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2018 REPORT OF THE CONFLICT OF INTEREST COMMISSIONER



Prince Edward Island Île-du-Prince-Édouard

Legislative Assembly

Assemblée législative

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of Interest Commissioner
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February 11, 2019

Hon. Buck Watts, MLA
Speaker of the Legislative Assembly
P.O. Box 2000
Charlottetown, PE
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Dear Mr. Speaker:

It is my honour and duty to submit to you the 2018 Annual Report of the Office of the Conflict of Interest Commissioner for the period January 1 to December 31, 2018.

This report is submitted pursuant to section 3(1) of the *Conflict of Interest Act*, R.S.P.E.I. 1988, Cap. C. 17-1.

Yours very truly,

Hon. John A. McQuaid
Conflict of Interest Commissioner

2018 Annual Report of the Conflict of Interest Commissioner

Introduction

According to s. 3 of the *Conflict of Interest Act* R.S.P.E.I. 1988 Cap. 17.1 (the “*Act*”) the Commissioner is required to report annually “. . . regarding the affairs of the Office of the Commissioner . . . ” The report is delivered to the Speaker who is required to table it in the Legislative Assembly. I am pleased to present my annual report for 2018.

The role of the Commissioner is to work with Members of the Legislative Assembly as they fulfill their obligations under the *Act*. In this role the Commissioner assists Members in the preparation of their private disclosure statements, prepares public disclosure statements and when requested, provides opinions to Members on issues that relate to compliance with the *Act*.

Disclosure Statements

The *Act* requires all Members, their spouses and dependent children to file a private disclosure Statement disclosing all their income, assets and liabilities. They are also required to disclose interests they hold in private corporations. Disclosure must be completed 60 days following the election of the Member.

Within this 60 day period the Commissioner is required to meet privately with each Member to review their private disclosure statement for compliance with the *Act*. The Member’s spouse is entitled to attend. During the meeting the Commissioner advises the Member on his or her obligations under the *Act*.

On or before a specific date as set by the Commissioner in each subsequent calendar year, all Members are required to prepare an additional private disclosure statement and meet with the Commissioner. In 2018 that date was June 1st. All Members complied with this obligation. Their public disclosure statements were updated and filed with the Clerk.

The public disclosure statement of each member updated in 2018 has been posted on the website for the Office of the Commissioner. See: <http://assembly.pe.ca/coi>

For the calendar year 2019, June 1st will be set as the deadline for sitting Members to file their annual updated Private Disclosure Statement and to meet with the Commissioner.

Subsequent to filing their annual private disclosure statements and throughout the ensuing year, Members are required to report any material changes that occur in their income, assets or liabilities. When a Member files a statement of material change, the public disclosure statement of the Member is amended accordingly.

Between June 1, 2018 and December 31, 2018 some Members reported material changes in their

income, assets or liabilities. In accordance with the relevant provisions of the *Act* they filed a statement of material change or provided evidence of the material change and the public statements were amended.

Trusts

Upon their appointment to Executive Council the *Act* requires that some Members who own certain classes of assets must establish trusts and appoint a trustee to hold those assets in trusts. All Members of Executive Council required to establish trusts have done so and the trusts continue to be administered in accordance with the *Act*.

Opinions

In 2018 Members sought my opinion or advice on issues related to the interpretation and application of the *Act*. I responded to each of these requests. Section 7 of the *Act* states that the opinions are given in confidence.

The *Act* provides that any Member may request the Commissioner to provide an opinion as to whether another Member has contravened the *Act* or a Parliamentary Convention of Prince Edward Island. The request must set forth the grounds or belief of the alleged contravention and it must be supported by affidavit evidence supporting those grounds.

The *Act* also provides that by resolution, the Legislative Assembly may request that the Commissioner render an opinion as to whether a Member has contravened the *Act* or any Parliamentary Convention.

Furthermore, either the Premier or the Executive Council may ask the Commissioner for an opinion as to whether a Member of the Executive Council has violated the *Act* or Parliamentary Convention of Prince Edward Island.

I did not receive any requests to provide an opinion as to the conduct of a Member.

Website

The Conflict of Interest Commissioner's website contains information on: (i) the role of the Commissioner; (ii) who may request the Commissioner to investigate an alleged conflict of interest; (iii) various reports and opinions that have been provided by the Office of the Commissioner; (iv) the Members' current public disclosure statements and; (v) a summary of the rules regarding the receipt of gifts by Members.

As an additional resource for individuals who might be interested in offering for election as a Member, a page has been added to the website in 2017 summarizing the obligations a Member has under the *Act*.

See: <http://assembly.pe.ca/coi>

In 2018 this Office also prepared a brochure containing much of the same information summarizing the Act for the benefit of all members of the public. This brochure has been circulated to the leaders of the registered parties for the information of any individuals who may be interested in seeking election as a Member.

Amendments to the Act

In my 2015 Report to the Assembly I recommended amendments to the *Act*. As I indicated in my 2017 Report, I had the opportunity to discuss the proposed amendments with the Standing Committee on Legislative Management. In 2018 the Legislative Management Committee agreed to adopt some of those recommendations and the Government brought forward a Bill including those amendments.

The Third Party also tabled a Private Members Bill in 2018 including all the amendments I recommended in 2015. At the request of the Third Party I reviewed this Private Members Bill prior to it being tabled in the Assembly.

I recommended to the Legislative Management Committee that they consider an amendment to the Act with respect to the retention and destruction of documents in the possession of the Commissioner.

Section 27(1) of the *Act* places an obligation on the Commissioner to retain each individual “record” in his or her possession for 10 years and to destroy that record within the 12 month period following the tenth anniversary of the record’s creation. Administratively, this means that files of each MLA and former MLA must be reviewed each year for any record that has been in existence for more than ten years and when located the record must be destroyed.

To provide a more efficient process of document retention and destruction, I recommended an amendment to section 27(1) of the *Act* so that it would provide for the retention of all “records” in the Commissioner’s possession for a fixed period of time after a Member ceases to hold office. While this may result in the retention of additional material, particularly in the case of long serving Members, it provides clarity for the Commissioner, avoids continual annual review of individual documents while continuing to meet the objectives of adequate retention and preservation of records.

As for a specific time period, I did not make a recommendation; however, I summarized the applicable time periods in other jurisdictions. Across Canada the period of retention under legislation similar to the *Act*, ranges from 1 to 10 years.

Canadian Conflict of Interest Network

In September 2018 the annual conference of the Canadian Conflict of Interest Network (CCOIN) was held in St. John’s, Newfoundland and Labrador. This network of Commissioners from across Canada is responsible for legislation and/or codes of conduct addressing ethical conduct of Senators and elected representatives to the House of Commons as well as those elected to

provincial and territorial legislatures.

Throughout each year I continue to find participation in this Network a useful source of information on various issues arising in area of public sector ethics.

Conclusion

I thank all Members for their continued cooperation and their commitment to compliance with the requirements of the *Act*.

As he is about to retire in March 2019, I extend a special thanks to Mr. Charles MacKay, Clerk of the Legislative Assembly. Since I commenced serving as Commissioner approximately four years ago he has provided me with tremendous support and guidance as I carry out the duties associated with this Office. I wish him well in retirement and I look forward to working with his successor, Mr. Joseph Jeffrey.

I also thank Ms. Barbara O'Donnell, as well as all the staff in the Clerk's Office and the Office of the Speaker for their advice and administrative assistance.