



**OFFICE OF THE CONFLICT OF INTEREST COMMISSIONER  
PROVINCE OF NEW BRUNSWICK**

**REPORT TO THE SPEAKER  
OF THE  
LEGISLATIVE ASSEMBLY OF NEW BRUNSWICK  
OF THE  
INVESTIGATION**

**BY THE HON. ALFRED R. LANDRY, Q.C.  
CONFLICT OF INTEREST COMMISSIONER**

**INTO ALLEGATIONS BY MR. VICTOR BOUDREAU,  
MLA FOR SHEDIAC—CAP-PELÉ  
OF VIOLATIONS OF THE *MEMBERS' CONFLICT OF INTEREST ACT*  
BY MINISTER PAUL ROBICHAUD, MLA FOR  
LAMÈQUE—SHIPPAGAN—MISCOU AND DEPUTY PREMIER**



Report to the Speaker  
of the  
Legislative Assembly of New Brunswick  
of the  
Investigation  
by the Hon. Alfred R. Landry, Q.C.  
Conflict of Interest Commissioner

Into Allegations by Mr. Victor Boudreau,  
MLA for Shediac—Cap-Pelé  
of Violations of the *Members' Conflict of Interest Act*  
by Minister Paul Robichaud, MLA for Lamèque—Shippagan—Miscou  
and Deputy Premier

## **Introduction**

Mr. Victor Boudreau (as he then was), Member of the Legislative Assembly for Shediac—Cap-Pelé, has requested, by affidavit dated March 12, 2013, an investigation pursuant to Section 36 of the *Members' Conflict of Interest Act*, SNB 1999, c M-7.01, to determine whether Minister Paul Robichaud, Member of the Legislative Assembly for Lamèque—Shippagan—Miscou and Deputy Premier has violated section 6 of the *Act* which provides as follows:

### **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.

MLA Boudreau seeks a determination of whether Minister Robichaud is in violation of Section 6 of the *Act* in that he allegedly used his office to seek to influence a decision made by another person so as to further another person's private interest; namely his brother.

## **Provision for investigations**

Section 36 of the *Members' Conflict of Interest Act* provides that any person may request in writing that the Commissioner investigate an alleged breach of the *Act* by a Member of the Legislative Assembly. The request must be made in the form of an affidavit and set out the grounds and the nature of the alleged breach. Upon receiving the request for an investigation the Commissioner may conduct an investigation with or without conducting an inquiry under s. 37. (See *Members' Conflict of Interest Act*, S.N.B. 1999, c.M-7.01, s.36 and s.37.)

## The Complaint

MLA Boudreau's complaint is stated as follows in his affidavit dated March 12, 2013:

I, Victor Boudreau of the Town of Shediac, County of Westmorland and Province of New Brunswick, MAKE OATH AND SAY:

1. I am the Applicant herein, a Member of the Legislative Assembly of New Brunswick and have personal knowledge of the matters deposed to, unless otherwise stated.

2. Paul Robichaud is a Member of the Legislative Assembly of New Brunswick and was appointed as the Minister of Economic Development of New Brunswick on October 12, 2010.

3. On or about March 1, 2012, I received an anonymous letter outlining serious allegations of criminal conduct by Minister Robichaud for allegedly attempting to interfere with the prosecution of a charge under the *Aquaculture Act R.S.N.B. 2011, c.112*, against Minister Robichaud's brother. A copy of the letter is attached hereto marked "A".

4. As the allegations are very serious and the anonymous letter contained detailed information related to facts of the alleged offence, a decision was made to forward this anonymous letter to the RCMP as I believed this matter should best be reviewed and investigated by the appropriate policing agency. A copy of my letter to RCMP Assistant Commissioner Wayne Lang is attached hereto marked "B".

5. On February 11, 2013, the Royal Canadian Mounted Police advised the public that charges of obstruction of justice were being laid against a senior civil servant relating to the allegations outlined in the anonymous letter.

6. I believe that the laying of a criminal charge based on the information contained in the anonymous letter gives credibility to the allegations contained therein and given that the allegations in the letter suggest Minister Robichaud was directly or indirectly involved in attempting to interfere with the prosecution of his brother for a violation of the *Aquaculture Act, c. A-9.1 S.N.B.*, I further believe that the allegations in the letter merit further investigation by the Conflict of Interest Commissioner for a determination of whether Minister

Robichaud is in violation of section 6 of the *Members' Conflict of Interest Act, S.N.B. 1999, Chapter M-7-01* in that he used his office to seek to influence a decision made by another person so as to further another person's private interest; namely, his brother.

7. Although there is a police investigation of this matter and charges have been laid against a senior civil servant, I would respectfully request a ruling from the Conflict of Interest Commissioner as to where he believes further investigation of this matter by his office is precluded at this time by Section 39 of the Act, and I further request that if the answer is in the affirmative, that an investigation be held by the Conflict of Interest Commissioner of the allegations against Mr. Robichaud once the police investigation or charge has been finally disposed of.

8. I make this affidavit in furtherance of a request for an investigation pursuant to section 36 of the *Members' Conflict of Interest Act, S.N.B. 1999, c. M-7.01*.

A

Dear Mr. Boudreau:

I am providing you with this information because I think that the Deputy Premier, Mr. Paul Robichaud has not only overstepped his bounds as a political leader, he may well have committed a criminal offence.

Also, the Deputy Minister of DAAF, was also guilty of perpetuating the offence of Obstructing Justice by ordering the manager of DAAF enforcement to not lay charges against Mr. Robichaud's brother for an offence under the Aquaculture Act. Mr. Sabine is also guilty of this offence by carrying out the illegal order of the Deputy Minister.

The following is submitted to allow you to understand why these allegations are being forwarded.

Mr. Robichaud's brother who has an aquaculture site on the North Shore, has been investigated by enforcement officers from DAAF for the past year or so. After obtaining all the required evidence, a report was completed recommending charges under the act and submitted to the Manager of DAAF. He then apparently advised his supervisor and the Deputy Minister of the report and recommendations. This information was brought to Mr. Robichaud who obviously ordered that his brother not be charged and to conclude the file. Documentation was then sent to the investigators ordering them not to lay any charges. Regardless of this and the fact that this was clearly obstruction under the criminal code, the file was presented to the Crown Prosecutor who agreed that the evidence was sufficient to warrant a charge. However, since this involved an MLA and other people in positions of power, the local Crown submitted this to the Regional Crown, P.J. Vienneau for his input. Mr. Vienneau reviewed the matter and agreed that the charge should stand. The information was laid in Provincial Court and the accused was served with a summons to appear.

After doing this, the Manager of DAAF was informed and he then brought this to the attention of his supervisor who then informed the Deputy Minister. The Manager was then ordered to contact the Regional Crown and ask that the charge be withdrawn, Mr. Vienneau refused and the charge is still before the court.

I feel that as the leader of the opposition, you should have this matter verified and appropriate action taken.

A very concerned citizen.

**B**

March 2, 2012

Royal Canadian Mounted Police  
"J" Division Headquarters  
1445 Regent Street  
Fredericton NB E3B 4Z8

Att: Assistant Commissioner Wayne Lang

Dear Sir:

I recently received an anonymous letter outlining very serious allegations against Mr. Paul Robichaud, a minister in the Alward government.

The allegations involved attempted prosecutorial interference by Mr. Robichaud in an alleged attempt to prevent the laying of charges against his brother by DAAF enforcement officers and the Crown.

I believe it is appropriate that I bring these allegations to the attention of the RCMP and I would ask that an investigation be undertaken to determine whether an offence has been committed under the provisions of the Criminal Code of Canada on the part of Mr. Robichaud, his political staff and/or any other party acting on his behalf and with his knowledge and consent.

Enclosed please find the letter brought to my attention containing the alleged facts constituting the actions in question.

Thank you for your attention in this matter.

Yours truly,

*(original signed by Mr. Victor Boudreau)*

Victor Boudreau  
Leader  
MLA for Shediac—Cap-Pelé

Encl.

## **The Response**

Minister Robichaud's response is enunciated as follows in his affidavit dated October 21, 2013:

1. I have been a Member of the Legislative Assembly since June 7, 1999, and I was appointed to the Executive Council of New Brunswick on October 12, 2010. I am currently Deputy Premier, Minister of Natural Resources, Minister Responsible for the Regional Development Corporation, Minister Responsible for the Northern New Brunswick Initiative, Minister Responsible for Rural Affairs, Minister Responsible for La Francophonie, and Government House Leader.
2. I am the defendant in this complaint made to the Conflict of Interest Commissioner and, as such, I have personal knowledge of the facts contained in this affidavit, except where I have indicated otherwise.
3. I was first informed of the existence of an anonymous letter, criticizing me for acting in contravention of the Act, during question period in the Legislative Assembly of New Brunswick on April 3, 2012. At the time, I was not aware of the exact contents of this letter or of the identity of the letter writer.
4. I was able to learn the contents of this anonymous letter, because it was attached as Appendix A to Victor Boudreau's affidavit dated March 12, 2013. The undersigned remains unaware of the identity of the letter writer as of the date of this affidavit.
5. I was contacted by the Royal Canadian Mounted Police, who informed me of their investigation following the receipt of this anonymous letter, without indicating precisely whether this investigation concerned me or other individuals.
6. After consulting my lawyer, I followed his advice and did not meet with the Royal Canadian Mounted Police, because I still did not know who had written the anonymous letter.
7. I learned afterwards, through the media, in February 2013, that charges had been laid against Mr. Peter Andrews, a New Brunswick

civil servant, and that these charges had been laid following an investigation by the Royal Canadian Mounted Police in relation to the anonymous letter that was attached to Victor Boudreau's affidavit.

8. I do not know the Mr. Peter Andrews referred to in paragraph 7 of this affidavit, and I have never spoken to him either about my brother, Donat Robichaud, or about the file involving my brother, Donat Robichaud.

9. I hereby respectfully submit that this complaint, which is based on an anonymous letter, is frivolous and vexatious and was not made in good faith, having the sole objective of tarnishing my reputation and preventing me from continuing to perform the tasks that I have been entrusted with as a member of the Executive Council.

10. Also, since the Royal Canadian Mounted Police have carried out an investigation related to the anonymous letter and charges have been laid as a result of this investigation, I would respectfully submit that there are no sufficient grounds to proceed with an investigation.

11. I hereby respond to the complaint filed by Victor Boudreau and ask the Conflict of Interest Commissioner to refuse to undertake an investigation under the Members' Conflict of Interest Act (S.N.B. 1999, c. M-7.01). [Translation]

## **Jurisdiction**

On September 22, 2014, the Alward government fell and was replaced by the Gallant government. The change also included a loss by the Member for Lamèque—Shippagan—Miscou, the Honourable Paul Robichaud, the subject of the request for an investigation by the Member for Shediac—Cap-Pelé, MLA Victor Boudreau.

In the circumstances I am of the opinion that there is no jurisdiction for me to continue the within investigation with or without an inquiry. My predecessor, the Hon. Patrick A.A. Ryan, Q.C., shared the same opinion and addressed the question at length as follows in his Report dated February 14, 2012, into allegations by Mr. Bruce Fitch, MLA for Riverview, against Minister Richard Miles, MLA for Fredericton—Silverwood and Minister of Environment:

[29] A reading of the *Members' Conflict of Interest Act* does not specify any power in the Commissioner to continue an investigation after a member or member of the Executive Council is defeated in an election; there is no statutory authority conferring any power to continue with or without the consent of the person who has requested the investigation; neither can the person, the subject of the investigation, empower the Commissioner to continue with the investigation; nor can the two parties consent and give the Commissioner authority to continue. Without statutory authority I am of the opinion that the matter must end without resolving the allegation of a breach.

[30] The Definition section of the *Members' Conflict of Interest Act* defines the word "member":

1 In this Act

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

[31] The member for Fredericton-Silverwood ceased to be a Member of the Legislative Assembly of New Brunswick when Writs of Election were issued on August 26, 2010 by the Chief Electoral Officer, Michael P. Quinn for the 55 electoral districts in accordance with an Order of the Lieutenant-Governor in Council, but continued as a member of the Executive Council until the new government of Premier Alward was sworn in on October 12, 2010.

[32] The former member is entitled to various benefits and was subject to the *Members' Conflict of Interest Act* because he held a portfolio on the Executive Council. This changed when he was defeated.

[33] The first reference to a "former member" appears in s. 16(1) prohibiting the Executive Council or a member of the Executive Council from knowingly awarding or approving a contract, grant or benefit to a "former member" until twelve months after the former member ceased to hold office. Some exceptions apply. S. 17 completes the circle, no "former member" may accept a contract or such benefits until after twelve months. Some exceptions may apply.

[34] In addition the "former member" is prohibited from making representations on his or her own behalf or on behalf of any

other person with respect to a contract or benefit. Some exceptions may apply.

[35] Under s. 21 a “former” member’s records are to be destroyed 12 months after the person ceases to be a member or a member of the Executive Council unless an inquiry is being conducted or criminal charges are pending.

[36] Under ss. 29, 30 the Commissioner may give advice to a “former” member respecting his or her obligations under the *Act*.

[37] Other than the sections referring to former members, there are no references, direct or indirect, that give the Commissioner the authority to pursue an investigation and inquiry into an allegation of conflict of interest or a breach of the *Members’ Conflict of Interest Act*.

[38] In further support of my opinion that I have no jurisdiction to continue with the investigation and the matter must otherwise remain unresolved is s. 41 “Recommended sanctions”:

[39] Where the Commissioner finds that a member has breached s. 41 for example the Commissioner may recommend

(a) that the member be reprimanded,

(b) that the Assembly impose a penalty on a member in an amount recommended by the Commissioner,

(c) that the member’s right to sit and vote in the Assembly be suspended for a specified period or until the fulfillment of a condition, or

(d) that the member be expelled from membership in the Assembly and the member’s seat be declared vacant.

[40] It is obvious from the wording of s. 41 and the specific references elsewhere to “former members” that the intention of the legislature in the drafting of the *Act* limited the sanctions to persons who remained under the jurisdiction of the legislature and of the Legislative Assembly.

[41] The listed sanctions (c) and (d) are inappropriate. The former member is no longer in the legislature and subject to its jurisdiction except where specifically referred to in the *Act*.

...

[46] A New Brunswick conflict of interest case decided on June 5, 2003 by my predecessor, the late Hon. Stuart G. Stratton, Q.C. has some relevance. In it Bernard Richard, the leader of the Official Opposition, alleged that Michael (Tanker) Malley was involved in sending out a letter seeking donations for the Miramichi—Bay du Vin Riding Association that also linked the donations to the candidate and future government support. Before the investigation was completed an election was called.

[47] Commissioner Stratton held as follows:

I would first record that although the issue has not been raised before me, I have given consideration to the question of my jurisdiction to investigate and report with respect to this particular complaint at this particular time. The Act does not contain any specific provisions dealing with cases such as the present one where an election has been called before my investigation and Report have been concluded. In this respect, it is a well recognized principle that when the Legislative Assembly is dissolved, the Members cease to be Members. This notwithstanding I have concluded that I do have the necessary jurisdiction to conclude my investigation and make my Report to the Speaker. I have come to this conclusion because the alleged misconduct in this case occurred while Mr. Malley was a Member and he was also a Member when I received the two requests to enquire into his alleged misconduct. In this respect, I refer as well to section 2 of the Act which provides that a re-elected Member of the Assembly is deemed to have been a Member for the period between dissolution of the House and re-election. Thus, if Mr. Malley is re-elected there can be no question as to my jurisdiction.

[48] I agree with Commissioner Stratton's opinion that he would have jurisdiction if Mr. Malley was re-elected but not otherwise.

## Conclusion

In conclusion I lay my report before the Assembly with the finding that the investigation of an allegation of a breach of the *Members' Conflict of Interest Act* by the Hon. Paul Robichaud commenced on March 12, 2013 be discontinued for want of jurisdiction.

Dated at the City of Fredericton this 6<sup>th</sup> day of, January 2015.

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The Hon. Alfred R. Landry, Q.C.  
Conflict of Interest Commissioner

Pursuant to s. 40 of the *Members' Conflict of Interest Act*, I met with Paul Robichaud on December 16, 2014 to inform him of the particulars of my report and to give him the opportunity to make representations before completing my report. No representations were made.

The *ratio decidendi* of my report has not changed.

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The Hon. Alfred R. Landry, Q.C.  
Conflict of Interest Commissioner