



New Brunswick

# CONFLICT OF INTEREST COMMISSIONER

The Honourable Alfred R. Landry, Q.C.

**ANNUAL REPORT**  
***MEMBERS' CONFLICT OF INTEREST ACT***  
**2013**

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July 18, 2014

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 2013 Annual Report of the Office of the Conflict of Interest Commissioner. This is the fourteenth annual report and my first, as my term of office as Commissioner began on September 1<sup>st</sup>, 2013. This report is created and filed pursuant to section 31 of the *Members' Conflict of Interest Act*.

Respectfully,

The Honourable Alfred R. Landry, Q.C.  
Conflict of Interest Commissioner  
for the Province of New Brunswick



## **2013 ANNUAL REPORT**

### **INTRODUCTION**

This is the fourteenth Report issued under the provisions of the *Members' Conflict of Interest Act* and the first Report issued by me as Commissioner. This Annual Report covers the entire calendar year of 2013, including the period under Commissioner Ryan's watch, January 1, 2013 to August 31, 2013, and mine, September 1, 2013 to December 31, 2013.

I have the honour of being the third Commissioner appointed since the creation of the Office of the Conflict of Interest Commissioner under the *Members' Conflict of Interest Act*, the first having been the Late Honourable Stuart G. Stratton, Q.C., a retired Chief Justice of the New Brunswick Court of Appeal (2000 to 2005) and the second being the Honourable Patrick A.A. Ryan, Q.C., a retired Justice of the New Brunswick Court of Appeal (2005 to 2013).

### **THE OFFICE**

The Conflict of Interest Commissioner is an Officer of the Legislative Assembly of New Brunswick tasked with oversight of the conduct and decisions of members of the Legislative Assembly of New Brunswick. The mandate of the Commissioner's Office is to promote and preserve the ethical responsibility of the members of the Legislative Assembly to act solely in the public interest in their capacities as members, as prescribed by the provisions of the *Members' Conflict of Interest Act*. This is a responsibility delegated by the Legislative Assembly that arises out of its parliamentary privilege of exclusive authority to govern its own affairs and the conduct of its members.

This mandate manifests in various functions of the Office, including the annual collection of the members' financial disclosure statements; the preparation of members' public disclosure statements; fielding confidential requests for advice and recommendations relating to potential conflicts of interest from the members of the Legislative Assembly and the Executive Council; conducting investigations into alleged breaches of the *Members' Conflict of Interest Act*; overseeing the creation and maintenance of blind trusts; and educating new and returning members of the Legislative Assembly as to the standard of conduct mandated by the Act.

The Office of the Conflict of Interest Commissioner is intended to be a part time position, but the demands of the Office often dictate full time engagement. 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. As it continues to mature, the Office should be increasingly relied upon for Advice and Recommendations, under section 30 of *Members' Conflict of Interest Act*, for proactive prevention and avoidance of conflicts of interest, whether actual, potential, or apparent.

It is worth noting that this Office continues to do its part to reduce expenses. By continuing and expanding upon cost-cutting measures initiated by my predecessor, this Office has effectively reduced the fiscal footprint of its operations.

## **NEW MEMBER**

On April 15, 2013, a by-election was held in the riding of Kent, following the resignation of the former member, and the new member was elected. The new member filed his private disclosure statement and was interviewed as required by the *Members' Conflict of Interest Act*.

## **DISCLOSURES**

All 55 members have filed their annual private disclosure statements for 2012, and my predecessor, Commissioner Ryan, conducted all interviews before the end of his term of office and filed the members' public disclosure statements with the Clerk of the Legislative Assembly on August 22, 2013, where they are available for public inspection during the normal business hours of the Office of the Clerk.

## **QUINQUENNIAL REPORT**

On October 4, 2011, my predecessor, the Honourable Patrick A.A. Ryan, Q.C., submitted a Quinquennial Report to the Speaker of the Legislative Assembly, pursuant to section 43.1 of the *Members' Conflict of Interest Act*, which was reviewed by the Legislative Administration Committee in 2012.

Section 43.1 of the *Members' Conflict of Interest Act* provides as follows:

43.1(1)The Commissioner shall initiate a review of this Act within five years after the coming into force of this section and subsequently within five years after each time the committee submits a report under subsection (3).

43.1(2)When the Commissioner has completed a review under subsection (1), the Commissioner shall prepare a report on the review and submit it to the Legislative Administration Committee or to such other committee of the Assembly as may be determined by a resolution of the Assembly.

43.1(3)The committee which has received the Commissioner's report under subsection (2) shall review it and then prepare and submit a report on its review, including any recommendations for amendments to this Act, to the Assembly within one year after the committee has received the Commissioner's report.  
2003, c.8, s.9

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.

## INVESTIGATION AND INQUIRY

The process for initiating an investigation into breaches of the *Members' Conflict of Interest Act* is set out by section 36; requests for investigation may come by way of resolution of the Legislative Assembly or by the sworn affidavit of any person. Requests made by individuals' affidavit must set out the grounds for the belief of the breach and the nature of the alleged breach.

In 2013, three separate Reports of investigations into complaints of breaches of the *Members' Conflict of Interest Act* were filed with the Speaker of the Legislative Assembly, one of which proceeded by way of an inquiry. All three Reports are now available on our website: <http://www.gnb.ca/legis/Conflict/act/MCIA-e.asp#investigations>.

The complainant in one of these three reports has made an Application for judicial review to the New Brunswick Court of Queen's Bench. The Application was dismissed on the ground, *inter alia*, that the Commissioner's work is subject to parliamentary privilege which protects, among other things, the Legislative Assembly's authority to regulate the conduct of its members.

The matter is now before the New Brunswick Court of Appeal, though a hearing date has yet to be fixed.

We have had to retain outside counsel to represent us in both the Court of Queen's Bench and the Court of Appeal.

Two additional allegations of breaches of the *Members' Conflict of Interest Act* were made in 2013 and are under review.

## **ADVICE**

During the course of the year, a number of written letters of advice and recommendations were given to members of the Legislative Assembly, including members of the Executive Council, in response to questions posed with respect to conflicts of interest or potential conflicts of interest.

We were also called upon to explain certain provisions of the *Members' Conflict of Interest Act* to potential candidates who were considering running for office.

## **GIFTS**

The question of gifts is one frequently raised with our Office and deserves some attention. Pursuant to subsection 8(1) of the *Members' Conflict of Interest Act*, members are prohibited from accepting a gift or personal benefit that is connected directly or indirectly with the performance of a member's duty of office. There is, however, an exception to this general rule for gifts that are received as an incident of protocol or social obligation that normally accompany the responsibilities of the office.

If this type of gift is greater than \$250.00 in value, or if the total value received from any one source in a twelve month period is greater than \$250.00 in value, a gift disclosure statement must be filed with the Commissioner. Such gifts are then recorded in the public disclosure statements prepared by this Office.

## **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. The wealth of experience of this collective is a valuable resource.

## **BUDGET**

During the fiscal period ended March 31, 2013, expenditures in the Office of the Conflict of Interest Commissioner for salaries, benefits, office equipment and supplies totaled \$162,062.95 as compared to \$267,871.67 in the previous fiscal year. The decrease from



2012 is due to a reduction in staff as a result of the transfer of the administration of the *Public Interest Disclosure Act* to the Ombudsman and a reduction in legal fees thanks to the conclusion of an inquiry.

## **CONCLUSION**

The year 2013, with my appointment as Commissioner on September 1<sup>st</sup> and the resulting transition from my predecessor in office, the Honourable Patrick A.A. Ryan, Q.C., was a very busy year. I am very grateful for Justice Ryan's valuable assistance and leadership which assured a smooth transition.

I would be remiss if I did not also acknowledge the highly qualified and professional individuals that routinely offer their exceptional services and support to this office. Donald Forestell, Clerk of the Legislative Assembly; 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; John-Patrick McCleave; and Aurella Losier-Vienneau each provide contributions without which the Office could scarcely function. A student at law, Charles Bryant, was engaged by this Office and was of assistance with many projects. In particular, I am especially appreciative and grateful for the competent and professional services of my Administrative Assistant, Rosanne Landry-Richard, who's experience and dedication is this Office's most valuable resource.

Dated at Fredericton this 18<sup>th</sup> day of July, 2014.

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