
Thursday, April 3, 2003.

1 o'clock p.m.

Prayers.

Mr. Speaker, from the Legislative Administration Committee ,
presented the First Report of the Committee for the session which
was read and is as follows:

April 3, 2003.

To the Honourable
The Legislative Assembly of
The Province of New Brunswick

Honourable Members,

I am pleased to present the First Report of the Legislative
Administration Committee

recommending the adoption of a statement on the Roles and
Responsibilities of an MLA and a Code of Conduct for Members of
the Legislative Assembly of New Brunswick.

I wish to thank the Members of the Committee for their contribution
and on their behalf express the Committee's appreciation to the
legislative staff who assisted the Committee in its work.

Respectfully submitted on behalf of the Committee.

(Sgd. :) Honourable Bev Harrison,
Chair.
M.L.A., Hampton.

Ordered that the report be received.

The full report of the Committee as presented follows:

Introduction

On June 7, 2002, the Legislative Assembly of New Brunswick adopted the
following resolution, moved during the Fourth Session of the Fifty-fourth
Legislature by Honourable Premier Lord and seconded by Honourable
Mr. Green:

WHEREAS Members of the Legislative Assembly are the elected
representatives of the people of New Brunswick;

AND WHEREAS it is important that the role and responsibilities of MLAs be
well understood by the general public;

AND WHEREAS the effectiveness of MLAs, and their accountability to the
people of New Brunswick, may be improved if the Legislative Assembly
establishes a formal statement of the key roles and responsibilities of MLAs;

THEREFORE BE IT RESOLVED THAT the Legislative Administration
Committee consider the advisability of introducing an *MLA Responsibility
Act*, a code of conduct for Members, or some similar guideline that would

serve as an aid to MLAs in the conduct of their duties and would better inform the people of New Brunswick of the role and responsibilities of MLAs.

The above Resolution of the Legislative Assembly is the order of reference and forms the basis of the Legislative Administration Committee's First Report to the Fifth Session of the Fifty-fourth Legislature.

By virtue of subsection 9(3) of the *Legislative Assembly Act*, your Committee is empowered to sit notwithstanding the adjournment or prorogation of a session. Your Committee began consideration of its order of reference on August 20, 2002. Additional meetings were held on September 26, November 8, December 6, 2002 and March 27, 2003.

As part of its deliberations, the Committee considered two earlier reports to the House dealing with conflict of interest legislation, undertook extensive research, and consulted a number of parliamentary authorities. Your Committee also examined codes of conduct in other jurisdictions, notably Saskatchewan, the Northwest Territories, Nunavut, the United Kingdom and Scotland.

In addition, the Committee considered a document entitled *Working Paper on an MLA Responsibility Act*, Office of Government House Leader, June 2002, provided to Committee members by the Honourable Brad Green. Based upon its documentary research, the consultative process, and in furtherance of its mandate, the Committee identified four main issues:

1. The need for establishing a formal statement on the role and responsibilities of Members of the Legislative Assembly of New Brunswick;
2. The advisability of introducing a formal statement on the role and responsibilities of MLAs in the form of an Act;
3. An alternative vehicle for adopting a formal statement on the role and responsibilities of MLAs;
4. The content of a code of conduct or statement on the role and responsibilities of MLAs.

The comments that follow incorporate the views and the concerns of your Committee with respect to the issues raised by the Committee's order of reference, the results of the research and consultative process, and the Committee's recommendations.

1. The need for establishing a formal statement on the role and responsibilities of Members of the Legislative Assembly of New Brunswick

One of the first questions the Committee considered was whether there is a need to establish a formal statement on the role and responsibilities of Members of the Legislative Assembly of New Brunswick.

As is widely recognized, the functioning of Parliament is governed largely by "unwritten" laws and well-established and well-understood principles and constitutional conventions. In this respect, the first paragraph in the Introduction to Erskine May's *Parliamentary Practice*, (a recognized

authority in the United Kingdom and Canada), Twenty-second Edition states:

“The law, privileges, proceedings and usages of Parliament’ in a nation with a long history and an unwritten constitution must be discovered largely by observing its practice, rather than by consulting fundamental texts and the decisions of a Supreme Court. The “law of Parliament” includes those aspects of Parliamentary activity that depend for their effectiveness on recognition by the courts, and such law - although it may be unwritten - is changed only by way of statute. But most Parliamentary procedure and usage derives from the admitted right of each House to regulate its own proceedings...

Elected representatives are a recognized and integral part of our parliamentary system of government. Is it necessary therefore to enshrine in legislation certain aspects of a parliamentary system which until now have been well-established and generally well-understood by the public, i.e. the role and responsibilities of elected representatives?

It may be that in the opinion of some, there should be more about the role of MLAs in the *Constitution Act* and the *Legislative Assembly Act*, and that these Acts should be amended accordingly. How they should be amended and to what extent is a matter of debate. New Brunswick has a proud history of democratic governance. One need only to refer to recent parliamentary history, when a single party was elected and swept all seats in the Legislative Assembly. There was no Official Opposition to hold the government of the day accountable. Extraordinary measures were adopted to ensure that the minority parties, absent from the Chamber, could participate in the parliamentary process.

It was suggested by Committee Members that drawing up a code of conduct and statement on the roles and responsibilities of the Members at this time in the province’s history would be a positive initiative. There may not be a great urgency for such a code. If however, one were to be adopted at this time, it would not be the result of a conduct crisis as in other jurisdictions. By and large, MLAs know what their duties and responsibilities are.

Your Committee is of the opinion that there may be no better time for the Legislative Assembly of New Brunswick to adopt a series of statements in principle that will govern MLAs on their role and to better educate them in their responsibilities to the electorate.

Recommendation No. 1

Your Committee therefore recommends the establishment of a code of conduct and statement on the roles and responsibilities of Members.

2. The advisability of enacting legislation on the role and responsibilities of the Members

Your Committee was specifically mandated to consider “the advisability of introducing an *MLA Responsibility Act*” that would serve as an aid to MLAs in the conduct of their duties and would better inform the people of New Brunswick on the role and responsibilities of MLAs. In an effort to assist the Committee, the Honourable Brad Green, Minister of Justice, Attorney

General and Government House Leader, also a member of the present Committee, prepared a document entitled "*Working Paper on an MLA Responsibility Act*, Office of the Government House Leader, June 2002". Your Committee wishes to express its appreciation to the Government House Leader for having provided the members of your Committee with such a valuable document to assist it in its deliberations.

The *Working Paper* raises a series of balanced questions relating to the merits of adopting an *MLA Responsibility Act*. It explains how a declaratory statement on the roles and responsibilities of Members could be incorporated into a legal and statutory framework for the benefit of the people of New Brunswick. The function of an *MLA Responsibility Act* would be to provide "a straightforward statement, in broad terms, of what New Brunswickers are entitled to expect from their elected representatives."

The *Working Paper* suggests that such an *Act* would have "a higher public profile", "greater authority", "be more permanent", and have "a greater public impact". The *Working Paper* does acknowledge, however, that some things, though perhaps important, neither need to be, nor should be formalized as a law.

Indeed, the *Working Paper* points out one cogent argument that could be made for not enacting a law as stated in the *Working Paper*:

"Whatever one may say about the *Act* not being designed to create legal obligations, if it is law, the Courts will enforce it somehow".¹

It is this latter statement that gave the Committee pause and focussed its attention on the potential risks and consequences of adopting such a piece of legislation. In this respect, the Committee was careful not to overlook the potential impact that such legislation might have on the rights and immunities of the Legislative Assembly.

The Legislative Assembly, as a whole, and its Members already individually enjoy certain rights, privileges, powers and immunities which are absolutely necessary if they are to effectively carry out their functions.

Subsection 1(1) of the *Legislative Assembly Act* (Chapter L-3) refers to the privileges immunities and powers held by the Assembly, its Members and Committees thereof:

1(1) In all matters and cases not specially provided for by any Statute of the Province, the Legislative Assembly of New Brunswick, and the committees and members thereof respectively, shall hold, enjoy and exercise such and the like privileges, immunities and powers, as are held, enjoyed and exercised by the House of Commons of Canada and by the respective committees and members thereof; and such privileges, immunities and powers of the Legislative Assembly shall be deemed to be and are part of the general and public law of New Brunswick, and it shall not be necessary to plead the same, but the same shall in all courts of justice in this Province, and by and before all justices and others, be taken notice of judicially.

It should also be noted that in New Brunswick, as elsewhere, at the opening of a new House, the Speaker of the Legislative Assembly claims from the Lieutenant-Governor, the traditional rights and privileges of the Assembly in the following words:

It now becomes my duty in the name and on behalf of the Assembly, to claim and demand that they have all their ancient and accustomed rights and privileges, especially freedom from arrest, freedom of speech in debate, ...

What impact, if any, would an *MLA Responsibility Act* have on the Legislative Assembly's privileges? To gain a better understanding of the issues raised in the *Working Paper* and to evaluate the potential risks of a legislative proposal on the rights and immunities of the Legislative Assembly as a whole, the Committee conducted extensive research, and reviewed and consulted with a number of parliamentary authorities. This documentary research and consultative process allowed Committee Members to be fully informed about the historical significance of privilege, how the Courts have dealt with it in the past, and how an *MLA Responsibility Act* could impact on parliamentary privilege as it applies in New Brunswick and other legislative bodies under the Westminster model.

These parliamentary authorities provide insight on the nature and necessity of parliamentary privilege, its modern relevance, and the specific right of the Legislative Assembly to regulate its own internal affairs, including the power to discipline its Members.

Parliamentary Privilege

Parliamentary privilege is a highly misunderstood concept. The phrase "parliamentary privilege" has a specific meaning in the lexicon of procedural terms used in legislatures under the Westminster model. It does not mean that legislators are a "privileged class" and must be treated as such. The phrase "parliamentary privilege" derives from the ancient laws and customs of Parliament, and is essential to maintain the constitutional doctrine of separation of powers and the principle of free speech by the representatives of the people.

A 1999 Joint Committee Report of the British House of Lords and House of Commons summarizes the term "parliamentary privilege" as follows:

Parliament makes the law and raises taxes. It is also the place where ministers are called to account by representatives of the whole nation for their decisions and their expenditure of public money. Grievances, great and small, can be aired, regardless of the power or wealth of those criticised. In order to carry out these public duties without fear or favour, Parliament and its Members and Officers need certain rights and immunities. Parliament needs the right to regulate its own affairs, free from intervention by the government or the courts. Members need to be able to speak freely, uninhibited by possible defamation claims. These rights and immunities, rooted in this country's constitutional history, are known as "parliamentary privilege".²

"Parliamentary privilege" refers simply to the rights and immunities necessary for a legislature as a distinct body (such as the Legislative

Assembly of New Brunswick or the House of Commons of Canada), and its Members, who are representatives of the people, to function and carry out their duties and responsibilities. It also refers to the power a legislature possesses to protect itself and its Members from undue interference in the fulfilment of their functions. As stated in 1967 by a Select Committee of the British House of Commons, parliamentary privileges “are not the prerogative of Members in their personal capacities (...) they are claimed and enjoyed by the House in its corporate capacity and by its Members, on behalf of the citizens whom they represent.”³ Electors have the right to expect that the representatives they have chosen are protected from any kind of improper pressure.

Parliamentary privilege is essential to a legislature: it allows Members to effectively carry out their principal functions which are to inquire, to debate, and to legislate.

Right to Regulate Own Internal Affairs

Among the rights and powers of the Assembly as a collectivity is the fundamental right of the legislative body to regulate its own affairs, free from interference from the Crown, the executive, the courts and the public. This is the most fundamental right for the Assembly, after freedom of speech, enjoyed by its Members. Regulating its own internal affairs is a widely recognized right, “one without which the legislative body could not uphold its dignity and efficiency”⁴; “one of the most significant attributes of an independent legislative institution”⁵; “a basic rule of an elected assembly”⁶. In that sense, the jurisdiction of a legislative institution, like that of a court, is not subject to appeal.

The legislative institution’s right to regulate its own internal affairs includes the right, in terms of its membership, to set down rules and regulations affecting the conduct and responsibilities of its Members. The jurisdiction over its Members is “absolute and exclusive”.⁷

Power to Discipline

The Assembly’s right to regulate its own internal affairs also includes the right and power to discipline its own Members and to punish those Members guilty of disgraceful conduct. The punishment can range from a reprimand, to suspension for disregarding the authority of the Chair, to expulsion for serious offences. In fact, the Assembly may exclude, suspend or expel a Member for any reason, because, in the final analysis it is an internal matter. The “power to expel is not confined to offences committed by a Member as a Member or during a session of Parliament, but extends to cases where the offence is such as, in the judgment of the House, to render the Member unfit for parliamentary duties ... it (the House of Commons) retains its right to decide upon the qualifications of any of its Members to sit and vote in the House.”⁸

Donahoe Decision

The absolute authority of Parliament and legislative assemblies to control their proceedings has been upheld by the Supreme Court of Canada in *New Brunswick Broadcasting Co. v. Nova Scotia (Donahoe) Speaker of the House of Assembly*, hereinafter referred to as Donahoe. In delivering the majority

opinion in Donahoe, Madam Justice McLachlin had this to say in regard to the independence of the legislative body, and to the rights necessary to the functioning of that body:

“Our democratic government consists of several branches: the Crown, as represented by the Governor General and the provincial counterparts of that office; the legislative body; the executive; and the courts. It is fundamental to the working of government as a whole that all these parts play their proper role. It is equally fundamental that no one of them overstep its bounds, that each show proper deference for the legitimate sphere of activity of the other.”⁹

In this particular case, the CBC had sued the Speaker of the Nova Scotia House of Assembly, arguing that the *Charter of Rights and Freedoms* (freedom of the press and freedom of expression) gave its reporters the constitutional right to film the proceedings of the House from the galleries with hand-held cameras. Speaker Donahoe had refused to grant the media permission arguing that the use portable cameras in the galleries would interfere with the decorum and orderly conduct of the proceedings of the Assembly. Mr. Justice Nathanson, of the Nova Scotia Supreme Court, Trial Division, held that the *Charter of Rights and Freedoms* did, in fact, prevail over the privileges of the House of Assembly and, as a result, made an order to the effect that the media have a limited right of access to the legislative chamber for the purpose of filming the proceedings, subject to reasonable rules to be made by the House. Mr. Justice Nathanson also ordered the House to develop such rules after holding public hearings.

The Speaker appealed to the Nova Scotia Supreme Court, Appeal Division. The Appeal Division agreed with Mr. Justice Nathanson that the *Charter of Rights and Freedoms* did prevail over the privileges of the House of Assembly but struck out those portions of the order that required the House to make rules respecting television coverage.

The Speaker of the Nova Scotia House of Assembly, concerned of the logical extension of the case as decided by the lower courts (that the *Charter* applied to the privileges) appealed to the Supreme Court of Canada. Most legislatures in Canada (including the House of Commons) intervened in the application because of the enormous significance that an adverse decision would have for legislative bodies.

The infringement of parliamentary privilege could have led to further Charter challenges concerning such things as freedom of speech in the Assembly, the imposition of closure and decisions of committees to meet in camera.

If it had been found that the *Charter* prevailed over parliamentary privileges, then the right of a Member of a Legislative Assembly to immunity from legal action as a result of what that Member says or does as a Member of the House, would be, at best, in very grave doubt.

For example, if a Member of the House made, in a speech, an attack on another individual and that individual sued the Member for slander, and the Member defended on the basis of legislative immunity, the individual

bringing the action could argue that the *Charter* gives every person equality before the law, that the Member's immunity from suit results in inequality and since the *Charter* prevails over the privileges of the House, the Member cannot raise the defence of legislative immunity.

A majority of the Supreme Court of Canada concluded that the privileges¹⁰ of legislative bodies in Canada constitute a basic principle of our federation which is just as important as the *Charter of Rights and Freedoms*, that both must exist together and that therefore the *Charter of Rights and Freedoms* does not override the privileges of the House, and that the House, therefore, has the constitutional right and power to exercise its privileges and, in particular, to exclude strangers, including TV cameramen.

The Supreme Court of Canada reasserted the necessary independence of the different branches of government and chose to avoid any institutional confrontation between the courts and Parliament or legislative assemblies by declining to review a proper exercise of privilege under the *Charter of Rights and Freedoms* - the decision of the Speaker of the Nova Scotia House of Assembly. In the result the Supreme Court of Canada refused to adjudicate whether the House was right or wrong in refusing CBC access to the galleries of the House.

By legislating on matters which may otherwise be covered by privilege, Parliament and legislative assemblies may subject themselves to judicial review. Assemblies should be cautious in diminishing their powers by legislating rules of conduct. In doing so, legislative bodies could be fundamentally altering their relationship with the judiciary in matters over which they were initially constitutionally supreme.

Issues raised in the Working Paper on an MLA Responsibility Act

The statement in the Working Paper that an *MLA Responsibility Act* is the only authoritative way for a "positive statement" to spell things out in straightforward terms for the benefit of the public discounts the authority of the Assembly to regulate the conduct of its own Members. It also discounts the access that the public has to the parliamentarians.

A resolution encompassing a code of conduct and a statement on the role and responsibilities of MLAs could be moved, debated (possibly amended) and voted on the floor of the Assembly, and couched in very simple and straightforward terms. Such a resolution could just as well spell things out. It could become a Standing Rule and survive prorogations and dissolutions. It would then remain within the existing authority of the Assembly for future amendment or review. Violations thereof could be dealt with expeditiously by traditional methods within existing parliamentary practice.

The Committee acknowledges that there may be very good reasons why no *Act* of this kind exists in any other jurisdiction. If the Assembly chooses to give up its rights and ancient immunities, the inclusion of a provision, as suggests the *Working Paper*, which attempts to exclude the courts by exempting the provisions of the legislation from judicial review and interpretation, is not a guarantee that the courts will not intervene. It is far from certain that the courts would heed those provisions, particularly if the law was challenged on constitutional grounds.

The Members of the Committee expressed concerns that if such a law were enacted, someone will surely contest its legality. If only a part of the proposed Act were to be ruled *ultra vires*, that is, if the section that exempts MLAs from judicial review and the rest of the Act was found constitutional, then the Assembly would be in a position of having indirectly given up its ancient right to control its internal affairs by having the courts pass judgment over the conduct of its Members.

Furthermore, is a statute the best instrument for broad statements such as those contained in the sample text of an *MLA Responsibility Act*? Who will determine what “being accessible” means? How do we define “respect”, “objectivity” and “openness”? What does “strive” mean? What is the difference between “high ethical standards” and “high standards of personal behaviour”?

Broad legislative statements using broad and undefined terms may spawn more difficulties than they solve. To articulate the broad responsibilities of MLAs, the *Working Paper* outlines what the Act must not do:

- It must not create conflict with MLAs’ formal roles.
- It must not displace political accountabilities.
- It must not focus on MLAs as individuals.
- It must not be exhaustive.
- It must not stifle development.
- It must not impose a “one size fits all” model.

This list of “must not” prerequisite conditions demonstrates the inherent difficulties of enacting such legislation. It would be a drafting *tour de force* to craft legislation that would incorporate the positive principles and the negative prerequisites at the same time. Even if such a draft was achieved, it could violate the right of the Assembly to set down the rules and regulations affecting the conduct of MLAs and the power to examine such conduct would inevitably be given up to an outside authority.

Because of the concern that an *MLA Responsibility Act* could some day find the Legislative Assembly’s privileges potentially diminished in a contest with the Courts, the Committee sought the opinion of two well recognized parliamentary experts: Dr. Robert Marleau, B.A. D.U., former Clerk of the House of Commons (1987-2000), and Mr. Camille Monpetit, B.A. B.S.S., former Deputy Clerk of the House of Commons (1998-2000), co-editors of the *House of Commons Procedure and Practice, Edition 2000*. Marleau and Montpetit offer the following advice:

“...However commendable the proposal may be politically speaking, the initiative... entails the risk of inflicting a major blow that would upset the necessary balance between the components (the Crown or Executive, the Legislative body and the Courts) in the system of parliamentary government enjoyed not only by the people of the province of New Brunswick, but also throughout Canada and the Commonwealth.

...If this legislation were enacted, there may well be citizens who, before casting their ballot, will sit down with the standards of this law and scorecard their incumbent MLA. But the reasons for voting, for or against,

a particular MLA are legion. Furthermore, the secret electoral ballot of New Brunswick guarantees that there would be no measurable way to determine whether or not the terms of this legislation had anything to do with the electoral success or failure of an incumbent or candidate. The electorate judges the performance of MLAs - it must remain a political and electoral judgment. It should never be subjected to judicial judgment. Will a Court someday allow a citizen to challenge the results of a properly held election on the basis of a statute that dictates MLA performance? What happens if an MLA, who has clearly not respected the terms of the Act, is returned to office? Who shall deny that MLA a seat? The Courts?..."

Dr. Marleau and Mr. Montpetit conclude their opinion with this advice: "A legal text is not the proper instrument..."

... The Speaker should exercise all of his influence to alert the Assembly and its Members to the grave consequences of such a precedent, not only on New Brunswick's legislature but also on all other Canadian legislatures...

Because of the possible erosion of its rights and immunities and infringement of its privileges, the Assembly should not relinquish its authority to outside bodies to regulate its internal affairs.

If a list of duties and responsibilities are to be enshrined in a formal text, such as a Code of Conduct for MLAs, then the adoption of a resolution, or order (special or standing), by the Assembly is the proper course to follow.

... We also recommend that the Committee report back that such legislation not be proceeded with as outlined, but that, if the Assembly wishes to go ahead with a code of conduct or guidelines on MLAs' responsibilities, it do so by Resolution of the Legislative Assembly."

Your Committee has given this opinion careful consideration and concludes that the Assembly should not relinquish its authority to outside bodies to regulate its affairs or to pass judgement on the performance and conduct of its MLAs. The Legislative Assembly should be vigilant in retaining rights necessary for its proper functioning. The Committee is concerned that by legislating Members' responsibilities it may risk subjecting Members to the judicial process.

If a proposed *MLA Responsibility Act* is intended to be largely declaratory in nature with the stated purpose of providing a statement of what New Brunswickers can expect from their MLAs, a code of conduct adopted by the Assembly could accomplish this purpose.

Once a piece of legislation is in place, no one can guarantee to Members that the legislation will never be contested. Why would the Committee risk subjecting Members to the jurisdiction of the Courts by recommending the enactment of an *MLA Responsibility Act*? A provision exempting the legislation from judicial review is far from a guarantee.

Recommendation No. 2

Your Committee therefore recommends against the enactment of an *MLA Responsibility Act* to define the roles and responsibilities of Members.

3. The alternative vehicle for introducing or adopting a Code of Conduct and Statement of the Roles and Responsibilities of Members

While the Committee has advised against a legislative proposal, it is prepared to recommend the adoption of a code of conduct and statement of the roles and responsibilities of MLAs through a resolution of the House. A House order is the appropriate instrument to provide genuine guidance to MLAs. It would remain a live document interpreted and enforced by the Assembly, in full respect of the right of the Assembly to control its own internal affairs.

By adopting a resolution in the Legislative Assembly, some of the objectives set out in the *Working Paper on the MLA Responsibility Act* will also be met.

A Code of Conduct and Statement of the Roles and Responsibilities will have a high public profile, through a public debate and its publication as an appendix to the Standing Rules. It can also be posted on the Legislative Assembly's internet site. The Legislative Assembly will raise the public profile of its own authority over the conduct of its Members.

A Code will have an immediate practical impact. It will come in effect immediately upon its adoption. Members will feel a greater responsibility to bring their behaviour up to the standards set by the Code. Enforcement and discipline for misconduct will rest with the Legislative Assembly under its existing powers.

Recommendation No. 3

Your Committee therefore recommends the adoption of the following amendments to the Standing Rules of the Legislative Assembly:

That the Standing Rules of the Legislative Assembly be amended by adding after Standing Rule 123:

PART IX

124 (1) The Legislative Assembly shall, on the recommendation of the Legislative Administration Committee, establish a Code of Conduct and Statement on the Roles and Responsibilities of Members, hereinafter referred to as the "Code".

124 (2) The Code shall be printed in the Appendices of the Standing Rules of the Legislative Assembly and in the Legislative Assembly of New Brunswick Members' Orientation Manual.

4. The content of a Code of Conduct and Statement on the Roles and Responsibilities of the Members of the Legislative Assembly

With the adoption of a code, provincial legislators in New Brunswick will have, for the first time, set out in writing, their obligations and responsibilities. These responsibilities go beyond a commitment not to use one's position to benefit financially. These obligations and responsibilities should include a fundamental commitment by Members of this Assembly to honesty and integrity in public life. A code will serve as a constant reminder of what the public trust requires in terms of Members' obligations to colleagues, to constituents, and to all New Brunswickers. A proposed code of conduct and statement on the roles and responsibilities of MLAs is not

intended to infringe upon but rather to complement the provisions of the *Members' Conflict of Interest Act*, which is administered by the Conflict of Interest Commissioner. For this reason, the Conflict of Interest Commissioner, Hon. Stuart G. Stratton, Q.C., was consulted during the development of a code.

To assist it in the development of a code, the Committee has examined codes of conduct that exist in provincial and territorial legislatures and the federal Parliament as well as other Commonwealth jurisdictions. The proposed code of conduct for federal parliamentarians, which is now being considered by the Senate of Canada and the House of Commons, is of interest, but since it has yet to be adopted, it would be premature to evaluate its relevancy in the New Brunswick context.

Codes of conduct exist in Saskatchewan, the Northwest Territories, Nunavut, Scotland and the United Kingdom. The existing codes deal mainly with issues of integrity for public office holders. The Legislative Assembly of Saskatchewan has an excellent code of conduct, but its main purpose is to deal with issues of ethics and integrity for MLAs of that Province. The Northwest Territories Legislature has adopted Members' Conduct Guidelines. The House of Lords and the British House of Commons have excellent codes and standards of conduct for public office holders. Nunavut and Scotland, two relatively young legislatures, have recently adopted codes that go beyond conflict of interest issues. It is the codes from these two jurisdictions that has inspired your Committee's work. Both codes deal heavily with issues of integrity and conflict of interest. Nevertheless, Nunavut and Scotland are the best examples of codes that attempt to identify and set down the responsibilities and standards of conduct expected of Members.

Your Committee has been asked to consider the adoption of an *MLA Responsibility Act*, a code of conduct or guideline that would serve as an aid to MLAs in the conduct of their duties, and that would outline for the people of New Brunswick the role and responsibilities of their MLAs. A proposed code of conduct would be similar to the formal principles that some legislatures have adopted for their Members. Less familiar would be a description of the key responsibilities of MLAs. However, it is the Committee's opinion that like the *Members' Conflict of Interest Act*, the underlying purpose of a code of conduct and statement on the roles and responsibilities of MLAs is to enhance the public's trust in their elected representatives.

Members of the Legislative Assembly must first and foremost ensure that the public interest takes precedence. The first step in this direction is for Members of this Assembly to demonstrate their collective commitment to high ethical standards. As stated above, a code of conduct would complement the provisions in the *Members' Conflict of Interest Act* and would be founded on principles of ethics, integrity and honesty. Such a code is not intended to be cast in stone. Rather, it should and must continue to be a reflection of the developing awareness of ethical decision-making for politicians.

A statement on the roles and responsibilities of MLAs would be founded on the best tradition of parliamentary and public service. The statement would not attempt to be, nor can it be, a comprehensive “job description” for MLAs. The responsibilities described therein would be founded on the highest standards of respect, courtesy, accountability, openness and selfless service.

The Committee considered including a provision recommended on page 3 of the *Working Paper* stating that “Every year, an MLA shall hold at least two public meetings on issues of concern to his or her electoral district.” While this concept may seem reasonable, it is the Committee’s view that such a requirement that MLAs hold at least two public meetings on issues of concern to constituents would impose a “one size fits all” model.¹¹ MLAs communicate with constituents differently. MLAs may go door to door, while other MLAs may have more extended constituency office hours. Some MLAs communicate regularly with constituents through newsletters, while others hold regular meetings. The requirement does not take into consideration the needs of the different constituencies and the individual talents of Members. All this points to the merits of leaving meeting requirements to the Members to manage. For these reasons, the Committee did not favour retaining the proposal for mandatory public meetings.

The purpose of a code of conduct and statement on the roles and responsibilities of MLAs would be two-fold:

1. It would guide MLAs on the standards of conduct expected of them in the discharge of their parliamentary and public duties.
2. It would inform New Brunswickers and set a reference point on which the electorate could base its expectations.

Notwithstanding these stated purposes, it must be recognized that there will be consequences for those who violate the code. The code will be enforceable by Members of this Assembly by the traditional methods within existing parliamentary practice. Enforcement by the Assembly under its existing powers represents a practical and reasonable mechanism for dealing with unacceptable behaviour. Furthermore, it is consistent with a commitment that all Members have some responsibility for ensuring that the public interest is served. Ultimately, the Committee believes the adoption of a code is a positive, innovative and sincere effort to protect public interest, thereby enhancing public confidence in the integrity of those elected to serve and ultimately in the institutions of parliamentary government. In adopting a code, the Legislative Assembly will provide to the people of this province, a standard against which they can assess the performance of their elected representatives.

Recommendation No. 4

Your Committee therefore recommends for adoption the following Code of Conduct and Statement on the Roles and Responsibilities of the MLAs:

THE ROLES AND RESPONSIBILITIES OF AN MLA AND A CODE OF CONDUCT FOR MEMBERS OF THE LEGISLATIVE ASSEMBLY OF NEW BRUNSWICK

THE KEY ROLE AND DUTIES OF AN MLA

As Members directly elected by the People of New Brunswick to represent them in the Legislative Assembly, we acknowledge and accept the responsibility thereby entrusted to us to serve the people of the Province honestly and conscientiously to the best of our abilities.

In furtherance of this commitment, the Members of the Legislative Assembly of New Brunswick further acknowledge that in carrying out their legislative duties, Members have the following responsibilities:

1. to first and foremost represent conscientiously the interests of the constituents of his or her electoral district;
2. to be accessible to the constituents of his or her electoral district and to assist his or her constituents regardless of their political affiliation;
3. to perform the duties of a legislator in the Assembly, by attending and participating in the proceedings of the Legislative Assembly;
4. to work for the advancement of the people and the Province of New Brunswick;
5. to uphold the principles of democratic governance;
6. to represent faithfully and loyally the Province of New Brunswick in all venues, be they local, provincial, national or international.

CODE OF CONDUCT

1. The key principle of this Code is to maintain and promote public confidence and trust in the integrity of Members of the Legislative Assembly of New Brunswick as well as the respect and confidence that citizens place in the New Brunswick Legislature as an institution.
2. A further purpose of this Code is to provide guidance to the Members of the Legislative Assembly as to the standard of conduct expected of them in the discharge of their obligations to their constituents, the Legislative Assembly and the public at large.
3. This Code applies to Members in all aspects of their public life.

Public Duty

4. By virtue of their oath or affirmation of allegiance, Members have a duty to be loyal to the people of New Brunswick and to perform the duties of Members honestly and justly in conformity with the laws of the Province of New Brunswick and the rules of the Legislative Assembly.

Duty as a Representative

5. Members have a duty to be accessible to the people of the areas for which they have been elected to serve and to represent their interests conscientiously.
6. In representing people's interest, Members have a duty to respect individual privacy, unless there are overwhelming reasons in the wider public interest for disclosure to be made to a relevant authority, for example where a Member is made aware of criminal activity.

General Principles of Personal Conduct**7. Selflessness**

Members should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

8. Integrity and Honesty
 - a) Members should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
 - b) Members have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
9. Accountability and Openness
 - a) Members are accountable for their decisions and actions to the public. They have a duty to consider issues on their merits, taking account of the views of others.
 - b) Members should be as open as possible about their decisions and actions that they take and give reasons for their decisions and restrict information only when the wider public interest clearly demands.
10. Respect and Courtesy

In respect of the responsibilities outlined in this Code, the conduct of Members shall demonstrate respect and courtesy

 - a) in all communications with constituents, regardless of political affiliation;
 - b) in all interventions in the Legislative Assembly and towards its Members and Officers;
 - c) by showing compassion and fairness toward all who seek their assistance;
 - d) for the cultural diversity of the Province of New Brunswick.
11. Leadership

Members have a duty to promote and support these principles by leadership and example.

Generally

12. Members shall base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once, and in favour of the public interest.
13. Members shall at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of the Legislature and never undertake any action which would bring the Legislative Assembly or its Members generally into disrepute.
14. The provisions of this code shall be taken into account by the Legislative Assembly in any proceeding relating to the conduct of an MLA.
15. This Code of conduct is not designed to be exhaustive and there will be occasions when Members will find it necessary to adopt more stringent norms of conduct in order to protect the public interest and to enhance public confidence and trust.

Conclusion

The issue of standards and conduct of public office holders is the subject of much debate. It is currently very much part of the national agenda. Although there may be some overlap, in formulating the proposed Code your

Committee has sought to draw a distinction between conflict of interest issues and the actual responsibilities of elected public officials. The Committee has attempted to make a distinction between issues of integrity and issues of performance.

The Members of the Legislative Assembly already have a code dealing with issues of ethics, integrity and honesty in the *Members' Conflict of Interest Act*. In adopting the proposed Code, Members will also now have clear guidelines and standards of honourable performance. The Code will also give to the people of New Brunswick a reference point against which they can evaluate the performance of their elected representatives.

By promoting and supporting the principles outlined in this Code, MLAs will reinforce the relationship that exists between the people of New Brunswick and the Members of its Legislative Assembly.

All of which is respectfully submitted,

(Sgd. :) Hon. Bev Harrison
Speaker of the Legislative Assembly
And Chair of the Committee

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- ¹ *Working Paper on an MLA Responsibility Act*, Office of the Government House Leader, June 2002, p.7.
 - ² United Kingdom Parliament, Joint Committee on Parliamentary Privilege, Session 1998 - 1999 session, First Report, p. 1.
 - ³ United Kingdom House of Commons, *Select Committee on Parliamentary Privilege*, 1967, Report, (reprinted 1971, p. vii, para. 12.)
 - ⁴ *Maingot*, J.P. Joseph, *Parliamentary Privilege in Canada*, 2nd ed., House of Commons and McGill-Queen's University Press, 1997, p. 293.
 - ⁵ *Maingot*, 2nd ed., p. 183.
 - ⁶ *Maingot*, 2nd ed., p. 316.
 - ⁷ *Maingot*, 2nd ed., p. 181.
 - ⁸ *Maingot*, 2nd ed., p. 211.
 - ⁹ *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*, [1993] I.S.C.R. 319, p. 389.
 - ¹⁰ *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*, [1993] I.S.C.R. 319, at page 385 of that decision, McLachlin J., made reference to particular parliamentary privileges that had emerged over time. In listing them, the door was held open for others. Note the use of the word "among" in the following passage: "Among the specific privileges which arose in the United Kingdom are the following: (a) freedom of speech, including immunity from civil proceedings with respect to any matter arising from the carrying out of the duties of a Member of the House; (b) exclusive control over the House's own proceedings; (c) ejection of strangers from the House and its precincts; and (d) control of publication of debates and proceedings in the House."
 - ¹¹ *Working Paper on an MLA Responsibility Act*, Office of the Government House Leader, June 2002, p.10.
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The following Bill was introduced and read a first time:

By Hon. Mr. Mesheau:

Bill 57, *Small Business Investor Tax Credit Act*.

Ordered that the said Bill be read a second time at the next sitting.

It was agreed by unanimous consent to dispense with the two hours allotted for consideration of Private Members' Motions.

Hon. Mr. P. Robichaud announced that it was the intention of the government that the House resolve itself into a Committee of Supply to resume consideration of the estimates of the Department of Education.

The House, according to Order, resolved itself into a Committee of Supply with Mr. Bernard in the chair.

At 2.10 o'clock p.m. the Chairman declared a recess and left the chair.

2.25 o'clock p.m.

The Committee resumed with Mr. Bernard in the chair.

And after some time Mr. Ashfield took the chair.

And after some further time, the Chairman declared it to be 6 o'clock p.m., and left the chair to resume again at 7 o'clock p.m.

7 o'clock p.m.

The Committee resumed with Mr. Bernard in the chair.

And after some time Mr. Ashfield resumed the chair.

And after some further time, Mr. Speaker resumed the chair and Mr. Ashfield, the Chairman, after requesting that Mr. Speaker revert to Presentations of Committee Reports, reported that the Committee had had under consideration the matters referred to them, had made some progress therein, had passed several items, and asked leave to sit again.

Pursuant to Standing Rule 78.1, Mr. Speaker then put the question on the motion deemed to be before the House, that the report be concurred in, and it was resolved in the affirmative.

The following are the items reported:

MAIN ESTIMATES, 2003-2004
ORDINARY ACCOUNT

DEPARTMENT OF EDUCATION

Resolved, That there be granted to Her Majesty a sum not exceeding \$775,125,000 to defray the expenses of the following programs:

Corporate Services	5,730,000
Elementary and Secondary Education	727,726,000
NB Public Libraries	10,886,000
Student Financial Assistance	25,384,000
Literacy Secretariat	2,061,000
TeleEducation	608,000
Post-Secondary Affairs	1,468,000
Connect NB	1,297,000
Less amounts authorized by law	35,000
Voted	775,125,000

MARITIME PROVINCES HIGHER EDUCATION COMMISSION

Resolved, That there be granted to Her Majesty a sum not exceeding \$187,018,000 to defray the expenses of the following programs:

Administration	437,000
Assistance to Universities	186,581,000
Less amounts authorized by law	0
Voted	187,018,000

CAPITAL ACCOUNT

DEPARTMENT OF EDUCATION

Resolved, That there be granted to Her Majesty a sum not exceeding \$1,000,000 to defray the expenses of the following program:

Public Schools – Capital Equipment	1,000,000
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WORKING CAPITAL – MAXIMUM BALANCES
2003-2004

WORKING CAPITAL ADVANCES

Education	
- Atlantic Provinces Special Education Authority	350,000

PETTY CASH ADVANCES

Education	120,000
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INVENTORIES

Education	1,500,000
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The said items were concurred in by the House.

And then 9.47 o'clock p.m. the House adjourned.