



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

REPORT OF THE INVESTIGATION

**BY THE HON. PATRICK A.A. RYAN, Q.C.
CONFLICT OF INTEREST COMMISSIONER**

**INTO ALLEGATIONS BY MARY ELLEN ROSE
OF THE CITY OF SAINT JOHN, NEW BRUNSWICK OF VIOLATIONS OF
*THE MEMBERS' CONFLICT OF INTEREST ACT***

AGAINST

The Hon. David Alward, Premier, Member of the Legislative Assembly for Woodstock;

The Hon. Blaine Higgs, Minister of Finance, Member of the Legislative Assembly for
Quispamsis;

The Hon. Marie-Claude Blais, Q.C., Minister of Justice and Attorney General, Member of the
Legislative Assembly for Moncton North;

The Hon. Danny Soucy, Minister of Post-Secondary Education, Training and Labour, Member
of the Legislative Assembly for Grand Falls—Drummond—Saint-André;

The Hon. Troy Lifford, Minister of Human Resources, Member of the Legislative Assembly
for Fredericton-Nashwaaksis;

The Hon. Bruce Fitch, Minister of Environment and Local Government, Member of the
Legislative Assembly for Riverview;

Then, the Hon. Martine Coulombe, Member of the Legislative Assembly for Restigouche-La-
Vallée;

Jim Parrott, M.D., Member of the Legislative Assembly for Fundy-River Valley;

Then, the Hon. Victor Boudreau, Member of the Legislative Assembly for Shediac-Cap Pelé;

Then, the Hon. Bernard LeBlanc, Member of the Legislative Assembly for Memramcook-
Lakeville-Dieppe

This is the report of the Conflict of Interest Commissioner of New Brunswick of a request for investigation by

Mary Ellen Rose, of the City of Saint John, New Brunswick

Against

The Hon. David Alward, Premier, Member of the Legislative Assembly for Woodstock;

The Hon. Blaine Higgs, Minister of Finance, Member of the Legislative Assembly for

Quispamsis;

The Hon. Marie-Claude Blais, Q.C., Minister of Justice and Attorney General, Member of the Legislative Assembly for Moncton North;

The Hon. Danny Soucy, Minister of Post-Secondary Education, Training and Labour, Member of the Legislative Assembly for Grand Falls—Drummond—Saint-André;

The Hon. Troy Lifford, Minister of Human Resources, Member of the Legislative Assembly for Fredericton-Nashwaaksis;

The Hon. Bruce Fitch, Minister of Environment and Local Government, Member of the Legislative Assembly for Riverview;

Then, the Hon. Martine Coulombe, Member of the Legislative Assembly for Restigouche-La-Vallée, former Minister of Post-Secondary Education, Training and Labour;

Jim Parrott, M.D., Member of the Legislative Assembly for Fundy-River Valley;

Then, the Hon. Victor Boudreau, Member of the Legislative Assembly for Shediac-Cap Pelé, former Cabinet Minister from October 2006 – October 2010;

Then, the Hon. Bernard LeBlanc, Member of the Legislative Assembly for Memramcook-Lakeville-Dieppe, former Cabinet Minister from October 2008 – February 2010, May 2010 – October 2010

By sworn affidavit, Mary Ellen Rose alleges that ten Members of the Legislative Assembly of New Brunswick have violated ss. 4, 5, and 6 of the *Members' Conflict of Interest Act*.¹ Her complaints relate to job competitions for which she applied unsuccessfully. Subsequent to the commencement of my investigation, I have exercised my discretion and ceased the investigation. Pursuant to s. 37(5) of the *Members' Conflict of Interest Act*, Ms. Rose and the Members of the Legislative Assembly (MLAs) identified in the request for investigation shall be informed of the Commissioner's decision to cease the investigation.² Because of the number of members named in Ms. Rose's affidavit, and her intent to pursue this matter in a public venue, the Court of Queen's Bench, I shall also file my report with the Speaker of the Legislative Assembly.

¹ SNB 1999, c M-7.01 [the *Act*].

² *Ibid*, s 37(5).

Introduction

[1] On April 17, 2013, the Office of the Conflict of Interest Commissioner received Ms. Rose's sworn affidavit.³ This affidavit, with supporting documents totaling 442 pages, alleges that ten Members of the Legislative Assembly have breached the "conflict of interest", "insider information", and "influence" sections of the *Members' Conflict of Interest Act*:⁴

Conflict of interest

4 A member shall not make a decision or participate in making a decision in the execution of his or her office if the member knows or reasonably should know that in the making of the decision there is the opportunity to further the member's private interest or to further another person's private interest.

This section expressly establishes that while acting in their official capacities as Members of the Legislative Assembly, MLAs must act only in the public interest. In the 183 pages of Ms. Rose's affidavit – with 54 pages of explanations and 205 pages of exhibits, other than her own statements, there is no evidence in support of these allegations. Ms. Rose claims to have won the competitions in which she participated, but she does not provide evidence that any of the named MLAs furthered their own private interests or the private interests of any other person. Ms. Rose does not identify any of the successful candidates nor does she impugn their qualifications.

Insider information

5(1) A member shall not use information that is obtained in his or her capacity as a member and that is not available to the general public to further or to seek to further the member's private interest or to further or seek to further another person's private interest.

5(2) A member shall not communicate information described in subsection (1) to another person if the member knows or reasonably should know that the information may be used for a purpose described in that subsection.

This section is designed to prevent insider information being used to give an advantage to a member personally or for a member to use to the advantage of another person. Again, there is no evidence that any of the named members had or used such information for the benefit of anyone or to the disadvantage of Ms. Rose.

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.

This section is intended to prevent a member from using his or her power to influence a decision by another person to further a member's private interests or some other person's private interest. The allegations of political influence are present but any supporting evidence is absent.

³ Exhibit 1, Request for investigation by sworn affidavit of Mary Ellen Rose.

⁴ The *Act*, *supra* note 1, ss 4, 5, 6.

[2] The rather expansive request for an investigation is centered on Ms. Rose's participation in several hiring competitions between 2006 and 2010. These competitions were for the position of lawyer for various divisions of the Department of Justice and the Office of the Attorney General of New Brunswick and include competitions 06-44-04, 08-44-04, 09-45-10, 10-44-02, and 10-44-03. Ms. Rose asserts that she was qualified and deserving of these positions and alleges that the Province's failure to award any one of these various positions to her, and the subsequent cover-up of any wrongdoing, indicates a pervasive, systemic corruption in the bureaucracy that reaches the highest levels of the Executive Councils of two consecutive provincial governments.

[3] Ms. Rose alleges that the MLAs identified in her affidavit have used the influence of their office and information obtained in their capacities as Members of the Legislative Assembly to participate in the cover-up of the improper handling of her applications in the various competitions. This was allegedly done to further their own private interests or the private interests of others, as exposure of any wrongdoing would lead to sanctions – including termination – against the individuals involved.

[4] Ms. Rose has pursued several avenues of redress, writing complaints to Deputy Ministers, Ministers, Premiers, and the Clerk of the Legislative Assembly; initiating an investigation by the Ombudsman; pursuing an inquiry by the New Brunswick Human Rights Commission; requesting an investigation by this office; complaining to the Law Society of New Brunswick; and finally, seeking judicial review of much of the foregoing from the Trial Division of the Court of Queen's Bench.

[5] By all appearances, Ms. Rose has been treated with respect and seriousness at every turn and by every office. In each instance, there appears to have been insufficient evidence to support any allegations of wrongdoing. The Ombudsman's investigator, Robert Savoie, concluded Ms. Rose's application was handled appropriately according to "the applicable legislation, policy and procedures".⁵

[6] As an exhibit to her affidavit, Ms. Rose provided a copy of the Human Rights Commission's earlier decision to deny Ms. Rose's request for a Time Limit Extension. This decision appears to have been made within the discretion of the decision-maker. Although requested by me, a confidential, and final, decision of the Human Rights Commission, rendered June 26, 2013, was not made available to this office by Ms. Rose.

Investigation Initiated According to Standard Practices of the Office of the Conflict of Interest Commissioner

[7] Upon receipt of Ms. Rose's affidavit requesting an investigation into these allegations, I commenced an investigation according to my practice. After my inspection and analysis of the 442 page affidavit and supporting documents, I notified all named MLAs of Ms. Rose's request for investigation by way of letter.⁶ In this letter, I explained the nature of Ms. Rose's

⁵ Exhibit 2, Letter dated June 11, 2007, provided by Ms. Rose as Exhibit "E" to her affidavit.

⁶ Exhibit 3, Letters to the named MLAs dated June 10, 2013 and July 2, 2013.

allegations, in general terms, and informed the Members that they would be expected to respond to the allegations.

[8] I have provided the MLAs in question with a complete copy of the request for investigation or with extracts from the request pertinent to each and asked for their response. Each has responded to my letter in a reasonably timely manner, and I will refer to each of these responses in turn. The last response was received August 6, 2013. I forwarded copies – with translations where necessary – of the ten responses to Ms. Rose on August 7, 2013.⁷

Responses of the Named Members

The Hon. David Alward⁸

[9] In his letter dated July 30, 2013, Premier Alward asserts that he has no involvement in the hiring process for departments, generally, and no involvement in Ms. Rose's applications, specifically. The Premier also asserts that he has not been party to the collusion alleged by Ms. Rose either in relation to the job competitions or the subsequent human rights complaint.

The Hon. Blaine Higgs⁹

[10] In his letter dated June 25, 2013, Finance Minister Higgs, former Minister of Human Resources, catalogues the instances that Ms. Rose has made contact with his various offices; and while the records show that Ms. Rose has contacted Minister Higgs' offices, there is no record of the substance of the messages left, of any conversation had, or of any direct contact between Minister Higgs and Ms. Rose. Minister Higgs asserts that under his direction Human Resources has not been involved in any decision or subsequent communication with respect to hiring competitions. This authority rests with the specific departments conducting the competitions. Further, Minister Higgs denies Ms. Rose's accusation that he promised her a job and later reneged on his offer.

The Hon. Marie-Claude Blais, Q.C.¹⁰

[11] In her letter dated July 23, 2013, Attorney General Blais asserts that the competitions identified by Ms. Rose were free from bias or favoritism and were "filled on the basis of merit in accordance with the *Civil Service Act*." Further, she has offered unfettered access to the files of the competitions in question. Attorney General Blais asserts that there has been no inappropriate contact between her office and the Human Rights Commission with respect to Ms. Rose's human rights complaint.

⁷ Exhibit 4, Letter to Mary Ellen Rose dated August 7, 2013.

⁸ Exhibit 5, Letter from Premier Alward.

⁹ Exhibit 6, Letter from Minister Higgs.

¹⁰ Exhibit 7, Letter from Attorney General Blais.

The Hon. Danny Soucy¹¹

[12] In his letter dated July 18, 2013, Minister Soucy asserts that neither he, nor any member of his department, the Department of Post-Secondary Education, Training and Labour, has had contact with the staff or members of the Human Rights Commission in the disposition of this matter. Minister Soucy relates the two occasions on which Ms. Rose contacted his department via email. In his response emails, Minister Soucy stated that he has no knowledge of the cases filed with the Human Rights Commission, that his department does not have any involvement with the Human Rights Commission in relation to its cases as there is a statutorily imposed arm's length relationship between his department and the Human Rights Commission. He also informed Ms. Rose of her options in the event that she is not satisfied with the process of her case before the Human Rights Commission.

[13] On June 9, 2013, Ms. Rose sent an email to the Office of the Conflict of Interest Commissioner outlining the transgressions to which she had been subjected since filing her affidavit.¹² Therein, Ms. Rose included the email exchange with Minister Soucy; the record confirms Minister Soucy's recounting of that exchange.

The Hon. Troy Lifford¹³

[14] In his letter dated June 28, 2013, Human Resources Minister Lifford asserts that a review of the Department of Human Resources correspondence log shows no record relating to Ms. Rose. He adds that she has not been mentioned in any department briefings nor is there any record of direct correspondence from Ms. Rose to the Minister.

The Hon. Bruce Fitch¹⁴

[15] In his letter dated August 2, 2013, Minister Fitch denies Ms. Rose's allegations that he participated in, or facilitated, an operation to gather information on Ms. Rose. He asserts that, in his capacity as Minister of Environment and Local Government, he has had no involvement or knowledge of any human resources decisions made by the City of Saint John in respect to the treatment of Ms. Rose.

Martine Coulombe¹⁵

[16] In her letter dated June 13, 2013, MLA Coulombe asserts that she is not acquainted with Ms. Rose, that she has no memory of hearing her name while Minister of Post-Secondary Education, Training and Labour, and that she has never offered Ms. Rose a job.

¹¹ Exhibit 8, Letter from Minister Soucy dated July 2, 2013; Letter from the Conflict of Interest Commissioner dated July 5, 2013; Letter from Minister Soucy dated July 18, 2013.

¹² Exhibit 9, Email to the Office of the Conflict of Interest Commissioner dated June 9, 2013.

¹³ Exhibit 10, Letter from Minister Lifford.

¹⁴ Exhibit 11, Letter from Minister Fitch dated June 19, 2013; Letter from the Conflict of Interest Commissioner dated June 27, 2013; Letter from Minister Fitch dated August 2, 2013 (received August 6, 2013).

¹⁵ Exhibit 12, Letter from MLA Coulombe.

Jim Parrott, M.D.¹⁶

[17] In his letter dated July 18, 2013, MLA Parrott asserts that he has no knowledge of any of the allegations made by Ms. Rose and that he has never been in contact, either in writing or in person, with Ms. Rose.

Victor Boudreau¹⁷

[18] In his letter dated July 15, 2013, MLA Boudreau, former Minister of Finance, asserts that he has no knowledge of Ms. Rose or of her allegations.

Bernard LeBlanc¹⁸

[19] In his letter dated July 10, 2013, MLA LeBlanc, former Minister of Justice, asserts that he has no knowledge of Ms. Rose's allegations, that he does not know her, and that he did not interfere in any hiring processes as alleged by Ms. Rose.

Assessment of the Merits of the Allegations

[20] I initiated and pursued the investigation on the assumption that Ms. Rose believed her allegations had merit. I required the named MLAs to respond to Ms. Rose's allegations despite the utter lack of substantive evidence indicating either improper conduct in the job competitions or any connection between the named MLAs and their alleged activities.

[21] In disregard of my direction to her concerning the unacceptability of communication by email,¹⁹ Ms. Rose has inundated this office with extraneous information without evidentiary support.²⁰ In these emails, Ms. Rose persistently makes demands in an attempt to control the investigation on her terms.

[22] On July 3, 2013, I sent a letter to Ms. Rose informing her that I had notified the named MLAs of her allegations, that I intended to give her the opportunity to appear before me in support of her request, and that I would complete my investigation into her allegations before my successor assumes office.²¹ In this letter, I requested a copy of the Human Rights

¹⁶ Exhibit 13, Letter from MLA Parrott.

¹⁷ Exhibit 14, Letter from MLA Boudreau.

¹⁸ Exhibit 15, Letter from MLA LeBlanc.

¹⁹ Exhibit 16, Email to Mary Ellen Rose dated April 23, 2013.

²⁰ Exhibit 16.1, Email to the Office of the Conflict of Interest Commissioner dated April 22, 2013 (5 pages),

- Exhibit 16.2, Email to the Office of the Conflict of Interest Commissioner dated April 23, 2013 (1 page),
- Exhibit 16.3, Email to the Office of the Conflict of Interest Commissioner dated April 23, 2013 (1 page),
- Exhibit 16.4, Email to the Office of the Conflict of Interest Commissioner dated May 2, 2013 (4 pages),
- Exhibit 16.5, Email to the Office of the Conflict of Interest Commissioner dated June 12, 2013 (4 pages),
- Exhibit 16.6, Email to the Office of the Conflict of Interest Commissioner dated June 14, 2013 (20 pages),
- Exhibit 16.7, Email to the Office of the Conflict of Interest Commissioner dated June 28, 2013 (1 page),
- Exhibit 16.8, Email to the Office of the Conflict of Interest Commissioner dated July 2, 2013 (1 page),
- Exhibit 16.9, Email to the Office of the Conflict of Interest Commissioner dated July 31, 2013 (2 pages);

see also, Exhibit 1, *supra* note 3, & Exhibit 9, *supra* note 11.

²¹ Exhibit 17, Letter to Mary Ellen Rose dated July 3, 2013.

Commission decision of June 26, 2013 into her human rights allegations. Though this letter was received by Ms. Rose on July 4, 2013, she did not respond.

[23] On July 22, 2013, I issued a follow-up letter to reiterate the need for the Human Rights Commission's decision to assist in the investigation.²² This letter was received by Ms. Rose on July 24, 2013. In response to this letter, Ms. Rose sent an email to the Office of the Conflict of Interest Commissioner indicating her intention to withhold cooperation from my investigation.²³ In this email, Ms. Rose pronounces that I do not have statutory authority to dispose of her request and that she is seeking judicial review of the Human Rights Commission's decision and of my conduct of this investigation.²⁴

[24] It is incumbent upon Ms. Rose to demonstrate that her allegations have merit. This burden is not onerous. It is simply that Ms. Rose must demonstrate that her allegations have a credible basis in fact, that there is some reasonable connection between the named Members and her allegations. Without support, the sort of speculation contained within Ms. Rose's affidavit is insufficient to sustain an investigation.

[25] Though the Office of the Conflict of Interest Commissioner is not, strictly speaking, an adjudicative body, its decisions and procedures must conform to the principles of fundamental justice and procedural fairness. This includes acting as a gatekeeper to ensure that there are reasonable grounds for an investigation. Accordingly, s. 37(4) of the *Members' Conflict of Interest Act* gives the Commissioner the discretion to dispose of a request for investigation that is unsupportable or without merit.²⁵

Investigation and inquiry

[...]

37(4) If the Commissioner is of the opinion that the request is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the Commissioner may refuse to conduct an investigation, or may cease the investigation.

[26] It is essential that there be a reasonable and rational connection between the alleged breaches of the *Members' Conflict of Interest Act*, the circumstances in which the alleged breaches have taken place, and the member, or members, that have allegedly committed the breaches. By her failure to cooperate with my investigative efforts or to supply or identify sufficient grounds for her allegations, her assertion that I am without jurisdiction and her detour to the court for redress, Ms. Rose has blatantly and transparently attempted to forestall

²² Exhibit 18, Letter to Mary Ellen Rose dated July 22, 2013.

²³ See Exhibit 16.10, *supra* note 20.

²⁴ As per the terms of office set out in s. 22(4) of the *Members' Conflict of Interest Act* in effect at the time of my appointment on April 12, 2005, I "[continue] to hold office after the expiry of [my five year term] until reappointed, or until a successor is appointed." Though my successor has been announced, his appointment will not commence until September 1, 2013. His term of office will be governed by terms set out in ss. 22-25 of the *Members' Conflict of Interest Act* as amended on June 5, 2013.

²⁵ The Act, *supra* note 1, s. 37(4).

my determination of this matter. The weight of the information in support of her allegations is, frankly, one feather light of frivolous.

[27] The pursuit of Ms. Rose's claims against Ministers Troy Lifford and Bruce Fitch, MLAs Martine Coulobme, Dr. Jim Parrott, Victor Boudreau, and Bernard LeBlanc is frivolous, in my opinion. Not only is there an absence of evidence against any of the named Members, but none of these six MLAs has been joined in Ms. Rose's application for judicial review. This suggests to me that even Ms. Rose recognizes that her allegations against these MLAs are devoid of merit.

[28] There is not a tittle of evidence in Ms. Rose's 442 page request for investigation substantiating a single facet of the allegations against any of the named Members. In lieu of any evidence of substance, Ms. Rose would like me to advance her cause by calling upon these elected legislators to come before me and be cross examined in order to probe and, hopefully, prove her unsubstantiated allegations. My responsibility is to follow the evidence objectively; my duty does not include augury. Even so, there are no entrails to examine or tea leaves to read.

[29] Although some sympathy may be shown for a candidate who is unsuccessful in the many applications she has made for a government position, Ms. Rose must understand, and accept, that even if she had, at the time, the qualifications to satisfy the decision maker, there were other equally qualified and worthy candidates. Ms. Rose does not impugn the qualifications of the successful candidates, and her failure to provide the investigation with the Human Rights Commission's decision of June 26, 2013 leads me to infer, and I do so infer, that the decision does not support her allegations.

[30] One must also take into consideration that she has, advertently or inadvertently and without justification, sullied or attempted to sully the credibility of ten persons duly elected to serve the people of New Brunswick. These elected Members of the Legislative Assembly are bound by the ethical expectations of the public, codified by the *Members' Conflict of Interest Act*, to act solely in the public interest. Even a most generous reading of her affidavit or of her circumstances cannot give credence to her allegations. One cannot manufacture credibility simply by repeating the allegations time after time.

[31] Ms. Rose's failure to cooperate, her attempts to control the investigation, her demand that I discontinue my pursuit of this matter, and her inclusion of me as a respondent in her application for judicial review, on top of the absence of grounds against the ten named Members of the Legislative Assembly, is added rationale for me to cease the investigation and to so inform Mary Ellen Rose, who made the request for investigation, and the ten Members against whom the allegations were made. To be clear, however, I am ceasing the investigation because there are no grounds, not because of her failure to cooperate or her application for judicial review.

Disposition of the Request for Investigation

[32] On the evidence before me, it cannot be reasonably concluded that, by their acts or omissions, the ten Members identified by Ms. Rose have made any decision, used or communicated insider information, or used the influence of their office to further their own private interests or the private interests of any other person.

[33] Pursuant to s. 37(4) of the *Members' Conflict of Interest Act*, I am ceasing this investigation because I find there are no grounds to sustain it.²⁶

Dated at the City of Fredericton this 26th day of August, 2013.

The Hon. Patrick A.A. Ryan, Q.C.
Commissioner

Postscript

[34] Subsequent to my August 7th letter to Ms. Rose and my intention to render a report on her request by extensive affidavit, swearing to the grounds for an investigation, I received another lengthy email from her on August 19th.²⁷ Upon reviewing the earlier emails in conjunction with this latest one, I am not persuaded that the information is reliable.

[35] Minister Higgs has responded to Ms. Rose's email.²⁸

[36] My report stands unchanged.

The Hon. Patrick A.A. Ryan, Q.C.
Commissioner

²⁶ The *Act*, *supra* note 1, s. 37(4).

²⁷ Exhibit 19, Email to the Office of the Conflict of Interest Commissioner dated August 19, 2013.

²⁸ Exhibit 19.1, Letter from Minister Higgs dated August 23, 2013.