



Province of New Brunswick

CONFLICT OF
INTEREST COMMISSIONER

The Honourable Patrick A.A. Ryan, Q.C.

ANNUAL REPORT

2007

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April 30, 2008

The Hon. Roy Boudreau
Speaker of the Legislative Assembly
Legislative Building
P.O. Box 6000
Fredericton, New Brunswick
E3B 5H1

Dear Mr. Speaker:

I have the honour of submitting my third report, the eighth Annual Report of the Office of the Conflict of Interest Commissioner.

This report is submitted pursuant to section 31 of the *Members' Conflict of Interest Act*.

Respectfully,

The Honourable Patrick A.A. Ryan, Q.C.
Conflict of Interest Commissioner
for the Province of New Brunswick

2007 ANNUAL REPORT

COMMISSIONER'S REMARKS

This is the eighth Annual Report issued under the provisions of the *Members' Conflict of Interest Act*. It is my third report as Commissioner and covers the first full year of a change in government following the election of September 18, 2006.

The Commissioner's office was particularly busy administering to a complete change in the Executive Council, and to the needs of eleven new Members of the Legislative Assembly from the general election and one from a by-election in Moncton East.

During the first quarter of the year, the office employed an Administrative Assistant who was available half days to assist the Commissioner in responding to the duties of office. In late Spring a Research Assistant was engaged full time until late Fall in order to facilitate the duties of office. During interim periods the office was assisted part time by ad hoc personnel from the Legislative Assembly.

As in my two earlier reports, I underscore the recommendation of my predecessor in office, the Honourable Stuart G. Stratton, Q.C., a retired Chief Justice of the Court of Appeal of New Brunswick, in his fifth Annual Report. He recommended that this office administer the legislation that now comes under the jurisdiction of two separate offices. If the recommendation is accepted as suggested, 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. Commissioner Stratton's recommendation in 2005 is as follows:

By a recent amendment of 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.

Although the next review of the *Act* is not required to be undertaken until 2008, I would like to record a suggestion for a revision to the *Act* for consideration by the review committee. At the present time, there are two conflict of interest *Acts* on the books. One, of course, is applicable to [m]embers of the Legislature while the other, presently administered by a designated judge of the Court of Queen's Bench, has application to Deputy Ministers, executive staff members, and heads of Crown Corporations. I express the opinion that the latter group could conveniently be made subject to the provisions of the *Members' Conflict of Interest Act* and report annually to the Commissioner, rather than to a designated judge.

I endorse the recommendation:

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.

These few examples flesh out and illustrate the point that this Commissioner and the previous Commissioner make with the recommendation for unifying the legislation and which is again advanced for consideration

In addition, now that the office of the Commissioner is staffed on a daily basis, there would be a fixed access by all eligible persons to the Commissioner for advice and consultation.

DECISIONS

Unlike in the previous year, I was not called upon to conduct any investigations. One request for an investigation was filed with me but, following various pieces of correspondence between the Commission and the intended complainant, has not been pursued.

Requests for investigation that a Member has breached the *Act* are not confined to Members of the Legislative Assembly. A request for an investigation into an alleged breach of the *Act* may be made by any person or, in fact, by resolution of the Assembly itself.

There are several safeguards provided in the legislation that protect the integrity of the process against mischievous requests. If, as Commissioner, I am of the opinion that the request is frivolous, vexatious, or not made in good faith, I can refuse to conduct an investigation. The same applies if I determine that there are no grounds, or insufficient grounds, for an investigation. A further inhibiting barrier to an ill-considered request is a

requirement that the request be made by way of affidavit setting out the grounds for the belief that a breach has occurred and the nature of the alleged breach.

The results of my investigative decisions are contained in Reports to the Speaker of the Legislative Assembly and are subsequently available to the public at: <http://www.gnb.ca/legis/conflict/investigations/inv101706-e.asp>

ADVICE

Every Member of the Legislative Assembly is required to file a Private Disclosure Statement with the Commissioner each year. The Private Disclosure Statements detail the nature of the assets, liabilities and financial and business interests of the Member. To a lesser degree, the same requirement applies to the Member's spouse and underage children. Private corporations controlled by the Member, the spouse and minor children must also be disclosed to the Commissioner.

The annual disclosure statements form the basis of one on one interviews with the Commissioner. These are important meetings that assist the Member in obtaining confidential advice from the Commissioner in avoiding a conflict of interest between the Member's private interest and public duty. Whenever there is a complete change in the composition of the Executive Council, a number of the newly appointed Members take advantage of arranging several meetings with the Commissioner. A principal purpose of meetings is to emphasize the importance of seeking advice before the fact rather than after the fact.

Subsequent to the meetings, I prepare a Public Disclosure Statement. The Public Disclosure Statement, after consulting with the Member, is filed with the Clerk of the Legislative Assembly each year. These are available to the public. The Public Disclosure Statements refer in general, but with some exceptions, to the Member's assets, liabilities, financial and business interests, income from a political party and certain gifts or benefits received.

The obligations placed upon Members of the Executive Council are more onerous.

The Commissioner is obligated to destroy the file of a former Member twelve months after the person has left office. This obligation does not apply where there is an inquiry underway or the Commissioner is aware of a criminal charge having been laid against the former Member.

There is a time when "after the fact" advice is useful. Advice is available to those leaving office or deciding not to re-offer. At all times, the advice and recommendations of the Commissioner are confidential and can only be released in the public domain by or with the consent of the person requesting the advice.

DISCLOSURES

I am pleased to report that all interviews for the year 2007 were concluded within the calendar year. The previous year the Members were involved in an election which is probably the reason why many appointments had to be re-scheduled and the process went beyond the time limits for the submission of Private Disclosure Statements and interviews. This delayed unduly the filing of the Public Disclosure Statements.

The Public Disclosure Statements are filed with the Clerk of the Legislature who is required by law to make the statements available for public inspection. They are available for inspection during normal business hours at the Clerk's office. Copies are also available for a reasonable fee at the discretion of the Clerk.

GIFTS AND PERSONAL BENEFITS

The area of fees, gifts and personal benefits is always an area of some interest because most tangible expressions of gratitude are of such minor value and, over the period of a year, lapse into a basket of inattentive remiss. As a result, a Member may fail to appreciate the necessity of being conscientious in reporting these tributes such as tickets to events or golf passes for example. Section 8 of the *Act*, however, is unrelenting:

Gifts

- 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 circumstance under which it was given and accepted.

Section 8 is interpreted as including any gift or personal benefit which the Member receives but decides to pass on to someone else whether that person is a Member of the family, a neighbour, another Member or a constituent, in other words, anyone else. If the Member gives the gift or benefit away, it is the same as though the Member used it personally.

REVIEW OF THE ACT

During the year 2008 the legislation requires that a review of the *Act* be conducted by the Commissioner and that the Commissioner submit a report to the Legislative Administration Committee or a committee designated by the Legislative Assembly. In order to fulfill this obligation, I began keeping notes of my thoughts on this directive in 2006 and 2007.

The pertinent legislation setting forth the matter of a review is as follows:

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.

APPRECIATION

Again this year, I have had the valuable assistance of dedicated personnel from the Legislative Assembly staff. It was necessary to call upon them in order to complete huge gaps in the staffing of this office until a full time Administrative Assistant was engaged in 2008.

As a result I am grateful for the assistance given to the office of the Commissioner by Loredana Catalli Sonier, Esqe., Clerk of the Legislative Assembly, Peter Wolters, C.A., Director of Finance and Human Resources, and Shayne Davies, Esq., Clerk Assistant of the Legislative Assembly. Also, of valuable assistance on loan from the Legislative Assembly staff to cope with the administrative duties of this office were Diane Mercier-Allain and Janet Trail.

CONCLUSION

During the fiscal period ended March 31, 2008, expenditures of the Commissioner's office for salaries and benefits, office equipment and supplies total \$123,621.25 as compared with \$91,576.57 for the previous fiscal year. The higher than normal costs were one-time expenditures attributed to the first compensation review for Members in 27 years.

As well, I participated in meetings and conferences relative to ethics and conflict of interest issues with commissioners from other provinces, the federal government and the territories.

As a final note, the office will be staffed on a full time basis commencing in the Spring of 2008.

Dated at Fredericton this 30th day of April, 2008.

The Honourable Patrick A.A. Ryan, Q.C.
Conflict of Interest Commissioner
Province of New Brunswick