



New Brunswick

# CONFLICT OF INTEREST COMMISSIONER

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

**ANNUAL REPORT**  
***MEMBERS' CONFLICT OF INTEREST ACT***  
**2010 and 2011**

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July 3, 2012

The Hon. Dale Graham  
Speaker of the Legislative Assembly  
Legislative Building  
P. O. Box 6000  
Fredericton, New Brunswick  
E3B 5H1

Dear Mr. Speaker:

I have the honour of submitting my sixth and seventh reports, the eleventh and twelfth Annual Reports of the Office of the Conflict of Interest Commissioner.

This combined report is submitted pursuant to section 31 of the *Members' Conflict of Interest Act*.

Respectfully,

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

## **2010 and 2011 ANNUAL REPORT**

### **COMMISSIONER'S REMARKS**

#### **2010**

This combined report for the years 2010 and 2011 is the eleventh and twelfth Report issued under the provisions of the *Members' Conflict of Interest Act* as well as being the sixth and seventh Report issued by me as Commissioner.

During the year 2010 the office of the Commissioner continued with information sessions in January and March under the *Public Interest Disclosure Act*. The purpose of the sessions was to instruct the officers who are responsible for receiving complaints under the *Act* and for deciding how to proceed with investigations if merited. The office received eleven queries/disclosures. No reprisals were reported. Among other recommendations, I recommended that the *Public Interest Disclosure Act* be amended to include sanctions against individuals guilty of taking reprisals against employees and that larger than average sections of the civil service with high numbers of personnel be permitted to have more than one "designated officer."

On January 4, 2010, the Attorney General and Minister of Justice resigned as a Member of the Legislative Assembly and returned to the private practice of law. His seat remained vacant until the general election later in the year.

The remaining fifty-four Members of the Legislative Assembly were particularly busy in 2010 preparing for a fall election. Only a number of the members were interviewed following submission of their private disclosure statements. In the general election of September 27, 2010, the government changed and 26 new members were elected. Of the newly elected members 24 were members of the party forming the government and two for the opposition. The former members were not pursued to file statements. As former members they were subject only to those provisions of the legislation that specifically dealt with them as "former members."

Newly appointed members of the Executive Council were sworn in on October 12, 2010, and an orientation session for new government and opposition Members of the Legislative Assembly was conducted. A few re-elected members chose to sit in on the orientation session to refresh their interests.

I dealt with twenty-six matters raised by members, former members and one member of the public in 2010 in relation to individual concerns as to whether a potential conflict of interest existed. Two of these matters resulted in allegations of breaches of the *Members' Conflict of Interest Act* that required ongoing investigations through the year 2011.

I emphasize the importance of discussing conflictual-type matters with me before they become even potential conflicts of interest. My advice is free and to fail to ask for it or to take the advice once offered may be costly.

All members have filed their private disclosure statements for 2011 and have been interviewed. I

recognize that many of the members, particularly the Cabinet Ministers, are extremely busy in the exercise of their portfolios and I appreciate the cooperation of all members who file their documents as requested and make arrangements with my office to be interviewed.

When a member is elevated to the Executive Council the member is required to complete an extensive set of disclosure forms because members of the Executive Council are governed by more stringent rules with respect to their businesses and assets.

A principal objective of filing private and public disclosures is to assist the member in avoiding conflicts of interest between the member's private interest and the member's responsibilities to the public. The public interest must prevail.

Under s. 14 of the *Members' Conflict of Interest Act* all Cabinet Ministers, that is, members of the Executive Council are prohibited from continuing certain activities such as:

**Prohibited activities**

- 14(1) A member of the Executive Council shall not
- (a) engage in any trade, occupation or employment or in the practice of any profession,
  - (b) engage in the management of a business carried on by a corporation,
  - (c) carry on business through a partnership or sole proprietorship,
  - (d) hold or trade in securities, stocks, futures or commodities, or
  - (e) hold an office or directorship, unless holding the office or directorship is one of the member's duties as a member of the Executive Council.

An exemption to a prohibition is possible provided the member has disclosed all material facts to the Commissioner and has been given the Commissioner's written approval.

**THE OFFICE**

The office of the Commissioner is part time with a full time administrative assistant. The position of the assistant allows the office to be available daily to the members, to the public and to allow the office to produce valuable aids to the members. For example, I adapted from the British Columbia Commissioner's office a brochure germane to New Brunswick on "gifts." Using our office equipment we were able to print it in-house and circulate the brochure to the members. It has also been put on our website for viewing by the public.

## PREVIOUS COMMISSIONER'S RECOMMENDATION

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

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

As in my [five] earlier reports, I underscore the recommendation of my predecessor in office, the Honourable Stuart G. Stratton, Q.C., a retired Chief Justice of the Court of Appeal of New Brunswick, in his fifth Annual Report. He recommended that this office administer the legislation that now comes under the jurisdiction of two separate offices. If the recommendation is accepted as suggested, the Members of the Legislative Assembly as well as executive staff members, deputy ministers, heads of Crown Corporations and others would be served by this office. Commissioner Stratton's recommendation in 2005 and my comments are as follows:

By a recent amendment of the *Members' Conflict of Interest Act*, a section was added to provide for the mandatory review of the *Act* every five years to monitor its effectiveness and to determine whether public attitudes about standards of conduct in public life have changed.

Although the next review of the *Act* is not required to be undertaken until 2008, I would like to record a suggestion for a revision to the *Act* for consideration by the review committee. At the present time, there are two conflict of interest [acts] on the books. One, of course, applicable to [m]embers of the Legislature while the other, presently administered by a designated judge of the Court of Queen's Bench, has application to Deputy Ministers, executive staff members, and heads of Crown Corporations. I express the opinion that the latter group could conveniently be made subject to the provisions of the *Members' Conflict of Interest Act* and report annually to the Commissioner, rather than to a designated judge.

I endorsed the recommendation and said:

The recommendation makes eminently good sense for several reasons other than simply the convenience mentioned by the previous Commissioner. For example, (1) there would be consistency in decision making; (2) executive staff members could be accorded the benefit of advice in order to avoid conflict before

the fact rather than obtaining ineffective and obsolete advice after the fact; (3) as it now stands, the secondary legislation for executive staff and others, comes under the aegis of a Justice of the Court of Queen's Bench who must interrupt the Justice's judicial responsibilities or, alternatively, postpone any accommodation of the staff member's conflict of interest problem until a time convenient to the court. David Lloyd George, in a speech at the Paris Peace Conference in 1919, said: The finest eloquence is that which gets things done; the worst is that which delays them.

These few examples flesh out and illustrate the point that this Commissioner and the previous Commissioner make with the recommendation for unifying the legislation and which is again advanced for consideration.

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

## **2011**

On June 10, 2011, administration of the *Public Interest Disclosure Act* was transferred back to the office of the Ombudsman. As a result, the lawyer who had been my counsel lost her position. One investigation remains to be completed.

The two investigations of allegations of breaches of the *Members' Conflict of Interest Act* were halted pending the outcome of the fall election in 2010. In one of the cases the member was defeated. As a result no further witnesses were interviewed nor evidence collected pending determination of jurisdiction and the legal status of the file. The evidence already collected was assembled and an analysis of the issue of jurisdiction was undertaken. A report was drafted and sent to the Office of Debates Translation. Following a meeting with the former member and the member's counsel the report was filed with the Clerk of the Legislature.

In the second case of an allegation of breach of the *Act* the investigation became an inquiry and continued with sittings and oral and written submissions of counsel off and on during the rest of the year 2011.

Under s. 43.1 of the *Members' Conflict of Interest Act* I prepared a report for submission to the Legislative Administration Committee which reviews the *Act* and makes recommendations for amendments. In my covering letter to the Committee I also recommended that a Code of Conduct be considered.

The following is a summary of various matters dealt with in the report to the Legislative Administration Committee:

A five-year report has been prepared by me and is delivered to the Legislative Administration Committee pursuant to section 43.1 of the *Act*. In my Annual Report for 2008, I referred to the five-year report as "Leading the Way" and said that the recommendations in the five-year report would give New Brunswick the opportunity to continue the leadership that puts the Province in the

forefront of matters of ethics in relation to conduct, public perception and transparency. I suggested that the *Act* be nudged slightly in a complementary new direction. What I propose is that the *Act* be amended so that it applies not only to conflicts of interest but also to “apparent conflicts of interest.” Why? For transparency and public perception!

I repeat what I said about the recommendation of expanding the *Act* in the Quinquennium Report to include “apparent conflicts of interest” as well as conflicts of interest as currently interpreted:

By adopting this recommendation, New Brunswick would be leading the way in Atlantic Canada in the matter of ethics as ethics relate to conflicts of interest between the members’ responsibilities in their public office vis-à-vis their private interests. The rationale is that if the conflict of interest is apparent, a structured procedure should be in place to enable it to be resolved efficiently. Whether the conflict is actual or is apparent, the stigma of an underlying conflict pervades and must be dealt with logically or left dangling in the rumour mill with a perception by the public that all is not so transparent as is claimed by various political forces. Prompt resolution of an apparent conflict of interest, employing a summary procedure, would be in each member’s best interest as well as that of the Legislature and would emphasize to the public that transparency is one of the Legislature’s paramount concerns.

A summary of the matters dealt with in the Quinquennium Report include the following:

- One administration for *Conflict of Interest Act* and *Members’ Conflict of Interest Act*
- “Apparent” Conflict of Interest
- Blind Management Agreement/Blind Trusts
- Benefits Direct/Indirect Prohibited
- Employment contracts for spouse, common-law partner, child, sibling or parent of another member prohibited
- Contract between the public sector entity for which a member is responsible and his or her spouse, common-law partner, child, sibling or parent prohibited
- Influence prohibited
- Preferential treatment prohibited
- Advice
- “Special” Conflict of Interest Commissioner

- Term of appointment - 7 years
- “Former” Commissioners prohibited from disclosing confidential information
- Public disclosure statements online
- Trusts to be disclosed
- Arrears of maintenance payable including legal costs/interest/penalties to be disclosed
- Names of other corporations affiliated with a member’s private corporation to be disclosed
- No retaliation against informants
- Former Member may seek completion of investigation
- Post employment restrictions, two years
- Additional post employment restrictions
- Lobbying restrictions

### **POTENTIAL CONFLICTS, 2011**

During the year I met or communicated with members and the public concerning forty-five potential conflicts of interest. It is apparent that the members have taken my suggestions to heart and they, and in some cases their executive assistants, have recognized that it is much safer to verify than take a chance on whether the question under consideration is a potential conflict of interest. Why take that chance? Ask!

### **THE OFFICE OF THE COMMISSIONER**

In May, the Speaker of the Legislative Assembly formally engaged the former Ombudsman and Child and Youth Advocate, Bernard Richard, ably assisted by Kevin Malone, to conduct a review of the mandates and operations of the legislative officers in New Brunswick. That would include this part time office which was established in the year 2000. The review is intended to focus on ways in which the efficiency, effectiveness and accountability of New Brunswick’s legislative officers may be enhanced without impairing their independence. In 2011 there were eight legislative officers:

Auditor General, Chief Electoral Officer & Supervisor of Political Financing, Ombudsman, Conflict of Interest Commissioner, Official Languages Commissioner, Consumer Advocate for Insurance, Child and Youth Advocate and the Access to Information and Privacy Commissioner.



A number of the recommendations of the Richard Report impact upon all of the offices of the legislative officers while others are specific to individual offices. Two in particular have consequences relevant to the Office of the Conflict of Interest Commissioner.

The Richard Report recommends:

1. That the *Members' Conflict of Interest Act* and the *Conflict of Interest Act* be assigned to the Ombudsman. The employee administrative assistant would be co-located in the office of the Ombudsman. To effect this assignment the Ombudsman would necessarily be someone who has: "i) impeccable character and demonstrated judgment, ii) relevant experience in the practice of law or, alternately (sic) ready access to legal expertise in this area of law, and iii) is committed to the sensitive management of the confidential information about members and senior office holders that will necessarily be in the office of the Ombudsman".
2. In the absence of an agreed procedure for handling citizen complaints about the work or conduct of a legislative officer, it is recommended that citizen complaints about legislative officers be directed to the Speaker who, with the Clerk of the Assembly, should investigate the complaint and present his advice to the Legislative Administration Committee. Once the complaint is addressed, the Speaker ought to report his disposition of the complaint to the complainant.

The recommendations from the Richard Report are being studied by a sub-committee of the Legislative Administration Committee.

With respect to the first recommendation: traditionally the Conflict of Interest Commissioner and the office of the Ombudsman have never been joined or paired in Canada. Their functions conflict in theory and practice. The Conflict of Interest Commissioner administers legislation relating to the Members of the Legislative Assembly and does not initiate investigations whereas the Ombudsman investigates complaints against administrative decisions and acts of government agencies, organizations and municipalities and may initiate reviews and investigations on his or her own motion including critically analyzing policies, legislation, case law and government records.

The second recommendation raises the question of a presumed necessity of future oversight of the legislative officers by the Speaker and the Clerk. The existing oversight consists of the requirement that all legislative offices file annual reports and meet with the Standing Committee on Legislative Officers for questioning. The ultimate oversight is more than adequate. Under their respective legislations, officers hold their positions for set terms but may be removed from office for cause or incapacity due to illness on recommendation of the Assembly.

## **APPRECIATION**

I would be remiss if I did not acknowledge the highly qualified and professional services that were provided to the office by the Clerk, Loredana Catalli Sonier, Q.C., and staff members of the

Legislative Assembly; Peter Wolters, C.A., Director of Finance and Human Resources; Shayne Davies, Esq., Clerk Assistant of the Legislative Assembly and Jeffrey Quinn, Assistant to Bruce Mather, Administrator Information Technology.

In particular, I appreciate the competent and professional services of my Administrative Assistant, Rosanne Landry-Richard and also those of Nicole Beaulieu, counsel to the Commissioner for her full time and part time legal assistance while the *Public Interest Disclosure Act* was administered by this office and for her assistance in the investigations and inquiry and her general counsel.

## CONCLUSION

During the fiscal period ended March 31, 2011, expenditures in the Office of the Conflict of Interest Commissioner for salaries, benefits, office equipment and supplies totaled \$714,567.18 as compared to \$315,892.27 in 2010 as a result of investigations and the increased responsibilities under the *Public Interest Disclosure Act*. For the fiscal period ended March 31, 2012, the expenditures totaled \$267,871.67. The major expenditure, apart from administration of the *Public Interest Disclosure Act*, was for the ongoing investigations and inquiry for allegations of breaches of the *Members' Conflict of Interest Act*.

The seminars conducted by this office with respect to the *Public Interest Disclosure Act* came to an end in 2010 although my responsibility continues for one investigation.

In 2010 and 2011 I participated in meetings and conferences with the Court of Appeal, the other Legislative Officers of New Brunswick and the Ethics and Conflict of Interest Commissioners of the others provinces and territories as well as the federal government and the senate. I made myself available to the Members of the Legislative Assembly and to the public service under the *Public Interest Disclosure Act*.

On November 22, 2011, at Fredericton I addressed the numerous members of the Appeals Tribunal of the Workplace Health, Safety and Compensation Commission on the topics of gifts, confidentiality, conflicts of interest of various natures and kinds, ethical concerns, the importance of being fair and impartial, and advice as to when an appeal member should recuse him or herself from hearing an appeal.

Dated at Fredericton this 3<sup>rd</sup> day of July, 2012.

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