

# **EXHIBIT BOOK**

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

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

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

**INTO ALLEGATIONS BY MR. BRUCE FITCH,  
MLA FOR RIVERVIEW  
OF VIOLATIONS OF THE *MEMBERS' CONFLICT OF INTEREST ACT*  
BY MINISTER RICHARD MILES, MLA FOR FREDERICTON-SILVERWOOD  
AND MINISTER OF ENVIRONMENT**



## **RECUEIL DE PIÈCES**

**BUREAU DU COMMISSAIRE AUX CONFLITS D'INTÉRÊTS  
DU NOUVEAU-BRUNSWICK**

**RAPPORT D'INVESTIGATION  
PRÉSENTÉ AU PRÉSIDENT  
DE L'ASSEMBLÉE LÉGISLATIVE DU NOUVEAU-BRUNSWICK**

**PAR L'HON. PATRICK A.A. RYAN, C.R.,  
COMMISSAIRE AUX CONFLITS D'INTÉRÊTS,**

**À LA SUITE D'ALLÉGATIONS FAITES PAR M. BRUCE FITCH,  
DÉPUTÉ DE RIVERVIEW,  
DE CONTRAVENTIONS À LA *LOI SUR LES CONFLITS  
D'INTÉRÊTS DES DÉPUTÉS ET DES MEMBRES DU CONSEIL EXÉCUTIF*  
PAR L'HON. RICHARD MILES,  
DÉPUTÉ DE FREDERICTON-SILVERWOOD ET  
MINISTRE DE L'ENVIRONNEMENT**

This is the Exhibit Book and contains all the information in its original or copied form that has been referred to in the body of the Report.

Exhibits are kept unchanged and untranslated in the language in which they were delivered or recorded as per the Supreme Court of Canada decision in *Charlebois v. Saint John (City)* [2005] 3 S.C.R. 563, 2005 SCC 74 per McLachlin C.J. and Major, Fish, Abella and Charron JJ., at paras 6 and 7; per Bastarache, Binne, LeBel and Deschamps JJ at para 53.

---

Le recueil de pièces suivant comprend tous les renseignements, sous forme originale ou copiée, auxquels il est fait référence dans le corps du texte du rapport.

Les pièces ne sont ni modifiées ni traduites, comme le prévoit l'arrêt de la Cour suprême du Canada dans *Charlebois c. Saint John (Ville)*, [2005] 3 R.C.S. 563, 2005 CSC 74 (la juge en chef McLachlin et les juges Major, Fish, Abella et Charron, par. 6 et 7, et les juges Bastarache, Binnie, LeBel et Deschamps, par. 53).

Sections 36 and 37 of the <i>Members' Conflict of Interest Act</i> .....	Exhibit 1
Articles 36 et 37 de la <i>Loi sur les conflits d'intérêts des députés et des membres du Conseil exécutif</i> .....	Pièce 1
Affidavit of Member of the Legislative Assembly Bruce Fitch .....	Exhibit 2
Affidavit du député provincial Bruce Fitch .....	Pièce 2
Letter to Hon. Shawn Graham from David L. E. Peterson of January 21, 2010 .....	Exhibit 3
Lettre adressée à l'hon. Shawn Graham par David L.E. Peterson le 21 janvier 2010 .....	Pièce 3
Response letter to David L. E. Peterson from Premier Shawn Graham of February 2, 2010 .....	Exhibit 4
Réponse du premier ministre Shawn Graham adressée à David L.E. Peterson le 2 février 2010 .....	Pièce 4
Affidavit of the Hon. Rick Miles, Minister of Environment .....	Exhibit 5
Affidavit de l'hon. Rick Miles, ministre of de l'Environnement .....	Pièce 5
Letter of Appointment to Mr. Phil Jensen .....	Exhibit 6
Lettre de nomination de Phil Jensen .....	Pièce 6
Letter of Appointment to Mr. P. Lorrie Yerxa .....	Exhibit 7
Lettre de nomination de P. Lorrie Yerxa .....	Pièce 7
Letter to the FRSWC from Brian D. Miles of August 3, 2005 .....	Exhibit 8
Lettre adressée à la CGDSRF par Brian D. Miles le 3 août 2005 .....	Pièce 8
Letter to the FRSWC from Brian D. Miles of October 21, 2005 .....	Exhibit 9
Lettre adressée à la CGDSRF par Brian D. Miles le 21 octobre 2005 .....	Pièce 9
Letter of Resignation from Mr. Phillip E. Jensen .....	Exhibit 10
Lettre de démission de Phillip E. Jensen .....	Pièce 10
Letter of Resignation from P. Lorrie Yerxa .....	Exhibit 11
Lettre de démission de P. Lorrie Yerxa .....	Pièce 11
Sections 50 and 51 of the <i>Law Society Act</i> .....	Exhibit 12
Articles 50 et 51 de la <i>Loi sur le Barreau</i> .....	Pièce 12
Royal Gazette, Order-in-Council 2010-26 .....	Exhibit 13
<i>Gazette royale</i> , décret en conseil 2010-26 .....	Pièce 13

**INVESTIGATION  
INTO BREACHES**

**Request for Investigation**

36(1) Any person may request in writing that the Commissioner investigate an alleged breach of this Act by a member.

36(2) A request under subsection (1) shall be in the form of an affidavit and shall set out the grounds for the belief and the nature of the alleged breach.

36(3) The Assembly may, by resolution, request that the Commissioner investigate any matter respecting an alleged breach of this Act by a member.

36(4) Where a matter has been referred to the Commissioner under this section, neither the Assembly nor a committee of it shall inquire into the matter.

**Investigation and Inquiry**

37(1) On receiving a request under section 36, the Commissioner may conduct an investigation with or without conducting an inquiry.

37(2) The Commissioner shall provide the member who is the subject of the investigation with reasonable notice and shall give the member an opportunity to respond to the allegation.

37(2.1) When the Commissioner conducts an investigation or an inquiry under this section, the member who is the subject of the request under section 36 shall respond promptly and completely to all of the Commissioner's questions and requests for information.

37(3) Where the Commissioner elects to conduct an inquiry under this section, the Commissioner has all the powers, privileges and immunities conferred on a commissioner under the *Inquiries Act*.

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.

37(5) If the Commissioner refuses to conduct an investigation or ceases an investigation, the Commissioner shall inform

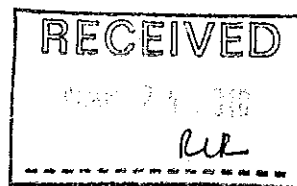
(a) the member against whom the allegation was made, and

(b) the person who made the request or, if the request was made by the Assembly, the Speaker.

2003, c.8, s.5; 2007, c.30, s.24.

**COIC/COI**

**Exhibit 10: 1**



NEW BRUNSWICK CONFLICT OF INTEREST COMMISSIONER

INVESTIGATIONS UNDER THE *MEMBERS' CONFLICT OF INTEREST ACT*,  
CHAPTER M-7.01, STATUTES OF NEW BRUNSWICK, 1999.

LEGISLATIVE ASSEMBLY OF NEW BRUNSWICK

REQUEST FOR AN INVESTIGATION  
INTO THE CONDUCT OF RICHARD  
MILES, MINISTER OF THE  
ENVIRONMENT AND MEMBER OF  
THE LEGISLATIVE ASSEMBLY.

AFFIDAVIT

I, Bruce Fitch of the City of Riverview in the Province of New Brunswick, Member of the Legislative Assembly for Riverview, MAKE OATH AND SAY AS FOLLOWS:

1. I am Bruce Fitch, Member of the Legislative Assembly for the Province of New Brunswick, and as such have personal knowledge of the matters deposed to except where otherwise stated to be based on information and belief.
2. Richard Miles is a Member of the Legislative Assembly for the Province of New Brunswick and was appointed to the Executive Council as Minister of Environment and Member of the Cabinet Committee Board of Management on July 24, 2009.
3. Brian Miles is the father of Environment Minister Richard Miles and is the owner of Elmtree Environmental Ltd.
4. Elmtree Environmental Ltd is a company specializing in Soil Remediation, Waste Management, Demolition and Project Management. The physical location of Elmtree Environmental Ltd. is 349 King St Post Box 444 Fredericton, NB, E3B1E4.
5. In 1994 Elmtree Environmental started a long term lease arrangement with the Fredericton Region Solid Waste Commission.
6. Problems between Elmtree Environmental and the Fredericton Solid Waste Commission caused a legal dispute between the parties to initiate in or about April of 2008.
7. I believe that Mr. Richard Miles, Minister of Environment, has a personal familiar interest in Elmtree Environmental Ltd. and therefore his appointment to the Minister of the Environment put him in an immediate conflict of interest which he should have recognized and taken appropriate steps to removed himself from dealings and decision making responsibilities with respect to the Fredericton Solid Waste Commission.

COIC/C

8. Instead of removing himself from all dealings between Elmtree Ltd and the Fredericton Solid Waste Commission Richard Miles appointed Lorrie Yerxa to the board of the Fredericton Solid Waste Commission.

7. Lorrie Yerxa is a Lawyer in Fredericton who was appointed to the board of the Fredericton Solid Waste Commission on October 14, 2009, by Environment Minister Richard Miles.

8. On January 28, 2010 I believe that Lorrie Yerxa quit the board due a conflict of interest between his business relationships with Brian Miles and his role as a board Member of the Fredericton Solid Waste Commission.

9. I hand delivered a letter from the Law Office of David L. Peterson on February 3<sup>rd</sup> 2010 for Justice Ryan to consider in regards to the conflict of interest problem.

10. Litigation between Elmtree Environmental Ltd. and The Fredericton Solid Waste Commission was initiated before the appointment of Richard Miles. Because of this Richard Miles knew or ought to have known that his family relationship put him in a conflict of interest when dealing with the Fredericton Solid Waste Commission.


11. Also I believe that the Richard Miles as the Minister of Environment failed to recognize that by continuing to make decisions and appointments to the Fredericton Solid Waste Commission in October of 2009 it put him further in a conflict of interest especially since the business relationships between Brian Miles and Lorrie Yerxa lead to Mr. Yerxa resigning from his board appointment.

12. I believe that the decisions of Richard Miles after he was appointed Minister of the Environment must be investigated in order to find out how these actual and perceived conflict of interest issues were not caught by the safe guards in place.

13. I make this Affidavit for an investigation under section 36 of the *Members Conflict of Interest Act*.

14. My request for an investigation is not frivolous or vexatious and is made in good faith.

SWORN BEFORE ME at  
Fredericton ~~Houcton~~  
in the Province of New Brunswick, this  
23<sup>rd</sup> day of March, 2010

  
A Commissioner for taking Affidavits  
In the Province of New Brunswick  
Marie-Claude Blais, solicitor

  
Bruce Fitch MLA Riverview



**David L. E. Peterson** B.P.E., LL.B.

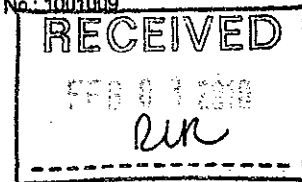
*Peterson & Walker Law Office  
Barristers Solicitors Notary Publics*

318 Maple Street  
Red Cross Building  
Fredericton, NB E3A 3R4

E-Mail: dlepeterson@nb.aibn.com

Telephone: (506) 444-0923  
Direct Line: (506) 444-0929  
Facsimile: (506) 444-0980

Please Refer To  
Reference No. 1001009



January 21, 2010

Honourable Shawn Graham  
Premier of New Brunswick  
Centennial Building  
P.O. Box 6000  
Fredericton, NB E3B 5H1

Dear Mr. Premier:

Please be advised that I represent the Fredericton Region Solid Waste Commission. The Commission is currently involved in significant litigation wherein Elmtree Environmental Ltd. is the plaintiff. Reference to the Corporate Affairs Registry Database shows Mr. Brian D. Miles as a director of Elmtree Environmental Ltd. and it is clear from communications the Commission has undertaken with the company, Mr. Miles is in full control of Elmtree Environmental Ltd.

As you are no doubt aware, the Honourable Rick Miles, your Minister of Environment is the son of Brian D. Miles.

On January 19, 2010 at the regular monthly meeting of the Commission two motions were passed unanimously by the members of the Commission related to the appointments made by your Minister of Environment pursuant to section 15.4(1)(b) of the *Clean Environment Act*.

Motion #1 reads as follows

**"MOTION #1**

Whereas the Commission is currently involved in litigation with Elmtree Environmental Ltd., owned and operated by Mr. Brian Miles.

COIC/CCI

Exhibit/Piece : 3

.../2

Hand-delivered by MLA Bruce Fitch  
with 3 reporters from the Daily  
Gleaner. Rik @ 1:45 approx.

*And whereas issues and concerns have arisen regarding a possible undeclared conflict of interest by Mr. Lorrie Yerxa (a newly appointed Member of the Commission) in relation to his past service as legal council for Mr. Brian Miles (owner of Elmtree Environmental Ltd.), and in regards to Mr. Yerxa's son's employment with Elmtree Environmental Ltd., and further with Mr. Yerxa (after informing the Board members that he is a lawyer) providing a legal opinion on a correspondence between the General Manager of FRSWC, the Commissions lawyer and Elmtree Environmental Ltd.*

*It is moved that the Commission instruct its lawyer (David Peterson) to file a complaint:*

- a. With the New Brunswick Law Society for determination on the issue of whether Mr. Lorrie Yerxa's actions since being appointed to the Commission are in violation of Chapter 17 of the Code of Professional Conduct and particularly whether he has been in a conflict of interest, without declaration of same.*
- b. And with the Department of Local government (or appropriate body) for determination of any possible conflict of interest violations under the New Brunswick Municipalities Act and the Clean Environment Act."*

The second motion instructed the Commission's lawyer to write this letter to bring to your attention the matter of recent appointments to the Commission by the Minister of Environment and to raise with you the potential conflict of interest that is evident in his making these appointments.

Motion #2 reads as follows:

**"MOTION #2**

*Whereas the Commission is currently involved in litigation with Elmtree Environmental Ltd., owned and operated by Mr. Brian Miles.*

*And whereas the Minister of Environment (Hon. Rick Miles) is the son of Mr. Brian Miles, and whereas the Minister is responsible for appointing up to four members, as representatives for the Local Service Districts, to the FRSWC Board.*

*And whereas two recent appointments have raised serious questions within the Commission – one is concerning a possible undeclared conflict of interest, and another concerns a representative appointed for a Local Service District who resides within the City of Fredericton. Concerning the LSD representative who resides within the City of Fredericton, this Board received a correspondence from the Department of Local Government stating that this*

*appointment was not in keeping with the intention of the policy and that it would be revoked. Subsequently, the Minister of Environment (according to the LSD representative in question) stated he could appoint whomever he wanted regardless of where they live and that this appointment stands.*

*It is moved that the Commission instruct its lawyer (David Peterson) to forward a letter to Premier Shawn Graham raising the matter of appointments to the Commission by the Minister of Environment and whether there exists a conflict of interest in making such appointments, due to the familial relationship between the Minister (Hon. Rick Miles) and the owner of Elmtree Environmental Ltd. (Mr. Brian Miles) and whether there should be a review of the appointments by the Minister to this Commission's Board."*

The Commission would ask that you review the Minister's appointments and satisfy yourself that the integrity of the appointment process was respected.

Upon reviewing the circumstances leading up to this point I believe you will appreciate that a reasonable apprehension of conflict of interest is obvious and that any further appointments to the FRSWC board to represent local service districts should be made by someone other than the Hon. Rick Miles.

All of which is respectfully submitted.

Yours truly,

**DAVID L.E. PETERSON LAW OFFICE**

Per: 

David L.E. Peterson



February 2, 2010

Mr. David L.E. Peterson, Esq.  
318 Maple Street  
Red Cross Building  
Fredericton NB E3A 3R4

Dear Mr. Peterson:

Re: Fredericton Region Solid Waste Commission

I am writing to acknowledge and respond to two matters raised in your letter of January 21, 2010.

Firstly, you have asked for a determination (including presumably an investigation) by the "appropriate body" of any possible conflict of interest violations under the *Municipalities Act* or the *Clean Environment Act*. While a regional solid waste commission is included within the definition of a "local board" for the purposes of sections 90.1 to 90.91 of the *Municipalities Act*, and while Mr. Yerxa was a member of a local board within those provisions, I would suggest that neither the Minister of the Environment nor the Minister of Local Government are in a position to determine in any formal way whether a conflict of interest exists.

In the *Hodginnott* case (1983) 46 N.B.R. (2d) 340, Justice Stevenson wrote:

*Section 2 of the Municipalities Act charges the Minister with the duty of administering the Act... I do not interpret a duty or responsibility of administering a statute or of directing and supervising administrative conduct as encompassing authority to ... render a decision as to the legality of something a council has done.*

With respect, the same conclusion holds true with respect to the authority (or better, the lack thereof) of the Minister to render a decision as to the legality a member of a council or local board has done. Whatever the "appropriate body" is, I regret to advise that it is neither the Minister of the Environment nor the Minister of Local Government. Your complaint, if it is to be pursued, will have to be directed elsewhere.



Mr. David L.B. Peterson, Esq.

Page 2

February 2, 2010

Finally, while there is a Ministerial provision under sub section 15.4(9) of the *Clean Environment Act* to remove a member of a commission seemingly without cause, the issue of removal from office is now academic, as Mr. Yerca has resigned and the other LSD rep whose situation is addressed in your letter has indicated his intention to resign.

With respect to the second point raised in your letter, as you may now be aware from the considerable publicity surrounding these matters, the Honourable Rick Doucet, Minister of Fisheries, has been directed and authorized to discharge the responsibilities of the Minister of the Environment, Honourable Rick Miles, in relation to the Fredericton Region Solid Waste Commission (the "Commission"). This should resolve any conflict of interest concerns on the part of the commission or its officers.

You have asked that I review the Minister's appointments to the commission and satisfy myself that the integrity of the appointment process was respected. However, it is not my role to police the conflict of interest provisions under the *Municipalities Act*. That role belongs to the courts, and I have no authority to intervene or to pass judgment as to whether those provisions have been respected. As the courts have not pronounced on the propriety of either appointment in issue, I do not believe that it is for me to purport to usurp their role.

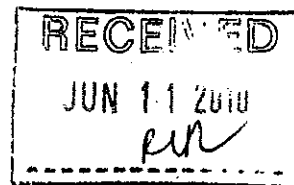
I trust this will suffice for your purposes.

Yours truly,



Shawn Graham  
Premier

NEW BRUNSWICK CONFLICT OF INTEREST COMMISSIONER



INVESTIGATIONS UNDER THE *MEMBERS' CONFLICT OF INTEREST ACT*,  
CHAPTER M-7.01, STATUTES OF NEW BRUNSWICK, 1999.

LEGISLATIVE ASSEMBLY OF NEW BRUNSWICK

REQUEST FOR AN INVESTIGATION  
INTO THE CONDUCT OF RICHARD  
MILES, MINISTER OF THE  
ENVIRONMENT AND MEMBER OF THE  
LEGISLATIVE ASSEMBLY.

**AFFIDAVIT**

I, **RICHARD MILES**, of the City of Fredericton, County of York and Province of New Brunswick, Minister of the Department of Environment ("DOE") and Member of the Legislative Assembly for the riding of Fredericton, Silverwood, MAKE OATH AND SAY AS FOLLOWS:

1. I have personal knowledge of the matters herein deposed to except where stated on information and belief and in such case I do believe the information and belief to be verily true.
2. I have reviewed the Affidavit of Bruce Fitch, Member of the Legislative Assembly for the riding of Riverview ("Fitch") and I agree with paragraphs 2, 3, a portion of 4 and 5 of his Affidavit dated March 23, 2010 ("Fitch Affidavit").

**COIC/CCI**  
Exhibit/Pièce : 5

3. I deny the allegations made in the first paragraph 7 and paragraph 11 of the Fitch Affidavit.
4. I have no knowledge of the allegations in paragraphs 6 of the Fitch Affidavit.
5. As to paragraph 4 of the Fitch Affidavit Elmtree Environmental Ltd's ("EEL") physical location is at 77 Timothy Avenue, Hanwell, NB E3C 2B7.
6. As to the first paragraph 8 of the Fitch Affidavit after a process which flows through the Minister of Local Government, Bernard LeBlanc, ("MLG") and finally to my office Lorrie Yerxa was appointed to the Fredericton Regional Solid Waste Commission ("FRSWC"). Attached hereto and **marked "A"** is the Procedure for Ministerial Appointments. (the "Procedure")
7. As to paragraph 7 of the Fitch Affidavit Lorrie Yerxa was appointed to the FRSWC pursuant to the Procedure.
8. As to the second paragraph 8 in the Fitch Affidavit I have been advised by my counsel, Allen Miles, that Lorrie Yerxa had no business relationships with Brian D. Miles nor was he his counsel and Lorrie Yerxa did not resign due to any relationship with Brian D. Miles.
9. As to paragraph 10 I was not aware of any litigation between EEL and FRSWC (the "Litigation") until I read the *Daily Gleaner* on or about January 8, 2010. Brian D. Miles has numerous businesses and I am not aware of his dealings and I have never been involved or made aware of any dealings of EEL.
10. As to paragraph 12 of the Fitch Affidavit I deny the portion that indicates any decisions made by me as Minister of the Environment were made to create an actual or a perceived Conflict of Interest.

11. As to the whole Fitch Affidavit and in particular the letter from the Law Office of David L. Peterson dated January 21, 2010 referred to in paragraph 9 of the Fitch Affidavit and attached hereto as **Schedule "B"**, I state as follows:

- a. The process of the appointment of Lorri Yerxa was governed by MLG and was not initiated by me;
- b. I understand there was one other individual other than Lorrie Yerxa who was willing to be a FRSWC board member but the only person who was approved by MLG was Lorrie Yerxa therefore he was selected as he was the only name that was presented to me for authorization for that Local Service District ("LSD");
- c. I was aware that Lorrie Yerxa's son was an employee of EEL but I understand that is not a conflict in this situation. I understood that his son did not reside with Lorrie Yerxa and the son has no interest in EEL other than he is a paid employee;
- d. Brian D. Miles owns numerous companies and employs numerous people in various industries and I do not know the majority of his employees and I have never made any decisions or had any interest involving Brian D. Miles companies;
- e. In my Member's Public Disclosure Statement and the update I provided upon being appointed as Minister of DOE a diagram of the Corporations owned by Brian D. Miles was provided as part of the disclosure and EEL was outlined in that diagram along with its connection to other corporations of Brian D. Miles;
- f. There is a letter produced dated August 3, 2005 from Brian D. Miles, CEO of EEL to FRSWC, Attention: Gordon Wilson, General Manager and CEO which was sent on a Without Prejudice basis and copied to various people including Peter Mockler, EEL's solicitor in the Litigation, Allen Miles, Lorrie Yerxa, Darren Chamberlain an EEL employee and Daryl DeMerchant of Gemtec Limited, which letter is attached hereto and **marked "C"**. I comment on that letter as follows:

- i. I have been advised by Allen Miles that he never received a copy of this letter until this Conflict of Interest matter was initiated and I retained him as counsel;
- ii. I have been advised by Allen Miles that through his investigation and meetings and discussions with Lorri Yerxa that Lorri Yerxa has never had any dealings as counsel, adviser, a business relationship or otherwise with EEL in its dealings with FRSWC or in particular any dealings with the Litigation;
- iii. I have been advised by Allen Miles that through his investigations and discussions and meetings with Brian D. Miles that at the time this letter was created Brian D. Miles was contemplating litigation against the FRSWC by EEL but never discussed this issue with Lorrie Yerxa and selected Peter Mocker as a result of any ongoing Provincial Sales Tax dispute that another Brian D. Miles company had against the Province of New Brunswick;
- iv. Allen Miles is a cousin to my father and I and has been my counsel since I began needing legal services for purchasing and building homes and also dealing with corporations I owned;
- v. Allen Miles has been counsel to Brian D. Miles and his corporations for in excess of 19 years and I had no knowledge that Lorrie Yerxa had ever provided legal services to Brian D. Miles or his corporations and the only other counsel I was aware of was Peter Mocker who had handled the Province of New Brunswick sales tax case;
- vi. I have been advised by Allen Miles that he has always been counsel for EEL, except for Peter Mockler's involvement with the Litigation and he incorporated EEL and was counsel for EEL when it entered into the lease with FRSWC on November 1, 1994 being the date of the lease;

- vii. I had no knowledge of this letter and I first saw the letter when it was produced by the FRSWC through David L.E. Peterson as a result of this matter;
- g. The only first time member of the FRSWC I was involved with was Lorrie Yerxa but I did reappoint Phillip E. Jensen, Pierre Theriault and H. E. Hartley as members of the board which was effective November 1, 2009 and the reappointment Procedure of these members is outlined in attachment "A" and MLG controls the process;
- h. In the January 21, 2010 letter to Premier Shawn Graham from David L. E. Peterson, attachment "B", an issue is raised about two appointments to the FRSWC one of which is Lorrie Yerxa and the other is about a board member who does not reside in the LSD he represents, which is Phillip E. Jensen whose district is St. Mary's - North of Nashwaak Village. I comment on this issue as follows:
  - i. The reappointment of Phillip E. Jensen was approved by MLG and subsequently approved by me prior to an email being issued by a policy analyst with the Department of Local Government dated October 30, 2009;
  - ii. The issue was discussed at a meeting of the board members on November 17, 2009 and a Motion was approved to forward my office a letter requesting a retraction of the email to allow Phillip E. Jensen to continue as a board member and subsequent to that Motion Phillip E. Jensen was unanimously elected as Chairperson of the Board;
  - iii. Subsequent to Phillip E. Jensen being appointed Chairperson the issue was raised by Fitch and/or David L. E. Peterson in the January 21, 2010 letter


where it is stated in Motion # 2 that I said "I could appoint whomever I wanted regardless of where they live and that this appointment stands.";

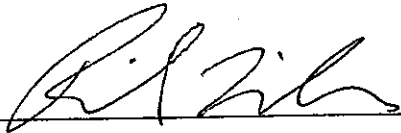
- iv. There is no dated associated with this statement I allegedly made and I deny ever making this statement as the MLG is in control of the process of appointments and until an approval arrives at my desk I have no control;
- v. After the issue arose and Phillip E. Jensen was made Chairperson of the Board it was my position that he remain as a member and the Chairperson until the matter could be resolved or another person is appointed through the process;
- vi. Subsequent to this issue arising but prior to the January 21, 2010 letter from David L. E. Peterson, Phillip E. Jensen became a property owner in the LSD which raised other questions about his ability to represent the LSD;
- vii. After the letter of January 21, 2010 and the issues with FRSWC, Phillip E. Jensen resigned from the Board at his own accord, not at the request of me or a department of the Province of New Brunswick.
- i. In early January of 2010 after learning of the possible existence of a conflict of interest, a potential conflict of interest or the appearance of a conflict of interest related to being a member of the Executive Council and Minister of the Department of Environment and dealing with FRSWC, I requested Premier Shawn Graham or the Executive Council by letter dated January 8, 2010 to designate another Minister to act in place of me in relation to any files dealing with the FRSWC. Attached hereto and **marked "D"** is this letter.

- j. Immediately upon my learning of a conflict of interest, a potential conflict of interest or the appearance of a conflict of interest related to the FRSWC I attended with the Conflict of Interest Commission prior to the letter sent to Premier Shawn Graham attached and marked "D".
  - k. A reply from Premier Shawn Graham dated January 8, 2010 is attached hereto and **marked "E"** whereby he appointed another Minister, namely the Honourable Rick Doucet, Minister of Fisheries subject to a review by the Conflict of Interest Commissioner and the requirements of the *Executive Council Act*, SNB
  - l. Premier Shawn Graham replied to the January 21, 2010 letter of David L. E. Peterson by letter dated February 2, 2010 attached hereto and **marked "F"**.
  - m. On or about January 27, 2010 Lorrie Yerxa tendered his resignation as a board member of the FRSWC and I have been advised by Allen Miles that in this discussion with Lorrie Yerxa the reason he resigned was not that he was in a Conflict of Interest situation concerning Brian D. Miles or his corporations but because he had more than enough work in his law practice, he did not need to deal with false accusations and the circumstances that were part of the politics in the matter of him being a board member of the FRSWC, and that he felt he could not represent his LSD property given the restrictions on him as a Board Member.
  - n. Although I do not admit that I was aware of any conflict of interest I felt it was necessary and prudent to remove myself from any dealings with the FRSWC once the matter came to my attention.
12. I made no appointment or decision that would have affected the litigation dealing with FRSWC , Gordon Wilson and John Bigger, Court File Number F/C/127/08.

13. I have been advised by Allen Miles that the Litigation has only proceeded to an exchange of documents and no discovery but a Motion has been heard and an injunction is in place to allow EEL to continue to operate at FRSWC.
14. I make this Affidavit in Reply to the request of Fitch for an investigation under Section 36 and my reply is pursuant to Section 37(2) and 2.1 of the *Members' Conflict of Interest Act*, RSNB, Ch M-7.01.

SWORN TO BEFORE ME at the City )  
of Fredericton, County of York and )  
Province of New Brunswick, this 11 )  
day of June, 2010. )

  
A COMMISSION OF OATHS )  
BEING A SOLICITOR )

  
RICHARD MILES

"A"  
Allen Miles  
Commissioner of Oaths  
Being a Solicitor  
Province of New Brunswick

AM  
June 11/10

## Procedure for Ministerial Appointments Regional Solid Waste Commissions & District Planning Commissions

### Responsibility

Recommendations for appointment to regional solid waste commissions (SWC) and district planning commissions (DPC) are made to the Minister of Environment by the Minister of Local Government as the Minister is responsible for the unincorporated areas in the Province. The Minister of Environment appoints four members to each of the 12 SWCs and one to several members to each of the 12 DPCs (as defined by each Ministerial Order under the *Community Planning Act* which establishes the DPC). The Policy and Strategic Initiatives Division coordinates the process for Ministerial appointments to DPCs and SWCs (following the steps outlined in the attached Process flow chart). This includes verifying the eligibility of a candidate for appointment or reappointment.

### Candidates

Names of potential candidates for appointment come from a variety of sources, including Local Services Manager (LSMs), MLAs, local service district advisory committees and individuals. These names are forwarded to the office of the Minister of Local Government for consideration. LSMs are periodically advised of any existing or upcoming vacancies for the commissions within their region and routinely recommend candidates that they believe would be suitable for appointment. Potential members commonly recommended by LSMs are primarily local service district advisory committee members.

### Consultation

The suitability of candidates is determined in consultation with LSMs, and in some instances with the Department of Environment. In the case of reappointments, the commission may be consulted to determine the incumbent's past attendance and participation in the activities of the commission. Staff of the Department of Local Government receive the name of a recommended candidate for appointment/reappointment and the following steps are taken:

- confirm that candidate is not a civil servant (recommendation of the Office of Human Resources);
- determine the number of terms served (SWC reappointments);
- consider commission area requirements (where possible, attempts are made to distribute members across the region covered by each SWC or DPC);
- confirm that the candidate resides in an LSD within the SWC/DPC region; and
- advise regional departmental staff of potential appointment.

### Approval Process

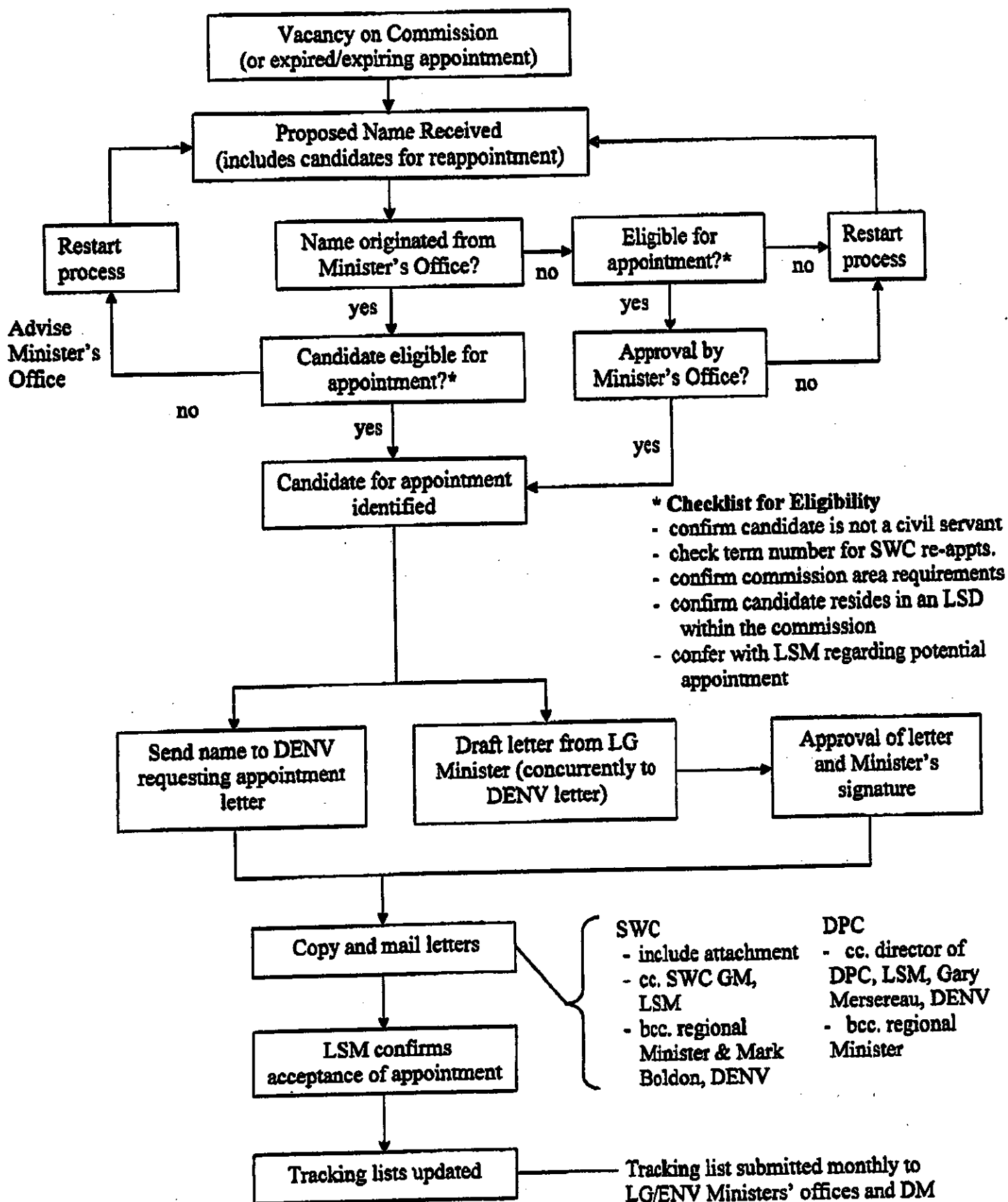
Appointments are made to fill vacancies on an SWC or DPC or to reappoint existing members whose terms have expired. A member of an SWC may be reappointed but may not serve more than three consecutive, three-year terms. A member of a DPC may also be reappointed but there is no limit on the number of terms a member of a DPC may serve. The attached figure presents the procedure to follow once a vacancy or potential vacancy (in the case of expiring appointments) is identified for an SWC or DPC. Once a candidate has been identified, their eligibility for appointment is confirmed by departmental staff consulting as necessary. Following this, if the name did not originate from the Minister's office, the name is forwarded to

the Minister's office for consideration. Once a name has been vetted, a letter is drafted for signature by the Minister of Local Government welcoming the commission member and instructing that they confirm acceptance of the appointment with their (LSM). Simultaneously, a request is sent to the appointments coordinator of the Department of Environment for an appointment letter to be drafted for consideration by the Minister of Environment. Subsequently, the signed letters are copied and mailed by the Policy and Strategic Initiatives Division.

#### **Tracking Lists and Updates**

A list of appointments to district planning commissions and solid waste commissions is maintained by the Policy and Strategic Initiatives Division. This list contains various details such as a summary of all of the appointments made by the Minister and the date terms expire. Existing and upcoming vacancies are highlighted for the attention of the Minister's office. An updated list is provided monthly to the DLG and DENV Ministers' offices and the Deputy Minister.

# Procedure for appointments to District Planning Commissions and Regional Solid Waste Commissions



## **COMMUNITY PLANNING – DELINEATION OF FUNCTIONS BY DEPARTMENT**

### **Issue**

The responsibility for land use planning and district planning commissions currently rests with the Department of Environment.

### **Background**

The *Town Planning Act* was established in New Brunswick in 1912. It was subsequently rolled into a new Act – the *Community Planning Act* in 1960-61, and was consolidated in 1972. Until the formation of DELG, the legislation was always under the purview of the department responsible for local governments. Only when DLG and Environment were split in February 2006 was the responsibility transferred to a department other than the one responsible for local governments.

A March 2005 study conducted by the Québec Ministry of Municipal Affairs concluded that the community planning function, as well as the responsibility for local government institutions were the only two functions that were common in the administrative structures of the 10 provincial departments responsible for Municipal Affairs in Canada. Consequently, the current configuration in New Brunswick where responsibility for community planning resides in a department other than municipal affairs is currently the exception across Canada.

Commissioner of Oaths  
Being a Solicitor  
Province of New Brunswick

68992



*"B"*  
**David L. E. Peterson B.P.E. L.L.B.**

*Peterson & Walker Law Office*  
*Barristers Solicitors Notary Publics*

*An*  
*June 11/10*

318 Maple Street  
Red Cross Building  
Fredericton, NB E3A 3R4

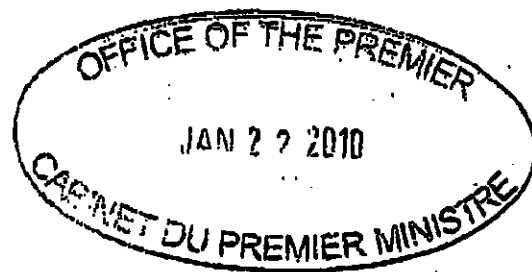
Telephone: (506) 444-0923  
Direct Line: (506) 444-0929  
Facsimile: (506) 444-0980

E-Mail: dlepeterson@nb.aibn.com

Please Refer To  
Reference No.: 1001009

January 21, 2010

Honourable Shawn Graham  
Premier of New Brunswick  
Centennial Building  
P.O. Box 6000  
Fredericton, NB E3B 5H1



Dear Mr. Premier:

Please be advised that I represent the Fredericton Region Solid Waste Commission. The Commission is currently involved in significant litigation wherein Elmtree Environmental Ltd. is the plaintiff. Reference to the Corporate Affairs Registry Database shows Mr. Brian D. Miles as a director of Elmtree Environmental Ltd. and it is clear from communications the Commission has undertaken with the company, Mr. Miles is in full control of Elmtree Environmental Ltd.

As you are no doubt aware, the Honourable Rick Miles, your Minister of Environment is the son of Brian D. Miles.

On January 19, 2010 at the regular monthly meeting of the Commission two motions were passed unanimously by the members of the Commission related to the appointments made by your Minister of Environment pursuant to section 15.4(1)(b) of the *Clean Environment Act*.

Motion #1 reads as follows

**"MOTION #1**

*Whereas the Commission is currently involved in litigation with Elmtree Environmental Ltd., owned and operated by Mr. Brian Miles.*

.../2

-2-

And whereas issues and concerns have arisen regarding a possible undeclared conflict of interest by Mr. Lorrie Yerxa (a newly appointed Member of the Commission) in relation to his past service as legal council for Mr. Brian Miles (owner of Elmtree Environmental Ltd.), and in regards to Mr. Yerxa's son's employment with Elmtree Environmental Ltd., and further with Mr. Yerxa (after informing the Board members that he is a lawyer) providing a legal opinion on a correspondence between the General Manager of FRSWC, the Commissions lawyer and Elmtree Environmental Ltd.

It is moved that the Commission instruct its lawyer (David Peterson) to file a complaint:

- a. With the New Brunswick Law Society for determination on the issue of whether Mr. Lorrie Yerxa's actions since being appointed to the Commission are in violation of Chapter 17 of the Code of Professional Conduct and particularly whether he has been in a conflict of interest, without declaration of same.
- b. And with the Department of Local government (or appropriate body) for determination of any possible conflict of interest violations under the New Brunswick Municipalities Act and the Clean Environment Act."

The second motion instructed the Commission's lawyer to write this letter to bring to your attention the matter of recent appointments to the Commission by the Minister of Environment and to raise with you the potential conflict of interest that is evident in his making these appointments.

Motion #2 reads as follows:

**"MOTION #2**

*Whereas the Commission is currently involved in litigation with Elmtree Environmental Ltd., owned and operated by Mr. Brian Miles.*

*And whereas the Minister of Environment (Hon. Rick Miles) is the son of Mr. Brian Miles, and whereas the Minister is responsible for appointing up to four members, as representatives for the Local Service Districts, to the FRSWC Board.*

*And whereas two recent appointments have raised serious questions within the Commission – one is concerning a possible undeclared conflict of interest, and another concerns a representative appointed for a Local Service District who resides within the City of Fredericton. Concerning the LSD representative who resides within the City of Fredericton, this Board received a correspondence from the Department of Local Government stating that this*

..../3

-3-

appointment was not in keeping with the intention of the policy and that it would be revoked. Subsequently, the Minister of Environment (according to the LSD representative in question) stated he could appoint whomever he wanted regardless of where they live and that this appointment stands.

It is moved that the Commission instruct its lawyer (David Peterson) to forward a letter to Premier Shawn Graham raising the matter of appointments to the Commission by the Minister of Environment and whether there exists a conflict of interest in making such appointments, due to the familial relationship between the Minister (Hon. Rick Miles) and the owner of Elmtree Environmental Ltd. (Mr. Brian Miles) and whether there should be a review of the appointments by the Minister to this Commission's Board."

The Commission would ask that you review the Minister's appointments and satisfy yourself that the integrity of the appointment process was respected.

Upon reviewing the circumstances leading up to this point I believe you will appreciate that a reasonable apprehension of conflict of interest is obvious and that any further appointments to the FRSWC board to represent local service districts should be made by someone other than the Hon. Rick Miles.

All of which is respectfully submitted.

Yours truly,

DAVID L.E. PETERSON LAW OFFICE

Per: 

David L.E. Peterson



**ELMTREE**  
ENVIRONMENTAL LTD.

Without Prejudice

Allen Miles  
Commissioner of Oaths  
Being a Solicitor  
Province of New Brunswick

RECEIVED  
AUG 03 2005

820 11:52 am

13.  
D-11  
R

Fredericton Region Solid Waste Commission  
PO Box 21, Station A  
Fredericton, NB  
E3B 4Y2

An  
June 11/10

03 August, 2005

Attention: Gordon Wilson  
General Manager and CEO

Dear Mr. Wilson,

I appreciate your telephone call of August 2<sup>nd</sup> and your fax of August 3<sup>rd</sup> however after communication with my advisors we are of the opinion that you and Mr. Lutes are fully aware of the statements made and the actions taken to date to discredit Elmtree Environmental, interfere with our operations and prevent our ability to secure long term commitments from the Board at the Fredericton Landfill. At this specific point in time Elmtree Environmental Ltd. is simply asking to be allowed to professionally continue its operations, modify our lease to more accurately reflect our current bioremediation process as approved by the DOELG and negotiate lease extensions to allow us to continue our operations. If you are sincere in your statement that you want to quickly resolve the current situation we suggest that you and Mr. Lutes secure the appropriate recommendations from your Executive Committee and make such necessary presentations to the Board for their approval.

If we are forced to justify our position again we are prepared to do so in a more public forum enjoining City Council, members of the media and the Board of the FRSWC. As well, it has been suggested that perhaps the time has come to propose an independent public Audit of the entire Landfill operation for the last 5 years. Your communication is very timely as I am to present my final documentation to our lead litigation counsel, Mr. Peter Mockler on Monday.

Should you and Mr. Lutes perform your due diligence and secure the appropriate intent from your Executive Committee and demonstrate to me that the Board shall be properly advised so as to rectify damages done to Elmtree to date, we may be able to resolve this situation immediately. You may contact me by phone at 470-4862 until noon on Monday, August 8, 2005 should you require additional detail in this regard.

Sincerely,

Brian D. Miles  
CEO

Cc Peter Mockler  
Allen Miles  
Lorrie Yerxa  
Darren Chamberlain  
Daryl DeMerchant

Mockler Peters Oley Rouse  
Whitehead Bird and Miles  
Yerxa & Stephenson  
Elmtree Environmental  
GEMTEC Limited



"D"

Allen Miles  
Commissioner of Oaths  
Being a Solicitor  
Province of New Brunswick

*Am*  
*Feb 11/10*

January 8, 2010

Hon. Shawn Graham  
Premier of New Brunswick  
670 King Street  
Fredericton, NB E3B 5H1

Dear Premier Graham:

**Re: Conflict of Interest – Fredericton Solid Waste Commission**

Further to our recent discussion dealing with the above noted matter, I wish to formally confirm for the record that the existence of a conflict of interest, a potential conflict of interest, or the appearance of a conflict of interest has been raised with respect to me, as a member of the Executive Council, and the Fredericton Solid Waste Commission.

While I feel that the perceived or possible conflict does not constitute a disqualifying conflict of interest preventing me from carrying out the duties entrusted to me as a member of the Executive Council, it could create the appearance of a possible conflict of interest, and could possibly lead to a situation where a conflict of interest might develop if I were to become involved in any files in relation to the Fredericton Solid Waste Commission, processed by the Fredericton Solid Waste Commission, or which impact or might impact the Fredericton Solid Waste Commission.

For this reason, to avoid both the possibility of conflict as well as the appearance of any possible conflict of interest, I would request that you or the Executive Council designate another minister to act as Minister of Environment in relation to any files of the Fredericton Solid Waste Commission, any files in respect of which the Fredericton Solid Waste Commission has been or may become involved, or which impact or might impact on the Fredericton Solid Waste Commission.

... 2

Hon. Shawn Graham

Page 2

January 8, 2010

I further request that this proposed arrangement be submitted to the Hon. Patrick A.A. Ryan Q.C., the Conflict of Interest Commissioner appointed under the *Members' Conflict of Interest Act* for his comments, review and approval in accordance with section 15 of the *Members' Conflict of Interest Act*.

Thank you for giving effect to this request, and for the challenge and opportunity of serving as Minister of Environment.

Sincerely,



Rick Miles  
Minister



Allen Miles  
Commissioner of Oaths  
Being a Solicitor  
Province of New Brunswick

January 8, 2010

an  
Jue 11/10

Honourable Rick Miles  
Minister of Environment  
20 McGloin Street  
Marysville Place  
Fredericton NB E3A 5T8

Dear Minister Miles:

**Re: Conflict of Interest – Fredericton Solid Waste Commission**

Further to your earlier letter of January 8, 2010, in order to allay your concerns on the matter, this will confirm that I have considered and will give effect to your recommendation to formally designate another Minister to act as Minister of Environment in relation to any files pertaining to the Fredericton Solid Waste Commission, processed by the Fredericton Solid Waste Commission, or any files in respect of which the Fredericton Solid Waste Commission has been or may become involved.

In addition, as the Minister formally designated to act as Minister of the Environment in relation to any files pertaining to the Fredericton Solid Waste Commission, processed by the Fredericton Solid Waste Commission, or any files in respect of which the Fredericton Solid Waste Commission has been or may become involved, please be advised that I have selected the Honourable Rick Doucet, Minister of Fisheries, to fulfill this role and he has agreed to so act.

Subject to the review and approval of the Conflict of Interest Commissioner and to any recommendations that he may have, the designation will be recommended to Cabinet under subsection 3(2) of the *Executive Council Act* at its next meeting.

Yours truly,

Shawn Graham  
Premier



"F"

Allen Miles  
Commissioner of Oaths  
Being a Solicitor  
Province of New Brunswick

Am  
June 11/10

February 2, 2010

Mr. David L.E. Peterson, Esq.  
318 Maple Street  
Red Cross Building  
Fredericton NB E3A 3R4

Dear Mr. Peterson:

**Re: Fredericton Region Solid Waste Commission**

I am writing to acknowledge and respond to two matters raised in your letter of January 21, 2010.

Firstly, you have asked for a determination (including presumably an investigation) by the "appropriate body" of any possible conflict of interest violations under the *Municipalities Act* or the *Clean Environment Act*. While a regional solid waste commission is included within the definition of a "local board" for the purposes of sections 90.1 to 90.91 of the *Municipalities Act*, and while Mr. Yerxa was a member of a local board within those provisions, I would suggest that neither the Minister of the Environment nor the Minister of Local Government are in a position to determine in any formal way whether a conflict of interest exists.

In the *Hoddinott* case (1983) 46 N.B.R. (2d) 340, Justice Stevenson wrote:

*Section 2 of the Municipalities Act charges the Minister with the duty of administering the Act... I do not interpret a duty or responsibility of administering a statute or of directing and supervising administrative conduct as encompassing authority to ... render a decision as to the legality of something a council has done.*

With respect, the same conclusion holds true with respect to the authority (or better, the lack thereof) of the Minister to render a decision as to the legality a member of a council or local board has done. Whatever the "appropriate body" is, I regret to advise that it is neither the Minister of the Environment nor the Minister of Local Government. Your complaint, if it is to be pursued, will have to be directed elsewhere.

...2

Mr. David L.E. Peterson, Esq.

Page 2

February 2, 2010:

Finally, while there is a Ministerial provision under sub section 15.4(9) of the *Clean Environment Act* to remove a member of a commission seemingly without cause, the issue of removal from office is now academic, as Mr. Yerxa has resigned and the other LSD rep whose situation is addressed in your letter has indicated his intention to resign.

With respect to the second point raised in your letter, as you may now be aware from the considerable publicity surrounding these matters, the Honourable Rick Doucet, Minister of Fisheries, has been directed and authorized to discharge the responsibilities of the Minister of the Environment, Honourable Rick Miles, in relation to the Fredericton Region Solid Waste Commission (the "Commission"). This should resolve any conflict of interest concerns on the part of the commission or its officers.

You have asked that I review the Minister's appointments to the commission and satisfy myself that the integrity of the appointment process was respected. However, it is not my role to police the conflict of interest provisions under the *Municipalities Act*. That role belongs to the courts, and I have no authority to intervene or to pass judgment as to whether those provisions have been respected. As the courts have not pronounced on the propriety of either appointment in issue, I do not believe that it is for me to purport to usurp their role.

I trust this will suffice for your purposes.

Yours truly,



Shawn Graham  
Premier



October 27, 2009

Mr. Phil Jensen  
537 Route 628  
Durham Bridge, NB E6C 1J9

Mr. Jensen:

As Minister of Environment, pursuant to subsection 15.4(4) of the *Clean Environment Act*, I am pleased to re-appoint you to the Fredericton Region Solid Waste Commission as a local service district representative. Your appointment starts November 1, 2009, and will expire on October 31, 2012.

Thank you for your interest in serving on the Fredericton Region Solid Waste Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Miles".

Rick Miles  
Minister

C. Mr. Peter Kavanagh, Local Services Manager  
Mr. Gordon Wilson, General Manager, Fredericton Region Solid Waste  
Commission

CC/C/C

Exhibit 6

Minister/Ministre  
Environment/Environnement  
P.O. Box/C.P. 6000 Fredericton New Brunswick/Nouveau-Brunswick E3B 5H1 Canada

[www.gnb.ca](http://www.gnb.ca)



*Dr. J. A.*

October 14, 2009

Mr. Lorrie Yerxa  
982 Route 636  
Harvey, NB E6K 3K6

Mr. Yerxa:

As Minister of Environment, pursuant to subsection 15.4(1) of the *Clean Environment Act*, I am pleased to appoint you to the Fredericton Region Solid Waste Commission as a local service district representative. Your appointment starts immediately and will expire on July 31, 2012.

Thank you for your interest in serving on the Fredericton Region Solid Waste Commission.

Sincerely,



Rick Miles  
Minister

C. Mr. Peter Kavanagh, Local Services Manager  
Mr. Gordon Wilson, General Manager, Fredericton Region Solid Waste  
Commission

COIC/CCI

Exhibit Pièce : 7





**ELMTREE**  
ENVIRONMENTAL LTD.

Without Prejudice

Allen Miles  
Commissioner of Oaths  
Being a Solicitor  
Province of New Brunswick

RECEIVED  
AUG 03 2005

820 11:50 am

Fredericton Region Solid Waste Commission  
PO Box 21, Station A  
Fredericton, NB  
E3B 4Y2

03 August, 2005

Attention: Gordon Wilson  
General Manager and CEO

Dear Mr. Wilson,

I appreciate your telephone call of August 2<sup>nd</sup> and your fax of August 3<sup>rd</sup> however after communication with my advisors we are of the opinion that you and Mr. Lutes are fully aware of the statements made and the actions taken to date to discredit Elmtree Environmental, interfere with our operations and prevent our ability to secure long term commitments from the Board at the Fredericton Landfill. At this specific point in time Elmtree Environmental Ltd. is simply asking to be allowed to professionally continue its operations, modify our lease to more accurately reflect our current bioremediation process as approved by the DOELG and negotiate lease extensions to allow us to continue our operations. If you are sincere in your statement that you want to quickly resolve the current situation we suggest that you and Mr. Lutes secure the appropriate recommendations from your Executive Committee and make such necessary presentations to the Board for their approval.

If we are forced to justify our position again we are prepared to do so in a more public forum enjoining City Council, members of the media and the Board of the FRSWC. As well, it has been suggested that perhaps the time has come to propose an independent public Audit of the entire Landfill operation for the last 5 years. Your communication is very timely as I am to present my final documentation to our lead litigation counsel, Mr. Peter Mockler on Monday.

Should you and Mr. Lutes perform your due diligence and secure the appropriate intent from your Executive Committee and demonstrate to me that the Board shall be properly advised so as to rectify damages done to Elmtree to date, we may be able to resolve this situation immediately. You may contact me by phone at 470-4862 until noon on Monday, August 8, 2005 should you require additional detail in this regard.

Sincerely,

Brian D. Miles  
CEO

Cc Peter Mockler  
Allen Miles  
Lorrie Yerxa  
Darren Chamberlain  
Daryl DeMerchant

Mockler Peters Oley Rouse  
Whitehead Bird and Miles  
Yerxa & Stephenson  
Elmtree Environmental  
GEMTEC Limited

COLO/COI

Exhibit/Pièce :

8

P.O. Box 550, Stn. "A", Fredericton, NB • E3B 5A6 • Canada  
Bus. (506) 444-0133 • Fax. (506) 452-2108 • 1-800-565-2839  
www.elmtree.ca • e-mail: elmtree@nbnet.nb.ca



**ELMTREE**  
ENVIRONMENTAL LTD.

File 26913-1-1

U-28

Fredericton Region Solid Waste Commission  
1775 Alison Blvd  
Fredericton NB E3B 7K4

21 October, 2005

NOV 2 2005

Attention: **Gordon Wilson**  
**General Manager**

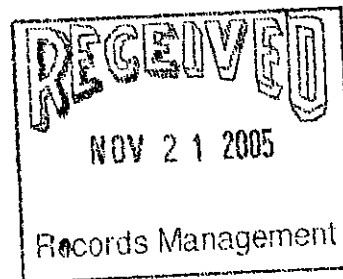
Dear Mr. Wilson,

I am writing with regards to your letter dated October 19, 2005 (attached). You refer to your letter dated July 4, 2005 (attached) and three conditions that have not been met, however I would ask that you refer to our response to your July 4<sup>th</sup> letter (attached). We still have not received the information we requested in that letter! As this entire matter began with your allegation that Elmtree Environmental contaminated Baker Brook with sediment, and you have stated that you have reports and analysis to prove this; we would for the eighth time ask that you forward this material to us for our review.

I await your reply.

Sincerely yours,

Brian D. Miles  
CEO



Cc Mike Sprague, NBDOELG  
Greg Shanks, NBDOELG  
Lorrie Yerxa, Yerxa & Stephenson

CC / CO:

Exhibit/Pièce 9

COIC/CCI

Exhibit/Pièce : D-3

June 8/10

Minister Rick Doucet  
Acting Minister For Environment In Matters Pertaining To FRSWC

Dear Minister Doucet,

Please consider this letter as my resignation as Chairman and Board Member of the  
Fredericton Region Solid Waste Commission.

Since my original appointment to this board, I have moved my residence and no longer reside  
in the LSD of Durham. While the Act is a bit unclear on this, I believe that the intent is that the  
Representative should reside in the area.

Should you wish to discuss this or any matters concerning the FRSWC, please feel free to  
contact me at your convenience.

Your very truly

  
Phillip E Jensen

RECEIVED/REÇU

FEB 01 2010

OFFICE OF THE DEPUTY MINISTER  
OF ENVIRONMENT  
CABINET DU SOUS-MINISTRE  
DE L'ENVIRONNEMENT

COIC/CCI

E Pièce : 10

COIC/CCI

Exhibit/Pièce : D-2Date: June 8/10January 27<sup>th</sup>, 2010*Facsimile (506) 457-4991 and Delivered by Hand*

The Honourable Rick Doucet  
Acting Minister of the Environment responsible for  
the Fredericton Regional Solid Waste Commission  
c/o Bonny Hoyt-Hallett, Deputy Minister  
Marysville Place  
P.O. Box 6000  
Fredericton, NB E3B 5H1

Dear Sir,

I wish to inform you that effective immediately, I resign my appointment to  
the Fredericton Regional Solid Waste Commission.

Very truly yours,

  
P. Lorrie Yerxa

PLY/bpd

COIC

Exhibit/Pièce : 11

appointed for a term of one year.  
(amended July 1, 2009)

49(3) Members of the Complaints Committee may be reappointed.

49(4) The Complaints Committee may sit in panels of three or more, presided over by the chairperson or vice-chairperson, and decisions of a panel shall be by majority vote.

49(5) If the term of a member of a panel of the Complaints Committee expires before the panel concludes a matter before it, the member whose term has expired shall continue in office until the matter is concluded by the panel.

49(6) Subject to subsection (5), if a member of a panel of the Complaints Committee is unable to continue to act for any reason, the chairperson of the Committee shall assign another member of the Committee to the panel.

#### Investigation by Complaints Committee

50 When investigating and deciding a complaint the Complaints Committee may interview the complainant and the respondent to obtain information and explanations of the position of each, including the possibility of settling the complaint.  
(amended July 1, 2009)

#### Action by Complaints Committee

51(1) Upon referral of a complaint from the Registrar, or from the Competence or Discipline Committee, the Complaints Committee shall consider the complaint and may do one or a combination of the following:  
(amended July 1, 2009)

(a) make a decision in writing in accordance with section 52,  
(amended July 1, 2009)

(b) dismiss the complaint, in which case it shall give its reasons in writing to the complainant and the respondent,

(b.1) issue a written caution or warning to the respondent in circumstances considered by the Committee not to justify other forms of sanction,  
(added July 1, 2009)

(b.2) order a practice or quality assurance review of the respondent's practice,  
(added July 1, 2009)

d'un an.  
(modification du 1<sup>er</sup> juillet 2009)

49(3) Le mandat des membres du comité des plaintes est renouvelable.

49(4) Le travail du comité des plaintes peut se faire en sous-comités de trois membres ou plus, présidés par le président ou un vice-président du comité, les décisions du sous-comité étant prises à la majorité des voix.

49(5) Le membre d'un sous-comité des plaintes dont le mandat arrive à échéance avant que le sous-comité n'ait conclu l'affaire en cours demeure en poste jusqu'à la fin.

49(6) Sous réserve du paragraphe (5), en cas d'empêchement d'un membre d'un sous-comité des plaintes, le président du comité le remplace par un autre membre du comité.

#### Investigations du comité des plaintes

50 Lorsqu'il mène une investigation et statue sur une plainte, le comité des plaintes peut rencontrer en entrevue le plaignant et l'intimé afin de clarifier leurs positions et explorer la possibilité d'un règlement de la plainte.  
(modification du 1<sup>er</sup> juillet 2009)

#### Options du comité des plaintes

51(1) Le comité des plaintes, ayant reçu une plainte du registraire ou du comité des compétences ou de discipline, étudie la plainte et peut exercer un ou plusieurs des choix suivants :  
(modification du 1<sup>er</sup> juillet 2009)

a) il rend une décision par écrit en vertu de l'article 52;  
(modification du 1<sup>er</sup> juillet 2009)

b) il rejette la plainte et indique ses motifs par écrit au plaignant et à l'intimé;

b.1) il fait une mise en garde ou donne un avertissement, par écrit, à l'intimé, si la situation, à son avis, ne commande pas l'imposition d'autres formes de sanction;  
(ajout du 1<sup>er</sup> juillet 2009)

b.2) il ordonne que la pratique de l'intimé soit soumise à un contrôle professionnel ou à un contrôle d'assurance de qualité;  
(ajout du 1<sup>er</sup> juillet 2009)

COIC/CCI

(b.3) order a financial audit of the respondent's practice,  
(added July 1, 2009)

(b.4) for the purpose of determining whether a respondent is professionally competent, order the respondent to submit to a medical or psychological examination or assessment if it appears to the Committee that the respondent may not be medically capable of conducting practice or is or may have been addicted to or influenced by the use of drugs or alcohol,  
(added July 1, 2009)

(c) refer the complaint to the Registrar for further investigation and action,

(d) refer any part of the complaint that relates to competence to the Competence Committee for appropriate action or to report with recommendations

(e) refer the whole or part of the complaint to the Discipline Committee, or

(f) take such other action, consistent with its responsibilities under this Act and the rules, as it considers necessary in the public interest, in which case it shall give its reasons in writing to the complainant and the respondent.

51(2) Not later than thirty days after receipt of reasons under paragraphs (1)(b) and (f), a complainant who considers that the Complaints Committee has failed to take any matter into account in reaching its decision, may request the Committee in writing to review its decision, in which case the Committee shall do so and advise the complainant in writing of its disposition of the review with reasons.

51(3) In making a decision under subsection (2) the Committee may take any action it could have taken when first making a decision under subsection (1).

#### Informal disposition of complaints

52 In cases where the respondent does not contest the validity of the complaint or consents to the Complaints Committee making a decision based on information before it, the Committee may do one or a combination of the following:  
(amended July 1, 2009)

b.3) il ordonne que la pratique de l'intimé soit soumise à une vérification financière;  
(ajout du 1<sup>er</sup> juillet 2009)

b.4) pour décider si l'intimé a la compétence professionnelle nécessaire, il lui ordonne de se soumettre à un examen ou à une évaluation médical ou psychologique, s'il pense que l'intimé n'est peut-être pas capable médicalement d'exercer le droit ou s'il lui semble qu'il souffre ou pourrait avoir souffert de pharmacodépendance ou d'alcoolisme ou qu'il est ou pourrait avoir été sous l'empire de drogues ou de l'alcool;  
(ajout du 1<sup>er</sup> juillet 2009)

c) il renvoie la plainte au registraire pour investigation plus poussée et autres mesures;

d) il renvoie au comité des compétences tout aspect de la plainte qui concerne la compétence, pour que celui-ci prenne les mesures qui conviennent ou lui fasse rapport avec recommandations;

e) il renvoie tout ou partie de la plainte au comité de discipline;

f) il prend toute autre mesure qui ne dépasse pas les limites de son mandat au regard de la présente loi et des règles et qu'il juge nécessaire pour protéger le public, indiquant ses motifs par écrit au plaignant et à l'intimé.

51(2) Ayant reçu les motifs prévus aux alinéas (1)b) et f), le plaignant qui considère que le comité des plaintes n'a pas tenu compte de certains éléments en prenant sa décision dispose de trente jours pour demander par écrit au comité de réviser sa décision. Le comité y donne suite, puis l'informe par écrit des résultats de la révision, en motivant sa décision.

51(3) Appelé à réviser sa décision en application du paragraphe (2), le comité peut prendre toute mesure qu'il lui était possible de prendre initialement en vertu du paragraphe (1).

#### Règlement informel des plaintes

52 Si l'intimé ne conteste pas la validité de la plainte ou accepte que le comité des plaintes prenne sa décision sur la foi des renseignements dont il dispose, le comité peut exercer un ou plusieurs des choix suivants :  
(modification du 1<sup>er</sup> juillet 2009)

**JANUARY 14, 2010**  
**2010-26**

Under subsection 3(2) of the *Executive Council Act*, the Lieutenant-Governor in Council transfers to, vests in and imposes on the Honourable Rick Doucet, effective immediately, all rights, powers, duties, functions, responsibilities and authority vested in or imposed on the Honourable Rick Miles, in relation to any files pertaining to the Fredericton Region Solid Waste Commission, processed by the Fredericton Region Solid Waste Commission, or which impact or might impact the Fredericton Region Solid Waste Commission.

Graydon Nicholas, Lieutenant-Governor

**JANUARY 14, 2010**  
**2010-27**

1. Under subsection 3(1) of the *Financial Administration Act*, the Lieutenant-Governor in Council appoints the following persons as members of the Board of Management, effective January 14, 2010:

- (a) The Honourable Denis Landry, designated as Vice-Chairperson;
- (b) The Honourable Victor Boudreau;
- (c) The Honourable Jack Keir;
- (d) The Honourable Rick Miles;
- (e) The Honourable Stuart Jamieson;
- (f) The Honourable Ronald Ouellette;
- (g) The Honourable Wallis Stiles;
- (h) The Honourable Rick Brewer;
- (i) The Honourable Edward Joseph Doherty; and
- (j) The Honourable Chris Collins.

2. Under subsection 3(1) of the *Financial Administration Act* and section 26 of the *Interpretation Act*, the Lieutenant-Governor in Council revokes Order in Council 2009-341 dated August 13, 2009.

Graydon Nicholas, Lieutenant-Governor

**JANUARY 28, 2010**  
**2010-49**

Under paragraph 8(1)(c) of *An Act Respecting the New Brunswick Medical Society and the College of Physicians and Surgeons of New Brunswick*, Chapter 87 of the Acts of New Brunswick, 1981, as amended by section 8 of *An Act to Amend An Act Respecting the New Brunswick Medical Society and the College of Physicians and Surgeons of New Brunswick*, Chapter 71 of the Acts of New Brunswick, 1997, the Lieutenant-Governor in Council appoints Karla M. O'Regan, Fredericton,

**LE 14 JANVIER 2010**  
**2010-26**

En vertu du paragraphe 3(2) de la *Loi sur le Conseil exécutif*, le lieutenant-gouverneur en conseil confère et impose à l'honorable Rick Doucet, à compter d'aujourd'hui, tous les droits et pouvoirs, toutes les obligations, fonctions et responsabilités ainsi que toute autorité conférés et imposés à l'honorable Rick Miles en relation avec l'un ou l'autre des dossiers se rapportant à la Commission de gestion des déchets solides de la région de Fredericton, à l'un ou l'autre des dossiers traités par la Commission de gestion des déchets solides de la région de Fredericton ou à l'un ou l'autre des dossiers qui ont une incidence ou pourraient avoir une incidence sur la Commission de gestion des déchets solides de la région de Fredericton.

Le lieutenant-gouverneur, Graydon Nicholas

**LE 14 JANVIER 2010**  
**2010-27**

1. En vertu du paragraphe 3(1) de la *Loi sur l'administration financière*, le lieutenant-gouverneur en conseil nomme les personnes suivantes membres du Conseil de gestion, à compter du 14 janvier 2010 :

- a) l'honorable Denis Landry, qui est désigné vice-président;
- b) l'honorable Victor Boudreau;
- c) l'honorable Jack Keir;
- d) l'honorable Rick Miles;
- e) l'honorable Stuart Jamieson;
- f) l'honorable Ronald Ouellette;
- g) l'honorable Wallis Stiles;
- h) l'honorable Rick Brewer;
- i) l'honorable Edward Joseph Doherty; et
- j) l'honorable Chris Collins.

2. En vertu du paragraphe 3(1) de la *Loi sur l'administration financière* et de l'article 26 de la *Loi d'interprétation*, le lieutenant-gouverneur en conseil révoque le décret en conseil 2009-341 pris le 13 août 2009.

Le lieutenant-gouverneur, Graydon Nicholas

**LE 28 JANVIER 2010**  
**2010-49**

En vertu de l'alinéa 8(1)c) de la *Loi relative à la Société médicale du Nouveau-Brunswick et au Collège des médecins et chirurgiens du Nouveau-Brunswick*, chapitre 87 des Lois du Nouveau-Brunswick de 1981, dans sa forme modifiée par l'article 8 de la *Loi modifiant la Loi relative à la Société médicale du Nouveau-Brunswick et au Collège des médecins et chirurgiens du Nouveau-Brunswick*, chapitre 71 des Lois du Nouveau-Brunswick de 1997, le lieutenant-gouverneur en conseil

COIC/CCI

13