



New Brunswick

CONFLICT OF INTEREST COMMISSIONER

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

ANNUAL REPORT ***MEMBERS' CONFLICT OF INTEREST ACT*** **2009**

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July 12, 2010

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 fifth report, the tenth 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

2009 ANNUAL REPORT

COMMISSIONER'S REMARKS

This is the tenth Annual Report issued under the provisions of the *Member's Conflict of Interest Act* as well as being the fifth Annual Report issued by me as Commissioner.

During the past year and a half the office of the Commissioner has been expanded to include another important piece of legislation, the *Public Interest Disclosure Act* that came into effect July 1, 2008. The first Annual Report under the *Public Interest Disclosure Act* known variously as PIDA, but commonly called the *Whistleblower Act*, has been filed separately.

NEW MEMBERS

Special attention was given to two new members of the Legislative Assembly. The member for New Maryland-Sunbury West came to the assembly in a by-election on November 3 of the previous year but was not required to file his private disclosure statements and be interviewed until 2009. In a second by-election held on March 8, 2009 for the constituency of Restigouche-la-Vallée the same process was followed and the member filed his private disclosure statements and was interviewed in due course. In his case the interview was of a former representative who, after some years, was returned to office following the appointment of the incumbent to the Senate.

A similar procedure of filing and interviewing occurs whenever a member is elevated to cabinet status, that is, to the Executive Council. If a member of the Executive Council assumes another or an additional portfolio the member is not required to file a new private disclosure statement or be further interviewed. However, if there is any significant change to the information which had been filed earlier in the year with the Commissioner, there is a requirement that the Commissioner be advised of the change or changes in a timely manner.

The information provided in the private disclosure statements is reviewed and the member is interviewed at least once before the information is processed and public disclosure statements are filed annually with the Clerk of the Legislature. Copies of each member's Public Disclosure Statement are available to the public through the office of the Clerk of the Legislature.

An objective of the filing of private and public disclosure statements is to aid the member in avoiding any conflict of interest between the member's private interest and the member's responsibilities to the public. The public interest must prevail. My advice to each member on a matter of potential conflict of interest is free. To fail to ask for it on a matter of conflict may prove costly.

For example, when a member of government is elevated to Executive Council status, the member faces a series of prohibitions which must be declared to the Commissioner as follows:

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.

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

THE OFFICE

The Office of the Conflict of Interest Commissioner is located in Edgecombe House, 736 King Street directly opposite the rear of the Legislative Assembly. The office is staffed full-time by an administrative assistant and counsel who assist the Commissioner in the administration of the *Members' Conflict of Interest Act* and the *Public Interest Disclosure Act*.

A repetitive duty of the Administrative Assistant is to provide the 55 members of the Legislative Assembly with the forms to be completed for their private disclosure statements and to arrange appointments with the Commissioner who will interview each member in person with respect to the contents of their disclosures. In 2008, there were many instances of long delays by some members in completing the process in preparation for filing the public disclosure statements with information processed from the private disclosure statements, more so than in previous years. In 2009, completion of the statements by members was better.

The Administrative Assistant also plays a key role in the organization of information sessions for senior management under the *Public Interest Disclosure Act*. In 2009 four such half-day information sessions were held. They will continue in 2010 giving every chief executive and designated officer under the *Public Interest Disclosure Act* the opportunity of being informed about the legislation, its purpose and their responsibilities.

BREACHES OF THE MEMBERS' CONFLICT OF INTEREST ACT

In 2009 there were neither substantiated allegations nor any investigations that any of the 55 Members of the Legislative Assembly had breached the *Act*. Under section 36 of the *Act* any person may request that the Commissioner investigate an alleged breach by a member. The request must be

in writing and be in the form of an affidavit. By requiring that the request be in affidavit form the legislation forces the person to set out the grounds for the belief that a breach has occurred as well as the nature of the breach.

PREVIOUS COMMISSIONER'S RECOMMENDATION

As in my four 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, 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 and said:

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.

QUINQUENNIUM REPORT

A five-year report has been prepared by me and is being delivered to the Legislative Administration Committee pursuant to section 43.1 of the *Act*. In my Annual Report for 2008, I referred to the five-year report as “Leading the Way” and said that the recommendations in the five-year report would give New Brunswick the opportunity to continue the leadership that puts the Province in the forefront of matters of ethics in relation to conduct, public perception and transparency. I suggested that the *Act* be nudged slightly in a complementary new direction. What I propose is that the *Act* be amended so that it applies not only to conflicts of interest but also to “apparent conflicts of interest”. Why? For transparency and public perception!

I repeat what I said about the recommendation of expanding the *Act* in the Quinquennium Report to include “apparent conflicts of interest” as well as conflicts of interest as currently interpreted:

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.

A summary of the matters dealt with in the Quinquennium Report include the following:

- ONE ADMINISTRATION FOR COI AND MEMBERS’ COI ACT
- “APPARENT” CONFLICT OF INTEREST
- BLIND MANAGEMENT AGREEMENT/BLIND TRUSTS
- BENEFITS DIRECT/INDIRECT PROHIBITED
- EMPLOYMENT CONTRACTS FOR SPOUSE, COMMON-LAW PARTNER, CHILD, SIBLING OR PARENT OF ANOTHER MEMBER PROHIBITED
- 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

- INFLUENCE PROHIBITED
- PREFERENTIAL TREATMENT PROHIBITED
- ADVICE
- “SPECIAL” CONFLICT OF INTEREST COMMISSIONER
- TERM OF APPOINTMENT - 7 YEARS
- “FORMER” COMMISSIONERS PROHIBITED FROM DISCLOSING CONFIDENTIAL INFORMATION
- PUBLIC DISCLOSURE STATEMENTS ONLINE
- TRUSTS TO BE DISCLOSED
- ARREARS OF MAINTENANCE PAYABLE INCLUDING LEGAL COSTS/INTEREST/PENALTIES TO BE DISCLOSED
- NAMES OF OTHER CORPORATIONS AFFILIATED WITH A MEMBER’S PRIVATE CORPORATION TO BE DISCLOSED
- NO RETALIATION AGAINST INFORMANTS
- FORMER MEMBER MAY SEEK COMPLETION OF INVESTIGATION
- POST EMPLOYMENT RESTRICTIONS, TWO YEARS
- ADDITIONAL POST EMPLOYMENT RESTRICTIONS
- LOBBYING RESTRICTIONS

GIFTS AND PERSONAL BENEFITS

There is a misunderstanding by some members with respect to the acceptance of gifts. The first misunderstanding is that gifts may be accepted if they are valued at less than \$250. No matter what the value of the gift, no matter how little or how great, if the gift is inappropriate, it is inappropriate at any value.

All gifts fees or personal benefits are unacceptable. Like any rule, there is an exception.

If the gift or personal benefit is received as an incident of protocol or social obligation that normally accompany the responsibilities of office, then the gift or personal benefit is acceptable provided that the gift or personal benefit does not exceed \$250. If the gift or personal benefit exceeds \$250 in

value the member must file a gift disclosure statement with the Commissioner without delay.

Regardless, no member shall accept a fee. What is permitted is compensation authorized by law that is directly or indirectly connected with the member's duties of office.

Section 8 of the *Members' Conflict of Interest Act* sets out the parameters governing gifts as follows:

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 2009 there were occasions when the entire office was engaged off-site providing seminars for senior management. As a result we relied upon staff members of the Legislative Assembly to carry on the business of the Conflict of Interest Office by remote control. I appreciate the good professional service provided by them. I am also grateful for the assistance given to this office by Loredana Catelli 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 and Jeffrey Quinn, Assistant to Bruce Mather, Administrator Information Technology.

In particular, I appreciate the competent and professional services of my Administrative Assistant, Rosanne Landry-Richard and counsel to the Commissioner, Nicole Beaulieu.

CONCLUSION

During the fiscal period ended March 31, 2010 expenditures in the Office of the Conflict of Interest Commissioner for salaries, benefits, office equipment and supplies totaled \$315,892.27 as compared with \$302,600.72 for the previous fiscal year. The increase was due to the expansion of the office to include legislation under the *Public Interest Disclosure Act*.

As well as conducting the seminars for senior management relative to their responsibilities under the *Public Interest Disclosure Act*, I participated in meetings and conferences with the New Brunswick Court of Appeal, Ombudsmen and Ethics and Conflict of Interest Commissioners from the other Provinces and Territories as well as representatives of the Federal Government. Assisted by counsel, I made myself available for consultation 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*. Along with counsel and my Administrative Assistant our office responded to telephone calls, letters and visits from a number of persons seeking information on matters of ethics.

Dated at Fredericton this 12th day of July, 2010.

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