



Province of New Brunswick

CONFLICT OF
INTEREST COMMISSIONER

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

ANNUAL REPORT

2006-2007

PO Box 6000, Fredericton, NB, E3B 5H1

Tel: (506) 457-7890

Fax: (506) 444-5224

www.gnb.ca/legis/conflict

May 9, 2007

The Hon. Eugene McGinley, Q.C.
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 second report, the seventh Annual Report of the Office of the Members' Conflict of Interest Commissioner. The first five reports were submitted by the Honourable Stuart G. Stratton, Q.C., a retired Chief Justice of the Province.

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

COMMISSIONER'S REMARKS

This, the second Report issued under my term of office, is the seventh Annual Report of the Conflict of Interest Commissioner and covers a provincial election in which there was a change in the governing parties. The office was particularly busy during the year when there was a cabinet shuffle of the previous administration and a completely new Executive Council following the election of September 18, 2006. For the first time, the Commissioner's office was staffed half days weekly by an Administrative Assistant.

Before advertng to the various duties of office and that which transpired during the year, I emphasize the recommendation of the previous Commissioner, 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 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.

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.

Last year, I endorsed 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 conflicts 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, albeit half days, there would be a fixed access by all eligible persons to the Commissioner for advice and consultation.

DECISIONS

During the course of the year a number of written letters of advice were delivered to members of the Executive Council as well as to members of both parties in response to questions posed to me with respect to conflicts of interest or potential conflicts of interest.

Members of the media continued to make inquiries of certain members. I insist that their inquiries be in writing and after perusing the inquiries I point out that all information imparted to me by members is confidential and can only be released by the member or with the member's written direction. I abstain from replying to hypothetical questions whether from the media or other sources.

For the first time under my tenure of office I was called upon to hold an investigation into a complaint filed by a member of the Opposition against a member of the Executive Council. The allegations against the Minister were described by the complainant as improprieties of office. They related to reimbursement for some constituency meals at his restaurant; using his company's credit card for part of a government trip for which the company received credit for some air miles; being shown as a director of his company when directorships are prohibited by the *Members' Conflict of Interest Act*; and engaging in the business of his corporation which was in a blind management agreement.

The Report to the Speaker of the Legislative Assembly can be found at: <http://www.gnb.ca/legis/conflict/investigations/inv101706-e.asp>

ADVICE

The most active service performed by the office of the Commissioner is by way of advice to any and all members with respect to conflicts between the member's private interests and the member's duty to the public. In any contest, the member's duty to the public must prevail.

In order to instruct key personnel to be able to assist their Members, I offered an innovative service to all members of the Executive Council and to the Leader of the Opposition. The offer was accepted. I proposed and put into effect an individual information service for each of the Executive Assistants. My Administrative Assistant, Jacqueline Boyer, prepared an information package, strategically highlighted, for their use. An explanation of the contents was given by her and by me at the time of delivery of the information package. This was followed by a full discussion of how the Executive Assistant could best assist his or her Member in avoiding conflicts of interest. In each and every case the Executive Assistant expressed gratitude at the conclusion of the session.

With the change in government, this highly successful innovation will again be offered to an entirely new panel of Executive Assistants.

Interestingly, I was also called upon to explain certain provisions of the *Members' Conflict of Interest Act* to a potential candidate who was considering running for election. Political leaders are taking the initiative and making certain that potential candidates are informed of the requirements of the legislation, particularly business people and professionals.

In the months prior to the general election of September, 2006, a cabinet shuffle resulted in five new ministers coming to the Executive Council as well as various changes in portfolios for several other members and a change in the office of the Speaker. The new ministers were interviewed and advised of their responsibilities under the *Members' Conflict of Interest Act*.

In the general election of September 18, six members did not re-offer, five incumbent members were defeated, and eleven new members were elected.

During an orientation session for new members, this office made a presentation to the new members with respect to the *Member's Conflict of Interest Act*. A principal purpose was to emphasize the importance of seeking advice before the fact and not after the fact.

There is a time when "after the fact" advice has a primary purpose. Members should keep in mind that 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 by or with the consent of the person requesting the advice.

One year after a member leaves the legislature, and following consultation with the former member, the member's file is destroyed.

DISCLOSURES

Last year, I was able to report and congratulate all members for having filed their Private Disclosure forms on time for the first time since the coming into force of the Act. This time, the delay in filing by some, has caused the disclosure forms to be delayed even into the year 2007. As well, in some instances, deadlines have had to be established and dates fixed for appearances before the Commissioner when the information was not provided by the deadline. That welcome change from previous years dissipated.

The delay in filing Private Disclosure Statements means a delay in preparation, dissemination and filing of the Public Disclosure Statements with the Clerk of the Legislative Assembly. In 2005, I was able to file the Public Disclosure Statements with the Clerk on November 25. They are available for public inspection during normal business hours of the office of the Clerk. Copies are also available at a reasonable fee.

GIFTS AND PERSONAL BENEFIT

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 my first year in office I was assisted by a host of dedicated personnel on loan from the Legislative Assembly staff until such time as an Administrative Assistant, Jacqueline Boyer, was engaged by this office. Along with the able assistance of Ms. Boyer, I continued to have and call upon, from time to time, the expertise of Loredana Catalli Sonier, Esq., Clerk of the Legislative Assembly, Peter Wolters, C.A., Director of Finance and Human Resources and Shayne Davies, Esq., Clerk Assistant and former assistant to the previous Conflict of Interest Commissioner.

CONCLUSION

During the fiscal period ended March 31, 2007, expenditures of the Commissioner's office for salaries and benefits, office equipment and supplies total \$91,576.57 as compared with \$100,005.03 the previous fiscal year. Improvements were made in the physical attributes of the office, restoring some of the historic built-in fixtures which had been allowed to deteriorate over the past 100 years. As well, I participated in meetings and conferences to improve our relations with the ethics and conflict of interest commissioners from the provinces, territories and federal institutions.

As a final note, the weekly opening of this office during half-days, means that members can obtain service and confidential advice on a timely basis.

Dated at Fredericton this 9th day of May, 2007

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