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2019 REPORT OF THE CONFLICT OF INTEREST COMMISSIONER



Prince Edward Island Île-du-Prince-Édouard

Legislative Assembly

Assemblée législative

Office of the Conflict
of Interest Commissioner
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December 18, 2019

Hon. Colin LaVie, 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 2019 Annual Report of the Office of the Conflict of Interest Commissioner for the period January 1 to December 31, 2019.

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

2019 Annual Report

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...” I am pleased, therefore, to present my Annual Report for 2019.

The primary 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 their 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 must also disclose any 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 their obligations under the *Act*.

There was a general election on April 23, 2019. The election in the constituency of Charlottetown - Hillsborough Park was deferred to July 15, 2019 as the result of the death of Josh Underhay, the candidate for the Green Party in that riding

The general election resulted in a change of government. There were 12 Members elected for the first time and those appointed to Executive Council were also serving for the first time.

Every Member has completed a private disclosure statement.

The public disclosure statements were prepared and filed with the Clerk of the Legislative Assembly. They are available for public inspection on the Assembly’s website - <https://www.assembly.pe.ca/> Click on “Offices” and then on “Conflict of Interest Commissioner.” A paper copy of each Member’s public disclosure statements is also available for review in the Clerk’s Office at 197 Richmond Street, Charlottetown P.E.I.

All Members are required to update their private disclosure statements and meet with the Commissioner within each 12 month period after their election. A date will be set by my successor for the fulfillment of this requirement in 2020.

Throughout 2019 Members reported a material change in either the assets or liabilities disclosed in their private disclosure statement. When reported, each Member’s public disclosure statement was amended accordingly.

Trusts

Upon their appointment to Executive Council in May 2019 four ministers were required to establish trusts and appoint a trustee to hold certain assets. The minister's public disclosure statement has the information with respect to the trust and the assets held in trust.

Former Ministers

With the change of government on April 23rd membership in Executive Council also changed. Those not returning were advised by letter of their obligations under s.24 of the *Act* with respect to accepting contracts from the Government of Prince Edward Island, making representations to that Government and accepting a contract or benefit from the department of which a former member of Executive Council was the Minister.

Opinions to Members

In 2019 Members sought my advice on issues related to the interpretation and application of the *Act*. I responded to each of these requests by telephone conversation, e-mail or letter. Many Members who were elected for the first time sought advice with respect to the preparation of their private disclosure statements in advance of completing the statement.

Section 7 of the *Act* provides that the opinions are given to Members in confidence unless the Member releases the opinion to the public or authorizes the Commissioner to release it.

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.

I am pleased to report that in 2019 I did not receive any requests from Members to provide an opinion with respect to an alleged contravention of the *Act* by another Member.

Website

The website with information from the Office of the Conflict of Interest Commissioner continues to be updated. See: <https://www.assembly.pe.ca/> Click on "Offices" and then on "Conflict of Interest Commissioner."

The 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.

In preparation for the election of Members to the 66th General Assembly on April 23, 2019, all the forms required for the completion of a Member's private disclosure statement were converted to a pdf. fillable format. This format was utilized by some Members in the completion of their public disclosure statements.

As noted above the public disclosure statements of each Member may be accessed from the website as well as sample forms for the private disclosure statements. The latter provide the public with knowledge as to the scope of the information Members must privately disclose to the Commissioner.

Amendments to the Act

As I stated in my 2015 Report, I view the role of the Commissioner as an advisor to Members of the Legislative Assembly on the evolution of legislation and codes of conduct respecting ethical and conflict of interest issues.

Many of the recommendations I made in 2015 have been incorporated into Bill 100 that was tabled in the Legislative Assembly by the Official Opposition and given first reading on June 18, 2019.

I have some additional suggestions as to how the *Act* might be improved.

Management Trusts

Section 17 of the *Act* provides that a Minister shall not engage in a business carried on by a corporation.

Section 18 of the *Act* provides that a Minister shall not hold stock and that the Minister may comply by placing stock in the hands of a trustee according to the terms of a trust agreement. The commissioner is required to approve the trustee and the terms of the trust agreement.

Section 19 provides that a Minister shall not carry on a business by way of a partnership or sole proprietorship. The Minister may comply with the section by entrusting that his or her interest in the business to a trustee pursuant to the terms of a trust agreement. The trustee and the agreement must be approved by the commissioner.

Many small businesses today are carried on by way of a private corporation as opposed to a partnership or sole proprietorship. The private corporation usually has one individual as the sole or at least the controlling shareholder. The individual also manages the business through the private corporation. If the individual becomes a Minister, the individual's shares of the private corporation are placed in trust. If the individual also manages the business of the private corporation, the trustee is in essence the manager.

The *Act* does not contain an express provision that provides for the placement of the management of the business of the private corporation in the hands of the trustee. This has never presented as a problem because the trustees have assumed the role; however, for clarity I think the *Act* would benefit from an amendment to provide for management trusts or, for what is referred to in the New Brunswick legislation, a "blind management agreement." See: *Members' Conflict of Interest Act* (New Brunswick) 2017, c. 15, s.1. In this regard an amendment to s. 19(1) of the *Act* to include a private corporation might accomplish this objective.

(ii) Retention of Documents

In my 2018 Report I made a suggestion with respect to an amendment to s. 27 of the *Act* - the destruction of documents. I refer Members to the Report because an amendment will provide clarity.

(iii) Section 24 & former ministers post-employment

Section 24 of the *Act* provides as follows:

24. Restrictions applicable to former Ministers

(1) A former Minister shall not knowingly, during the 6 months after the date the former Minister ceased to hold office,

(a) accept a contract or benefit that is awarded, approved or granted by the Executive Council or an employee of a department pursuant to the *Public Departments Act* R.S.P.E.I. 1988, Cap. P-29;

(b) make representations to the Government of Prince Edward Island on the former Minister's own behalf or on another person's behalf with respect to any contract or benefit;

(c) accept a contract or benefit from any person who received a contract or benefit from a department of which the former Minister was the Minister.

Exception; further duties

(2) Subsection (1) does not apply to contracts or benefits in respect of further duties in the service of the Crown.

Exception; same conditions

(3) Subsection (1) does not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.

Ongoing transaction or negotiation

(4) A former Minister shall not make representation to the Government of Prince Edward Island in relation to a transaction or negotiation to which the Government is a party and in which the former Minister was previously involved as a Minister, where the representation could result in the conferring of a benefit not of general application.

Offence

(5) Any person who contravenes subsection (1) or (4) is guilty of an offence and liable, on summary conviction, to a fine of not more than \$10,000. *1999,c.22,s.24.*

This section restricts a former Minister's ability after service in cabinet to seek employment with government and/or private sector employers who may have contracted with the former minister's department. It also restricts former ministers from making representations to government on behalf of other persons. The *Act* prohibits former ministers from knowingly engaging in these endeavors for a period of six months after their term of office.

In my 2015 report I recommended that the transition period of six months should be extended to 12 months. The recommendation was based on the transition period provided for in other jurisdictions across the country, the majority of which provide for a 12 month transition period.

I note Bill 100 tabled by the official opposition and given first reading in the Legislative Assembly on June 18, 2019 proposes this period be extended to 24 months.

The House of Commons and the Province British Columbia are the only jurisdictions with a transition period of 2 years. These have not been recently established. In fact British Columbia has had the 24 month time period in place since 1992.

The Province of Quebec has a 24 month transition period; however, it relates only to appointment to the board of directors of a crown corporation and the making representation on behalf of another person to any person with whom the former minister had “direct and significant” dealings.

All remaining jurisdictions have either a 6 month or 1 year transition period. Therefore, a transition period of 2 years seems to be the exception rather than the rule.

enforcement of s.24

Concern has recently been expressed publicly by a Member that the existing enforcement provisions may be insufficient. In 2015 when the enforcement provisions in similar legislation across the country were reviewed I found the provisions in the legislation of other jurisdictions to be similar to those in this province. I recently undertook a further review and I have found that the provisions of the *Act* with respect to enforcement remain consistent with those across the country and the principles of parliamentary convention.

The Legislative Assembly of Prince Edward Island assumes exclusive authority to manage its internal affairs, to discipline its Members and regulate its proceedings. Decisions made in these spheres of activity are entitled to parliamentary privilege and are immune from review by the judicial and executive branches of government. The Office of Conflict of Interest Commissioner is a statutory delegate of those legislative bodies.

Parliament and the various legislative assemblies have not assumed jurisdiction to directly monitor and sanction the conduct of individuals who are not members. It follows that their statutory delegate is not vested with the power to investigate and recommend sanctions with respect to the conduct of persons who are not members.

Therefore, consistent with these principles, in Prince Edward Island if a former minister violates section 24(1) or (4), the *Act* provides that the former minister may be held accountable in two ways.

First, if the former minister **is** a Member of the Legislative Assembly he or she may face a sanction according to the provisions of the *Act*. The Commissioner has the authority to undertake an investigation into an allegation against a Member at the request of another Member or by resolution of the Assembly. The Commissioner must report on the investigation to the Assembly and if the investigation reveals a contravention, the Commissioner may recommend that no sanction be imposed or, that a specific sanction should be imposed. These sanctions range from a reprimand to a declaration the Member’s seat be declared vacant. See section 32 of the *Act*.

Second, if a former minister **is not** a Member, the Assembly has not assumed jurisdiction to impose the sanction and thus the Commissioner has no jurisdiction to investigate. Therefore,

s.24(5) is available to provide the sanction. The former minister could be charged with a summary conviction offence and if found guilty ordered by the court ordered to pay a fine of up to \$10,000. The *Summary Proceedings Act* R.S.P.E.I. 1988 Cap S-9 applies to all proceedings where it is necessary to determine if a person has committed an offence under any Prince Edward Island legislation, including s. 24(5) of the *Act*.

Applicable legislation in the provinces of Alberta, British Columbia, New Brunswick, Nova Scotia, Ontario, Saskatchewan as well as Yukon and Nunavut all provide for a summary conviction charge. The legislation in the provinces of Manitoba, Newfoundland and Labrador, Quebec, the Government of Canada and the Northwest Territories do not provide for a sanction by way of a summary conviction proceeding.

Canadian Conflict of Interest Network

I attended the annual conference of the Canadian Conflict of Interest Network in Regina, Saskatchewan in September 2019. This is a network of Commissioners from across Canada responsible for legislation and/or codes of conduct that address the ethical conduct of Senators and elected representatives to the House of Commons as well as those elected to provincial and territorial legislatures.

Throughout my term of office I have found participation in this Network of Commissioners to be a resource of information and research on issues that arise in the area of public sector ethics. I would like to thank all those from other jurisdictions for their advice and assistance over the time I served in this Office.

Conclusion

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

It has been a pleasure to have had the opportunity to serve the Legislative Assembly in this capacity since March 2015. I owe a tremendous debt of gratitude to Ms. Barbara O'Donnell and all the staff in the Clerk's Office and the Office of the Speaker for their advice and administrative assistance.

I wish Ms. Judy Burke Q.C. every success as she assumes the duties of Commissioner on January 1, 2020.