



New Brunswick

CONFLICT OF INTEREST COMMISSIONER

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

ANNUAL REPORT
MEMBERS' CONFLICT OF INTEREST ACT
2012

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June 25, 2013

The Honourable Dale Graham
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 the thirteenth 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,

A handwritten signature in black ink, appearing to read "Patrick A.A. Ryan". The signature is fluid and cursive, with a large initial "P" and "R".

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

2012 ANNUAL REPORT

COMMISSIONER'S REMARKS

This is the thirteenth Report issued under the provisions of the *Members' Conflict of Interest Act*. It is also the eighth Report issued by me as Commissioner. All 55 members have filed their annual private disclosure statements although it was necessary to call upon both whips to stimulate a few members to action who, for whatever reasons, ignored repeated letters and telephone reminders to file their disclosure statements. The failure to file the documents in a timely manner delays the scheduling of interviews and the preparation of the public disclosure statements for the year.

NEW MEMBER

On June 25, 2012, a by-election was held in the riding of Rothesay, following the resignation and appointment to office of the former member. On September 26, 2012, the new member was appointed to Cabinet at the time of a shuffle of portfolios.

THE OFFICE

Since the creation of the Office of the Conflict of Interest Commissioner under the *Members' Conflict of Interest Act*, the Commissioner has been a retired Justice of the New Brunswick Court of Appeal, the first Commissioner having been the late Honourable Stuart G. Stratton, Q.C. from 2000 to 2005. I have the honour of being the second Commissioner appointed to the position as an officer of the Legislative Assembly. It is and has been to date a part time position. As with some part time positions it has, intermittently, become closer to full time, depending upon the work load. With the intended reduction in members from 55 to 49, the future work load may be correspondingly reduced.

COMMISSIONERS' REPEAT RECOMMENDATION

Everyone even remotely connected with government recognizes that New Brunswick is in a prolonged period of fiscal restraint. However, there are some matters that bear repetition. The following is one:

I again raise the recommendation of my predecessor in office the late Honourable Stuart G. Stratton, Q.C. a retired Chief Justice of the Court of Appeal. He recommended, and I have annually supported that this office administer the legislation covering executive staff members, deputy ministers, heads of Crown Corporations and certain others. At present they come under the jurisdiction of the *Conflict of Interest Act* under a designated Justice of the Court of Queen's Bench.

Commissioner Stratton's recommendation in 2005 and my subsequent comments have consistently been as follows:

As in my [seven] 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 endorsed 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.

I recommend that, when the time is fiscally appropriate, our endorsement be effected.

RICHARD REPORT: NEW BRUNSWICK'S LEGISLATIVE OFFICERS

In December, 2011, Bernard Richard, Q.C. filed his report with the Speaker of the New Brunswick Legislature. The report is entitled *Fine-tuning Parliamentary Machinery: A Review of the Mandates and Operations of New Brunswick's Legislative Officers*. Mr. Richard makes a number of recommendations which are under review by the Legislative Administration Committee. Mr. Richard is of the opinion that there are too many legislative officers. He is not alone.

The Conflict of Interest Commissioner is a legislative officer as are the conflict of interest commissioners for all ten provinces, the three territories, the elected Parliament and the appointed Senate of Canada. Mr. Richard recommended that the Conflict of Interest Commissioner's mandate covering the Members of the Legislative Assembly be assigned to the Ombudsman along with the *Conflict of Interest Act* for Deputy Ministers and others, the administration of the *Public Interest Disclosure Act* and the proposed *Lobbyists' Registration Act*. Nowhere in Canada has the administration of the *Conflict of Interest Act* for Members of the Legislative Assembly been folded into any other mandate let alone the Ombudsman's mandate. The opposite has occurred where a compatible mandate has been administered by the Conflict of Interest Commissioner but never the reverse. The reason is not complex; rather, it is elementary. In the case of the Ombudsman, the two mandates are fundamentally conflicted, there would be clashing of opposed principles.

The Ombudsman's function is to investigate complaints from members of the public about actions by government, which can put the Ombudsman in a real or perceived adverse relationship with a minister. The Conflict of Interest Commissioner provides confidential and trusted advice to all elected members about their obligations in complying with the conflict of interest legislation and ethical codes and, if necessary, investigating complaints. The potential for a real or perceived adversarial aspect to the Ombudsman's function would undermine the confidential and trusted relationship which must exist between the Conflict of Interest Commissioner and members including ministers.

On September 18, 2012, the Canadian Conflict of Interest Network, meeting in Fredericton, unanimously resolved its concern against this segment of the Richard Report recommendation because the role and function of the two offices are fundamentally different and had the potential of undermining the trusted relationship between members and the commissioner. The resolution was signed by the following commissioners:

Neil R. Wilkinson, Ethics Commissioner, Alberta;
Paul D.K. Fraser, Conflict of Interest Commissioner, British Columbia;
Ronald S. Perozzo, Conflict of Interest Commissioner, Manitoba;
Honourable Patrick A.A. Ryan, Conflict of Interest Commissioner, New Brunswick;
Victor Powers, Chief Electoral Officer and
Commissioner for Legislative Standards, Newfoundland & Labrador;
Gerald L. Gerrand, Conflict of Interest Commissioner, Northwest Territories;
Honourable Justice D. Merlin Nunn, Conflict of Interest Commissioner, Nova Scotia;
Norman Pickell, Integrity Commissioner, Nunavut;
Lynn Morrison, Integrity Commissioner, Ontario;
A. Neil Robinson, Conflict of Interest Commissioner, Prince Edward Island;

Jacques St-Laurent, Ethics Commissioner, Quebec;
Honourable Claude Bisson, Jurisconsult, Quebec;
Honourable Ronald L. Barclay, Conflict of Interest Commissioner, Saskatchewan;
David Phillip Jones, Conflict of Interest Commissioner, Yukon;
Mary Dawson, Conflict of Interest and Ethics Commissioner, Canada.

QUINQUENNIAL REPORT

The first five-year report was delivered in October of 2011 and was reviewed by the Legislative Administration Committee in 2012. The report contained many recommendations important to bringing the *Members' Conflict of Interest Act* as well as the *Conflict of Interest Act* up to date.

Among the more important recommendations are that a “conflict of interest” should include “apparent” conflict of interest together with a summary procedure to promptly resolve an “apparent” conflict of interest; that former members continue to be bound by the Act in certain ethical circumstances; and that consideration be given to assisting the members by creating a Code of Conduct to which the members could refer in order to avoid conflicts.

The recommendation to create a Code of Conduct is not prompted by any misconduct on the part of members; rather it is for the purpose of efficiency in day to day matters and as a ready reference to the most frequent questions that arise in ethical hot spots. In reviewing the Code, a member may be prompted to consult with the Commissioner about more intricate concerns, thus avoiding a situation before it becomes a problem. The Commissioner’s advice is free; to fail to ask for it or to follow the advice once offered could be costly.

INVESTIGATION/INQUIRY

One investigation, commenced earlier, continued through 2012 as an inquiry. A second allegation of breaches of the *Members' Conflict of Interest Act* was commenced in 2012. The Report of the breaches was not concluded until after the year end. Both Reports are now available on our website <http://www.gnb.ca/legis/Conflict/act/MCIA-e.asp#investigations>.

THE OFFICE

In accordance with government policy on cutbacks, this office did its part to reduce expenses. In addition to budget cuts, this office reduced other costs in the thousands of dollars by printing our own annual reports as well as a Report to the Legislative Assembly in one investigation and the in-house creation of binders of evidence in another. As well, the office cancelled some legal periodicals and saved substantial expenditure on postage by using alternatives to mail.

Literally, the office fields hundreds of letters, telephone calls, and e-mails relating to advice, general inquiries, scheduling of appointments, conflict of interest legislation, potential candidacy, disclosures, blind trusts, divestitures, and gifts and benefits.

PUBLIC INTEREST DISCLOSURE ACT

There is one hold-over from this office's administration of the *Public Interest Disclosure Act* which will be completed in 2013.

CANADIAN CONFLICT OF INTEREST NETWORK

The Canadian Conflict of Interest Network is composed of the conflict of interest commissioners from each of the ten provinces, the three territories and two from the federal government representing the members of Parliament and the Senate. They meet annually in September. Meeting dates and venues are fixed two years in advance, each member taking its turn to convene the meeting. In 2012, New Brunswick hosted the meeting presenting papers pertinent to the work of all members. This meeting was also addressed by the Honourable William L. Hoyt, Q.C. retired Chief Justice of New Brunswick who spoke about his work as one of the three commissioners on the Bloody Sunday Commission in Northern Ireland, the longest running commission to date in the United Kingdom.

APPRECIATION

I am grateful for and acknowledge the well qualified and professional services and support that were provided to the office by Donald Forestell, Clerk of the Legislative Assembly and his predecessor Loredana Catalli Sonier, Q.C.; Peter Wolters, C.A. Director of Finance and Human Resources; Shayne Davies, Clerk Assistant and Clerk of Committees; Jeffrey Quinn, Assistant to Bruce Mather, Administrator of Information Technology; Diane Mercier-Allain; Janet Trail; Jacinthe Landry and John-Patrick McCleave for their often called upon services to this office. Two students at law; Charles Bryant of the University of New Brunswick and Karine Le Breton of the Université de Moncton were engaged by this office to assist me with many projects. As well, recognition must be accorded to my dedicated full time Administrative Assistant, Rosanne Landry-Richard, for her commendable work.

CONCLUSION

During the fiscal period ended March 31, 2012, expenditures in the Office of the Conflict of Interest Commissioner for salaries, benefits, office equipment and supplies totaled \$267,871.67 as compared to \$714,567.18 in 2011. The decrease from 2011 is mainly accounted for by reason of the completion of two investigations, one of which resulted in protracted inquiry hearings. The decisions in both investigations are available on the Office of the Conflict of Interest Commissioner's website at <http://www.gnb.ca/legis/Conflict/act/MCIA-e.asp#investigations>.

Dated at Fredericton this 25th day of June, 2013.



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