



**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. STUART G. STRATTON, Q.C.
CONFLICT OF INTEREST COMMISSIONER**

**INTO ALLEGATIONS BY MS. ELIZABETH WEIR, THE MLA
FOR SAINT JOHN HARBOUR, OF A POSSIBLE VIOLATION
OF THE *MEMBERS' CONFLICT OF INTEREST ACT*
BY THE HONOURABLE MARGARET-ANN BLANEY,
THE MLA FOR SAINT JOHN - KINGS
AND MINISTER OF TRANSPORTATION**

DECEMBER 5, 2000

REQUEST FOR INVESTIGATION

By letter dated September 27, 2000, and enclosure, Ms. Elizabeth Weir, the MLA for Saint John Harbour, (Ms. Weir), wrote to me alleging “a possible violation of the *Members’ Conflict of Interest Act*”, (The Act), by the Honourable Margaret-Ann Blaney, the MLA for Saint John - Kings and Minister of Transportation, (The Minister).

In her letter Ms. Weir requested me to review the circumstances involving a letter sent by Mr. W. Andrew LeMesurier, (Mr. LeMesurier), the Chairman of the Fundraising Committee of the Saint John - Kings P.C. Association “to a number of businesses and individuals across the province to solicit donations for the constituency association of the Minister of Transportation and to help the Minister, as is stated in the letter, “prepare for future elections”.” A copy of Ms. Weir’s letter together with the fundraising letter are attached as Schedule “A” to this report.

In her request for an investigation, Ms. Weir quotes Mr. Jim Hughson, the Secretary/Manager of the Road Builders Association of New Brunswick, as stating that members of his Association, as well as some of his 112 associate members received the fundraising letter. Ms. Weir, in her letter to me, adds that “Mr. Hughson is quoted in the media as stating that the letter is “unusual”.” Mr. Hughson is also reported to have stated that he has worked in the industry since the 1970's and has never seen a Minister of Transportation’s riding association solicit donations from the Road Builders Association.

In her letter to me, Ms. Weir specifically relies upon subsections 5(1) and 5(2) of the Act as the foundation for her request for an investigation. Those subsections deal with insider information. They prohibit the use of information that is obtained by a Member in his or her capacity as a Member and that is not available to the general public to further or seek to further the Member’s private interest. Ms. Weir asserts that “the names and addresses of members of a private association would not be information generally available to the public, particularly those of road construction firms

outside of the Minister's constituency." Ms. Weir concludes her request for an investigation by posing the question: "Has privileged information been communicated to benefit the private interest of the Minister?"

INVESTIGATION

On October 2, 2000, I wrote Ms. Weir acknowledging receipt of her letter and enclosure and on that same day also wrote Mr. LeMesurier requesting his response to what had been asserted by Ms. Weir. In each instance, I sent a copy of my correspondence to the Minister. On October 16, Mr. LeMesurier responded to my letter of October 2. A copy of his letter is attached as Schedule "B" to this report.

On October 18, I again wrote Mr. LeMesurier posing additional questions for his consideration and requesting his response. A copy of my letter to him is attached as Schedule "C" to this report. When I did not receive a response from Mr. LeMesurier by November 2, I wrote him again requesting his prompt response to my enquiries of him, explaining that I was concerned to conclude my investigation of the matter and report to the Speaker as required by the Act. A copy of my letter to Mr. LeMesurier is attached as Schedule "D" to this report.

In the meantime, on October 11, I wrote Ms. Weir reminding her that technically any request to the Commissioner to investigate an alleged breach of the Act by a Member had to be in the form of an affidavit. In this respect, the relevant subsections of the Act provide as follows:

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.

When I did not hear from Ms. Weir by October 25, I wrote to her again informing her that if she intended me to proceed with her request that I investigate the circumstances surrounding the alleged breach of the Act by Minister Blaney, I required the affidavit referred to in subsection 36(2) of the Act. A copy of my letter to Ms. Weir is attached as Schedule "E" to this report. On November 1,

2000, I received Ms. Weir's Affidavit, a copy of which is attached as Schedule "F" to this report.

On November 3, I received a response from Mr. LeMesurier to my letter of October 18. He enclosed with his letter an Affidavit by the Minister. In her Affidavit the Minister deposes that she was not a member of the Fundraising Committee, was not involved in the letter campaign and did not participate in the preparation of the mailing list. The Minister further deposes that since she had no involvement of any type in the fundraising letter campaign, she did not use any information that was obtained in her capacity as a Member of the Legislative Assembly or the Executive Council, nor did she communicate any such information to anyone, including anyone on the Fundraising Committee. A copy of the Minister's Affidavit is attached as Schedule "G" to this report.

In his letter of October 31, received by me on November 3, Mr. LeMesurier stated that the Fundraising Committee attempted to send letters to various individuals and corporations that they believed would be interested in financially supporting the Saint John - Kings P.C. Association. Mr. LeMesurier also sets out the criteria used by the Fundraising Committee in assessing to whom letters would be sent. He further stated that there was no preconceived plan to solicit from those who did business with the Department of Transportation. Mr. LeMesurier admitted to using the annual publication of the New Brunswick Road Builders Association and other publications as reference materials to assist the Fundraising Committee in identifying possible donors. Mr. LeMesurier concluded his letter by stating his understanding that the Department of Transportation does business with over ten thousand vendors annually and that he does not believe it is reasonable to expect Minister Blaney's riding association to abstain from fundraising with respect to all of these individuals or corporations. He adds that if the Committee's assumptions are incorrect and it is the Commissioner's view that this practice violates the *Members' Conflict of Interest Act*, the Committee "shall cease such solicitations immediately." A copy of Mr. LeMesurier's letter of October 31 is attached as Schedule "H" to this report.

ISSUES

It is asserted by Ms. Weir that the Minister obtained privileged information and communicated that

information to the benefit of her private interest and thereby breached subsections 5(1) and 5(2) of the *Members' Conflict of Interest Act*. Those subsections provide as follows:

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.

In citing those subsections, Ms. Weir contends that the membership list of a private association such as the New Brunswick Road Builders Association would not be available to the general public, but that the Minister and her staff would be privy to such information. It is her contention, as noted above, that in fact privileged information was obtained and communicated to further the private interest of the Minister.

A second issue that has occurred to me, and concerning which I invited the submissions of the parties, is the possible applicability of section 6 of the Act to the matters in issue. That section provides as follows:

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.

SECTION 5 ISSUE

There can be no doubt that a fundraising letter in the form attached to Schedule "A" hereto was issued by the Fundraising Committee of the Saint John - Kings P.C. Association and mailed to various individuals and corporations throughout the Province of New Brunswick.

It has also been established that such letters were sent to members and associate members of the Road Builders Association of New Brunswick. The fact that such letters were sent is not denied by Mr. LeMesurier. The fact that they were received by members and associate members of the Road

Builders Association is confirmed by the Affidavit of Mr. James Hughson, the Secretary/Manager of the Association, which is attached as Schedule "I" hereto.

According to Mr. LeMesurier, several hundred letters identical to the letter attached to Ms. Weir's Affidavit were mailed to various individuals and corporations. He writes, however, that there was no intention to target members of the Road Builders Association and that "only a small percentage of our total mailout went to these individuals or corporations."

Further, Mr. LeMesurier writes that the Fundraising Committee "attempted to send letters to individuals and/or corporations [the Committee] believed would be interested in financially supporting [the Saint John - Kings] riding association." He adds that there was "no pre-conceived plan to solicit from those who did business with the Department of Transportation." Mr. LeMesurier concludes his letter by admitting that "[a] review of various business and trade publications, including the annual publication of the Road Builders Association, were used as reference materials to assist [the Fundraising Committee] members in identifying possible donors."

As noted, Ms. Weir alleges that the membership list of a private association such as the Road Builders Association "would not be information ordinarily available to the general public." In this respect Mr. Hughson, the Secretary/Manager of the Road Builders Association, deposes that the annual report of the Road Builders Association of New Brunswick, which includes the names and addresses of the members and associate members of the Association, is available to the public.

In furtherance of the issue as to the availability of the membership list of the Road Builders Association, I would report that a researcher assigned to assist me from time to time went to the office of the Association unidentified and unannounced and was given a copy of the Road Builders' annual report without any question. In the light of Mr. Hughson's Affidavit and the visit referred to above, I find that the membership list of the Road Builders Association is ordinarily available to the general public.

As already noted, Minister Blaney has deposed in her Affidavit that she is not and never has been a member of the Fundraising Committee of the Saint John - Kings P.C. Association, that she was not involved in the fundraising campaign and did not participate in the preparation of the mailing list. She further deposed that she did not use any information in connection with the fundraising letter campaign that was obtained in her capacity as a Member of the Legislative Assembly or the Executive Council. Nor did she communicate any information in connection with the fundraising letter campaign that was obtained in her capacity as a Member of the Legislative Assembly or the Executive Council to anyone, including anyone on the Fundraising Committee.

There being no evidence contradicting the facts deposed to by the Minister, I find that the Minister neither obtained nor communicated any information to the Fundraising Committee that was not available to the general public, nor did she in fact communicate any information of any type in respect of the Committee's fundraising effort. I must therefore conclude that the assertions by Ms. Weir that the Minister breached section 5 of the Act have not been established.

SECTION 6 ISSUE

Neither Ms. Weir nor Mr. LeMesurier raised any question with respect to the application of section 6 in this matter. This was an issue brought forward by me to which both parties have responded.

Section 6 deals with the issue of influence. The section prohibits a Member from using his or her office to seek to influence a decision made by another person so as to further the Member's private interest. It should be noted that the term "private interest" appears in both section 5 and 6 of the Act. The term "private interest" is defined in the negative in the definition section of the Act as follows:

"private interest" does not include an interest in a matter
(a) that is of general public application,
(b) that affects a person as one of a broad class of persons, or
(c) that concerns the remuneration and benefits of a member or an officer or employee of the Assembly;

When considering the possible application of section 6 in this investigation, the question seems to

me to be: Does the fact that the Minister of Transportation, through her agents (the Fundraising Committee of the Saint John - Kings P.C. Association), by seeking financial contributions from the members and associate members of the Road Builders Association constitute the use of the influence of her office to further her private interests?

In other words, by seeking such contributions, could a road builder be influenced by the source of the request to make a donation in the hope or expectation that he or she would receive a more favourable consideration than if he or she did not do so. In this respect, I am informed that although there is a public tendering process in place for the granting of road building contracts, the Minister does retain a discretion which she can exercise over such matters as, for example, contract extras and the waiver of contract penalties.

I hasten to point out, however, that there is absolutely no evidence before me that the Minister of Transportation, through her agents, or otherwise, attempted overtly to seek to influence any member of the Road Builders Association to further the Minister's private interest.

In any event, when considering the applicability of section 6 in the present investigation, regard must be had to the meaning of the term "private interest" as defined in the Act. In this respect, I would point out that the definition of "private interest" contained in the New Brunswick Act is similar to the definition of that term as contained in the conflict of interest Acts in British Columbia (*Members' Conflict of Interest Act*, S.B.C. 1990 c.54, s.1), Ontario (*Members' Integrity Act, 1994*, S.O. 1994 c.38, s.1) and Alberta (*Conflicts of Interest Act*, S.A. 1991 c. C-22.1, s.1). All of these Acts define the term in the negative or, in other words, what are not private interests.

In an Ontario decision in 1993 involving the Sinclair Stevens investigation, Commissioner W.D. Parker drew a distinction between "private business interests" and "private political interests." In respect of the latter, Commissioner Parker expressed doubts as to whether allegations relating to "private political interests" constituted allegations of conflict of interest.

In a decision by Mr. Robert C. Clark, the Ethics Commissioner for the Province of Alberta, (Mitchell - Klein, April 21, 1997) Mr. Clark noted the distinction between “private interests” and “political interests”. He too expressed grave doubts as to whether the furtherance of political interests is the furtherance of private interests. While not dealing expressly with political donations, Mr. Clark stated that he did not believe that the Alberta legislature intended the *Conflicts of Interest Act* and the Ethics Commissioner to prevent Members from doing those things which they believe will maximize their public acceptance and hence their chance of being re-elected.

In applying the reasoning in that decision to the present investigation, I would respectfully agree with Mr. Clark that the term “private interest” as used in the *Members’ Conflict of Interest Act* does not, in this case, include a political interest or, more specifically, financial support for the desire for election or re-election to political office. Thus, it is my opinion that in order to constitute a breach of the *Members’ Conflict of Interest Act*, a “private interest”, rather than a “political interest”, must be involved. The raising of election funds is, in my view, a “political interest” rather than a “private interest”.

As noted, I invited the parties to make submissions with respect to the possible application of section 6 of the Act to the present investigation. On November 20, I received a rather terse reply from Mr. LeMesurier. In his reply to my invitation for submissions he wrote on behalf of the Fundraising Committee:

“As Minister Blaney attested to in her Affidavit, she was not involved in the general fundraising letter campaign and does not participate in the activities of our fundraising committee. As a result, we do not believe that Section 6 of the Act could reasonably have any application to the circumstances in question.

Finally, we would also note that fundraising remains an important and essential activity for members of all political parties.”

Because of her duties as a Member, Ms. Weir was not able to make her submissions with respect to

section 6 until November 24. On that date she stated that possible favouritism could result from the solicitation of funds from those who do business with the Minister's department. She posed the question whether one who makes a contribution to the Minister's riding association could be favoured over one who does not?

Moreover, Ms. Weir submitted, we are here dealing with the fundraising activities on behalf of a Cabinet Minister who has powers and responsibilities greater than those of a backbencher. To canvass donations from those who do business with the Minister's department, Ms. Weir argued, raises an ethical question, which, she admitted, may not expressly be covered by the present legislation but requires to be addressed in any event. It is her view there should be some regulation dealing with the separation of political interests from the private interests of office holders.

Despite Ms. Weir's submissions, I have concluded that section 6 of the present Act does not have application to this investigation.

CONCLUSION

It is my opinion that the request for an investigation in this instance was neither frivolous or vexatious, nor was it made in bad faith. There were, in my opinion, sufficient grounds for an investigation.

In view of my findings that the Minister neither obtained nor communicated any insider information not available to the general public to the benefit of her private interest, I must conclude that the assertion by Ms. Weir that the Minister breached section 5 of the Act has not been established.

The second issue, the application of the provisions of section 6 of the Act, was not an issue raised by the parties. That section, which, in my opinion, might have had some relevance here, prohibits a Member from using his or her office to seek to influence the decision of another person so as to further the Member's private interest.

As the result of my investigation, however, I have found that there is a “political interest” rather than a “private interest” involved in this case. I therefore conclude that section 6 of the *Members’ Conflict of Interest Act* does not have application in this instance. As pointed out by Mr. LeMesurier in his latest letter to me, “fundraising remains an important and essential activity for members of all political parties.” This having been said, I do express the opinion that the solicitation of political donations by the Minister of Transportation from members and associate members of the Road Builders Association, a specific and important group doing major work for the Department, is conduct that ought not to be repeated.

I would note that I see the issues raised by this case as ones of perception. While conflict of interest Acts in other jurisdictions encompass both actual and apparent conflicts of interest, the New Brunswick Act does not. This notwithstanding, I would recommend that Members not forget that the primary objective and purpose for the enactment of the *Members’ Conflict of Interest Act* was to enhance public confidence in the integrity of government and its office holders by the prohibition of conflicts between the Member’s office and powers and the Member’s private interest. Thus, Members must always be mindful of their words and actions.

In the result, having found that no breach of the Act has occurred, the question of sanctions does not arise. This having been said, however, I would nonetheless recommend that Mr. LeMesurier’s offer to cease the solicitation of funds on behalf of the Minister of Transportation from the members and associate members of the Road Builders Association of New Brunswick be accepted.

The Honourable Stuart G. Stratton, Q.C.
Conflict of Interest Commissioner

December 5, 2000

