



Province of New Brunswick

CONFLICT OF  
INTEREST COMMISSIONER

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

ANNUAL REPORT

2008

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June 18, 2009

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 fourth report, the ninth 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



## 2008 ANNUAL REPORT

### COMMISSIONER'S REMARKS

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

On November 3, 2008 a by-election was held for the riding of New Maryland-Sunbury West. In the previous year a by-election was held for the riding of Moncton East. All newly elected members are required to provide the Commissioner with extensive information concerning their assets and liabilities. The information provided in these declarations is reviewed, the member is interviewed and Public Declarations are filed with the Clerk of the Legislature. Copies of the Public Declarations may be obtained by the public through the office of the Clerk.

When a cabinet shuffle occurs, as it did on November 12, 2008, every new member of the Executive Council is required to complete and provide detailed information as to the member's assets and liabilities. The member must also provide the Commissioner, in writing, with information concerning any private corporations held by the minister or any family member, any gifts and personal benefits and provide extensive general information. The reason for requiring members of the Executive Council to provide such detailed information is to avoid any conflicts of interest between the member's public duty and the member's private interests. This requirement is prompted partially by prohibitions in s. 14(1) of the *Members' Conflict of Interest Act*:

#### **Prohibited Activities**

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.

An exemption to a prohibition is possible from the Commissioner provided the member has disclosed all material facts to the Commissioner and has been given the Commissioner's written approval.

## **THE OFFICE**

For the first time the office has been staffed full-time with an Administrative Assistant and the members are now able to have direct contact daily with personnel. Prior to 2008, the office was staffed on a part-time basis that led to possible delays in members having their concerns addressed forthwith. With the appointment of a full-time Administrative Assistant, this impediment to access has been resolved. One of the persistent duties of the Administrative Assistant is to prepare and disseminate the forms which must be completed annually by every member. It is then the Assistant's responsibility to gather in the responses and coordinate the dates and times for members' interviews with the Commissioner. In order to complete these tasks it is important that there be a high degree of cooperation between each member and the Office of the Conflict of Interest Commissioner, particularly given the heavy workload of the members in relation to the Legislature, committees and their constituency offices. In 2008, there were many instances of long delays in completing the process in preparation for filing the Public Declarations, more so than in previous years.

## **PIDA**

As Commissioner, a new mandate has been given to the office under the *Public Interest Disclosure Act* which took effect July 1, 2008. A separate report will be filed as required under the *Public Interest Disclosure Act*, known and called by its abbreviation PIDA. The duties of the Administrative Assistant for the Office of the Conflict of Interest Commissioner encompass those of the *Public Interest Disclosure Act* for which the Commissioner is responsible.

Following a competition, counsel was engaged to assist in organizing the initial planning involved in the extra workload for public interest disclosures including the involvement of information sessions, investigations and recommendations emanating from the investigations. Nicole Beaulieu, Esq. commenced her position as counsel on November 20, 2008. She was immediately charged with the responsibility of piloting two Blind Management Agreements to completion for two ministers of government who, pursuant to the *Act*, are required during their term of office to divest themselves of certain assets by transferring the management of the assets to trustees.

## **BREACHES OF THE MEMBERS' CONFLICT OF INTEREST ACT**

In 2008 there were neither substantiated allegations nor any investigations that any of the 55 Members of the Legislative Assembly had breached the *Act*.

## PREVIOUS COMMISSIONER'S RECOMMENDATION

As in my three 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 and my comments are 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.

#### **LEADING THE WAY--- FIVE YEAR REVIEW MANDATED BY THE ACT**

An automatic five-year-review will provide the Members of the Legislative Assembly with a positive look at the effectiveness of the procedure applicable to its members. It also gives the New Brunswick Legislature the opportunity to continue the leadership that puts this Province in the forefront of matters of ethics in relation to conduct, public perception and transparency. Pursuant to s. 43.1 the five-year-review is to be delivered as a separate report to the Legislative Administration Committee. I mention the importance of transparency and public perception because one of the responsibilities of this office is to promote the understanding by members of their obligations under the *Act*. In order to accomplish this purpose from the perspective of each of the 55 members and from the perspective of the Conflict of Interest Commissioner, it is my considered opinion that the *Act* be nudged slightly in a complementary new direction. What I will be proposing is that the *Act* ought to apply to "apparent conflicts of interest". By adopting this recommendation, New Brunswick would be leading the way in Atlantic Canada in the matter of ethics as ethics relate to conflicts of interest between the members' responsibilities in their public office vis-à-vis their private interests. The rationale is that if the conflict of interest is apparent, a structured procedure should be in place to enable it to be resolved efficiently. Whether the conflict is actual or is apparent, the stigma of an underlying conflict pervades and must be dealt with logically or 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. Prompt resolution of an apparent conflict of interest, employing a summary procedure, 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.

## **GIFTS AND PERSONAL BENEFITS**

What I set forth in the 2007 Report with respect to fees, gifts and personal benefits bears repeating:

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 circumstances 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.

## **APPRECIATION**

In 2008, the Office of the Conflict of Interest Commissioner was able to relieve the staff of the Legislative Assembly from providing back up support in the weekly operation of the office. During 2008, various personnel did provide temporary support as needed and did assist immeasurably in assessing applications for employment in the Office of the Conflict of Interest Commissioner as well as taking the lead in interviewing candidates for the position of Administrative Assistant and as counsel to the Commissioner. As a result, I am grateful for the assistance given to the Office of the Conflict of Interest Commissioner by Loredana Catalli Sonier, Esq., Clerk of the Legislative Assembly; Peter Wolters, C.A., Director of Finance and Human Resources; Shayne Davies, Esq., Clerk Assistant of the Legislative Assembly and Wendy Bergeron, Manager of Finance and Human Resources. Janet Trail and Diane Mercier-Allain also provided valuable staffing assistance prior to the spring of 2008.

I would be remiss if I did not also thank my Administrative Assistant, Ms. Rosanne Landry-Richard and counsel, Nicole Beaulieu, Esq., for their professional competent assistance.

## **CONCLUSION**

During the fiscal period ended March 31, 2009, expenditures in the Office of the Conflict of Interest Commissioner for salaries and benefits, office equipment and supplies totaled \$302,600.72 as compared with \$123,621.25 for the previous fiscal year. The increase was due to the expanded mandate inaugurating the *Public Interest Disclosure Act*. This should stabilize once an investigator is hired and the full intent of the *Act* is engaged.

As well, I gave speeches and participated in meetings and conferences relative to ethics and conflict of interest issues with The Court of Appeal of New Brunswick and with Commissioners and Ombudsmen from other provinces, the federal government and the territories. Assisted by counsel, I will continue to make myself available to the Members of the Legislative Assembly under the *Members' Conflict of Interest Act* and to the public service under the *Public Interest Disclosure Act*.

Dated at Fredericton this 18th day of June, 2009.

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