the Crown.

(4) Subsection (2) does not apply if the conditions on which a contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.

(5) Subsection (2) does not apply to a contract or benefit if the commissioner has granted an exemption pursuant to subsection 34(5) with respect to that contract or benefit or class of contracts or benefits.

In Yukon, the *Conflict of Interest (Members and Ministers) Act* outlines the following:

3(2) A Member who was but no longer is a Minister violates paragraph 3(1)(a) if, during the six months immediately after they ceased to be a Minister, they use to further their own private interest information that they acquired because of their office as Minister and which was not available to or accessible by the general public.

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<sup>xxxvii</sup> See Part III-Section 27 of Conflict of Interest and Post-Employment Code for Public Office Holders

<sup>xxxviii</sup> In Alberta, the *Conflicts of Interest Act* outlines the following:

1(1) In this Act,

(a) “Crown” means the Crown in right of Alberta and includes a Provincial agency;

(h) “Provincial agency” means a Provincial agency as defined in the Financial Administration Act but does not include a corporation enumerated in section 2(5) of that Act;

(i) “publicly-traded securities” means

(i) securities of a corporation that are listed or posted for trading on a recognized stock exchange, or

(ii) securities of a corporation that has more than 15 shareholders and any of whose issued securities were part of a distribution to the public;

(j) “securities” means

(i) shares of any class or series of shares of a corporation, or

(ii) bonds, debentures, notes or other evidence of indebtedness or guarantees of a corporation, whether secured or unsecured, but does not include shares or units in a mutual fund;

(k) “senior officer” means, with reference to a corporation,

(i) the president, vice-president, secretary, comptroller, treasurer or general manager of the corporation, or

(ii) any other person who performs functions for the corporation similar to those normally performed by persons holding the offices referred to in subclause (i);

(m) “Standing Committee” means the Standing Committee on Legislative Offices.

(2) For the purposes of this Act, securities of a corporation

(a) issued on a conversion of other securities, or

(b) issued in exchange for other securities are deemed to be securities that are part of a distribution to the public if those other securities were part of a distribution to the public.

(3) Subject to subsection (4), for the purposes of this Act, securities of a corporation

(a) are part of a distribution to the public if, in respect of the securities, there has been a filing of a prospectus, statement of material facts, registration statement, securities exchange take-over bid circular or similar document under the laws of Canada, a province or territory or of a jurisdiction outside Canada, or

(b) are deemed to be part of a distribution to the public if the securities have been issued and a filing referred to in clause (a) would be required if the securities were being issued currently.

(4) On the application of a Member who owns or is a beneficial owner of securities of a corporation, the Ethics Commissioner may determine, for the purposes of this Act, whether the securities of the corporation are or were part of a distribution to the public.

<sup>xxxix</sup> The *House of Assembly Accountability, Integrity and Administration Act* in Newfoundland outlines the following:

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2. In this Act

- (a) "audit" means an examination of the accounts of public money and other records relating to the House of Assembly, statutory offices and a member that may be conducted by an auditor under this Act or another law of the province;
- (b) "audit committee" means the audit committee established under section 23;
- (f) "commission", unless the context indicates otherwise, means the House of Assembly Management Commission continued under section 18;
- (h) "compliance audit" means an audit referred to in subsection 43 (9);
- (i) "financial audit" means an audit referred to in subsection 43 (5);
- (k) "House of Assembly service" means the House of Assembly Service referred to in section 25;
- (l) "manual" means a manual referred to in section 50 ;
- (p) "rules" means rules made by the commission under this Act;
- (r) "statutory office" means the office and administrative staff directly serving the
  - (i) Chief Electoral Officer,
  - (ii) Commissioner for Members' Interests,
  - (iii) Child and Youth Advocate,
  - (iv) Information and Privacy Commissioner,
  - (v) Citizen's Representative, and
  - (vi) other offices of the House of Assembly, with the exception of the office of the Auditor General, that may be established under an Act; and

PART V: ETHICS AND ACCOUNTABILITY

- 43.** (1) Notwithstanding another Act, the accounts of the House of Assembly and statutory offices shall be audited annually by an auditor appointed by the commission under subsection (2).
- (2) The commission shall, before the end of each fiscal year, upon the recommendation of the audit committee, appoint an auditor.
- (3) The auditor general may act as the auditor appointed under subsection (1) but in that event the audit to be performed shall be of the House of Assembly and statutory offices as a separate body and not as part of the general audit of the accounts of the province with appropriate levels of materiality applied to that entity.
- (4) Where the commission does not appoint an auditor as required by subsection (2), the speaker shall report the fact to the House of Assembly.
- (5) Where the commission has not appointed an auditor under subsection (2) by the end of the fiscal year, the auditor general shall be the auditor.
- (6) The audit provided for in subsection (1) shall consist of
  - (a) a financial statement audit conducted in accordance with generally accepted auditing standards as determined by the Canadian Institute of Chartered Accountants, expressing an opinion on whether the

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accounts of the House of Assembly and statutory offices are fairly presented in accordance with accounting policies noted;

(b) the expression of an opinion on whether the expenses incurred by the House of Assembly and statutory offices are in accordance with the policies of the commission and, where applicable, the policies of the executive branch of government; and

(c) the expression of an opinion on whether the clerk's assessment of the effectiveness of internal controls of the House of Assembly and statutory offices is fairly stated and whether the internal controls are operating effectively.

(7) Nothing in this Act precludes the auditor general, after consultation with the audit committee, from conducting at any time and on his or her own motion a separate financial audit of the accounts of the House of Assembly and the statutory offices under the authority conferred on the auditor general by the *Auditor General Act*.

(8) Where a financial audit conducted under this section is conducted by an auditor other than the auditor general, that auditor shall

(a) deliver to the auditor general after completion of the audit a copy of the auditor's report, his or her recommendations and a copy of the audited financial statements; and

(b) provide to the auditor general as soon as reasonably practicable when so requested, a full explanation of the work performed, tests and examinations made and the results obtained, and other information relating to the audit within the knowledge of the auditor.

(9) In addition to the financial audit required by this section, the auditor general shall perform and complete a compliance audit at least once during every General Assembly to determine and express an opinion on whether

(a) collections of public money

(i) have been effected as required under law and directives and decisions of the commission,

(ii) have been fully accounted for, and

(iii) have been properly reflected in the accounts of the province;

(b) disbursements of public money

(i) have been made in accordance with the authority of a supply vote, or relevant law,

(ii) have complied with regulations, rules, directives and orders applicable to those disbursements,

(iii) have been properly reflected in the accounts, and

(iv) have been made for the purposes for which the money was appropriated and authorized;

(c) accounts have been faithfully and properly kept;

(d) assets acquired, administered or otherwise held by or for the House of Assembly and the statutory offices are adequately safeguarded and accounted for;

(e) accounting systems and management control systems that relate to revenue, disbursements, safeguarding or use of assets or the determination of liabilities are in existence, are adequate and have been complied with;

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- (f) accountability information with respect to the operations of the House of Assembly and the statutory offices is adequate; and
  - (g) there are factors or circumstances relating to expenditure of public money which in the opinion of the auditor general should be identified and commented on as part of the audit function.

(10) Subsection (9) shall not be construed as entitling the auditor general to question the merits of policy objectives of the House of Assembly, the House of Assembly service, the commission or the statutory offices.

44. The auditor general, another auditor appointed under section 43 and the comptroller general shall, for the purposes of

- (a) an audit of the accounts of the House of Assembly and statutory offices under this Act; and
- (b) the duties of the comptroller general under the *Financial Administration Act*, have access to all books, documents, accounts and other financial records of the House of Assembly and the statutory offices.

45.(1)Where

- (a) during the course of an audit;
- (b) as a result of a review of an audit report prepared by another auditor employed by the commission; or
- (c) as a result of an internal audit procedure, the auditor general becomes aware of an improper retention or misappropriation of public money by a member, the clerk, the clerk assistant or staff of the House of Assembly service or the statutory offices or another activity that may constitute an offence under the *Criminal Code* or another Act of the province or of Canada, the auditor general shall immediately report the improper retention, misappropriation of public money or other activity to
  - (d) the speaker;
  - (e) the chair of the audit committee;
  - (f) the Premier;
  - (g) the leader of the political party, if any, with which the person involved may be associated;
  - (h) the Attorney General; and
  - (i) the Minister of Finance.

(2) In addition to reporting in accordance with subsection (1), the auditor general shall attach to his or her annual report to the House of Assembly a list containing a general description of the incidents referred to in subsection (1) and the dates on which those incidents were reported.

(3) Before making a report under subsection (1), the auditor general shall give to a person involved and who may be ultimately named or identified in the report

- (a) full disclosure of the information of which the auditor general has become aware; and
- (b) a reasonable opportunity to the person to provide further information and an explanation,

and shall take that information and explanation into account in deciding whether to proceed to make a report.

(4) The auditor general shall not make the existence or the contents of a report referred to in subsection (1) known to another person except

- (a) as part of his or her annual report to the House of Assembly;

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- (b) in accordance with a judicial proceeding;
  - (c) as part of proceedings before the Public Accounts Committee; or
  - (d) as a result of a request from the commission.
- (5) The auditor general is a compellable witness in any criminal or civil proceeding and in a proceeding before the Public Accounts Committee relating to a matter dealt with in a report made under this section.
- (6) Section 19.1 of the *House of Assembly Act* does not apply to a report made under this section.
- (7) Section 15 of the *Auditor General Act* does not apply to a member, the clerk, clerk assistant or staff of the House of Assembly service.
46. The *Financial Administration Act* applies to public money issued to defray expenses of the House of Assembly including money allocated to defray the salaries, allowances and other expenses of members.
47. The Public Accounts Committee of the House of Assembly or another committee that may be designated by the House of Assembly shall annually review
- (a) the audited accounts and the report prepared by the speaker under section 51 ;
  - (b) the clerk's role as accounting officer under section 31 ; and
  - (c) another matter that it considers necessary or advisable with respect to the financial management of the House of Assembly and the statutory offices.
48. (1) The *Transparency and Accountability Act* shall apply to the House of Assembly service and the statutory offices, with the following exceptions:
- (a) an authority or responsibility given to a minister under that Act shall be exercised by the speaker;
  - (b) an authority or responsibility given to the Lieutenant- Governor in Council under that Act shall be exercised by the commission;
  - (c) sections 10, 11, 12, 13, subsections 14(2), 19(1), (2), (3) and (4), and section 24 of that Act do not apply;
  - (d) subsections 14(2), 19(1), (2) and (4) of that Act apply only to the statutory offices;
  - (e) where the *Transparency and Accountability Act* refers to a "governing body" it shall be read as a reference to the commission;
  - (f) where the *Transparency and Accountability Act* refers to a "government entity" it shall be read as a reference to the House of Assembly service and statutory offices;
  - (g) where the *Transparency and Accountability Act* refers to a "public body" it shall be read as a reference to an office of the House of Assembly service and statutory offices;
  - (h) where in sections 5, 6, and 7 of the *Transparency and Accountability Act* reference is made to the "strategic direction of the government" it shall be read as a reference to the strategic direction of the House of Assembly service; and
  - (i) where in section 21 of the *Transparency and Accountability Act* a reference is made to a "deputy minister" it shall be read as a reference, in relation to the House of Assembly service, to the clerk.
- (2) The *Public Tender Act* and the *Conflict of Interest Act, 1995* shall apply to the House of Assembly and the statutory offices except to the extent that the application may be modified by a directive of the commission putting in place

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alternative and more appropriate requirements dealing with tendering processes and the conflict of interest of persons employed in the House of Assembly and statutory offices.