



2023 REPORT OF THE CONFLICT OF INTEREST COMMISSIONER



FEBRUARY 2023



Prince Edward Island

Legislative Assembly

Office of the Conflict of Interest Commissioner
PO Box 2000, Charlottetown PE
Canada C1A 7N8

Île-du-Prince-Édouard

Assemblée législative

Bureau du commissaire aux conflits d'intérêts
C.P. 2000, Charlottetown PE
Canada C1A 7N8

February 20, 2024

Hon. Darlene Compton, MLA
Speaker of the Legislative Assembly
P.O. Box 2000
Charlottetown, PE C1A 7N8

Dear Madam Speaker:

The provincial general election made 2023 a busy year for MLAs and for my office in collecting and reporting disclosure information under the provisions of the amended *Conflict of Interest Act*.

It's my honour to submit to you the *2023 Annual Report of the Office of the Conflict of Interest Commissioner* for the period January 1 to December 31, 2023, thereby fulfilling the annual reporting requirement in section 3(1) of the *Conflict of Interest Act*, R.S.P.E.I. 1988, Cap. C. 17-1.

Yours very truly,

Judy Burke, K.C.
Conflict of Interest Commissioner

Annual Report 2023

I am pleased to present my Annual Report for 2023 regarding the affairs of the office of the Commissioner as required by Section 3 of the *Conflict of Interest Act RSPEI Chapter C-17.1* (the *Act*).

BRIEF OVERVIEW OF THE ROLE OF THE CONFLICT OF INTEREST COMMISSIONER

Established under the above legislation, the Conflict of Interest Commissioner is an independent officer who advises Members of the Legislative Assembly (MLAs) on situations where their elected duties may provide them with a financial benefit in their private life, therefore creating a conflict between their public duty and personal assets. Through a formalized process, the Commissioner also investigates alleged conflicts when evidence is provided in writing by a third party.

To support the function of the Commissioner's office, the *Act* requires all MLAs, their spouses, and their dependent children to disclose in writing their income, assets, and liabilities, as well as any interest they hold in private corporations. Private disclosures are required each year and reviewed in person with the Commissioner. The Commissioner creates a public disclosure statement for each MLA which is filed with the Office of the Clerk and available for public review.

2023 DISCLOSURE PROCESS

2023 was an election year and resulted in the election of nine new members to the Legislative Assembly. While the new cohort of MLAs meant the disclosure process took longer than usual as they caught up to the disclosure requirements and provided me with necessary documentation, I'm pleased to advise that every MLA completed their private disclosure statement.

I met with each MLA and any spouse who chose to attend in May and June 2023, to complete and review each private disclosure statement for compliance with the *Act*, and to assist and advise. I created public disclosure statements for all MLAs and filed them with the Clerk of the Legislative Assembly, who made them available on the Assembly's website.

The disclosure process is a significant undertaking following an election as MLAs are pulled in many directions at the start of a new General Assembly, and new MLAs are often learning about the disclosure requirement for the first time.

2021 amendments to the *Act* requires MLAs provide detailed information on the shareholders in any private company in which the MLA has an interest. Information required included:

- shareholder names
- shareholder addresses
- identifying shareholders who are members of the MLA's family
- identifying shareholders with more than 10% of voting shares
- identifying shareholders with non-voting shares valued at more than \$5000.

This caused unexpected complications during the disclosure process and, as outlined later in this report, I will be reviewing the entire *Act* and making recommendations for further amendments to this section.

TRUSTS

Three Ministers established trusts and appointed trustees to administer the assets in the trusts. Sections 18(3)(d), (e), and (g) of the *Act* outline the reporting requirements of the trustee for those assets put in trust:

Management of trust

(3) A Minister may comply with subsection (1) by entrusting the assets to one or more trustees on the following terms:

...

(d) at the end of each calendar year and at one or more intervals during the year, the trustees shall give the Minister a written report stating the value, but not the nature, of the assets in the trust;

(e) the year-end report required by clause (d) shall also state the net income of the trust for the preceding year and the trustees' fees, if any;

...

(g) the trustees shall give the Commissioner copies of all information and reports given to the Minister;

The required reports were received from two Ministers as at the date of this report.

ADVICE TO MEMBERS

Following the spring election, 2023 was a busy year for me in providing support and advice to MLAs in applying the *Act* to their personal circumstances. Newly-elected MLAs and changing roles for returning MLAs resulted in a number of requests for my advice and opinions. I responded to each request via telephone, email and, on occasion, by meeting personally with the member. I welcome these enquiries, and encourage members to reach out with questions or concerns. According to Section 7 of the *Act*, all such advice and opinions are given in

confidence unless the Member themselves releases the opinion or authorizes the Commissioner to release it.

Under Sections 28 and 28.1 of the *Act* a formal request for investigation into an alleged contravention of the *Act* may be given, in writing, to my office by a third party. In 2023, no such written requests were received.

PROFESSIONAL DEVELOPMENT

The national association of conflict and ethics commissioners, the Canadian Conflict of Interest Network (CCOIN), held two meetings in 2023 to support networking and professional development. March was a virtual meeting and in September I attended an in-person meeting hosted in Halifax, Nova Scotia. As always, I found these sessions enormously helpful. I believe the peer-to-peer knowledge gained through these sessions are ultimately of assistance to PEI's MLAs as I gain insight into how other jurisdictions interpret unique situations, share administrative processes, and discuss changes to legislation.

RECOMMENDATIONS

I have two reporting obligations under the *Act*:

- Section 3(1) requires an annual report on activities which is satisfied by this report; and
- Section 36 requires a full review of the *Conflict of Interest Act* within 18 months of a provincial general election.

The 2023 provincial general election was my first time assisting new MLAs through the disclosure process under the *Act* as amended in 2021. It was an experience that brought forward conflicting provisions in the *Act* and highlighted areas in need of added clarity. This annual report addresses short-term, housekeeping changes to administration and legislation, while the longer review will address broader processes and areas in need of clarifying.

ADMINISTRATION

I recommend information regarding disclosure requirements be provided to prospective electoral candidates so they are aware in of the substantive nature of those disclosure requirements in advance of declaring their candidacy. A brochure is available to MLAs and to members of the public outlining the role of the Commissioner and the disclosure requirements for members and their families. The brochure was provided to the office of the Chief Electoral Officer to be included in the information package sent to prospective candidates. My office is currently considering whether more detailed information should be forwarded to prospective candidates.

LEGISLATION

Section 6 requires an MLA to request an extension on any due date in writing and requires that the Commissioner respond in writing.

- I recommend providing the Commissioner the direct authority to extend reporting deadlines contained in the *Act*, in keeping with the authority and independence of the Office of the Conflict of Interest Commissioner. Such a provision would provide the authority and flexibility for the Office to operate more efficiently, especially in exigent circumstances, such as a pandemic.

Section 23 prevents Executive Council and Ministers from knowingly awarding or approving a contract to benefit to a former Minister for a period of six months after that Minister leaves office; however, under Section 24, a former Minister cannot knowingly accept a contract of benefit to them for a period of twelve months.

- I believe this was simply an oversight when Section 24 was amended in 2021, and Section 23 should be updated to reflect the twelve month moratorium put in place in Section 24 in 2021.

Section 25(1)(a) requires MLAs to provide private disclosure statements to the commissioner within 60 days of being elected.

- Disclosure requirements are extensive and in my experience following the 2023 election, MLAs require more time than the *Act* currently allows. New MLAs not only have extensive disclosure requirements, but a huge learning curve, and returning MLAs are often coming back to different legislative roles. I believe that the disclosure reporting period should be extended to 90 days after election.

Additionally, there is an inconsistency between the *Act* and the *Lobbyists Registration Act* regarding restrictions applicable to former Ministers. As noted above, the 2021 amendment to Section 24 of the *Act* set a twelve-month moratorium for former Ministers accepting government contracts. However, Section 17(1) of the *Lobbyist Registrations Act* still reflects the six month moratorium. In my view the *Lobbyist Registration Act* should be amended to agree with the 2021 amendment to the *Act*. This discrepancy came to my attention in discussions with other Canadian Commissioners, some of whom are also the lobbyist registrars in their jurisdictions.

Finally, the table of contents for the *Act* needs updating as the last two sections, added by amendment in 2021, are not included.

REVIEW OF THE ACT

The post-election review of legislation mandate in Section 36 was added in 2021 and provides the opportunity for the public to make written submissions on the *Act* to the Commissioner. The final report, including any recommendations, is submitted to the Standing Committee on Legislative Assembly Management within 18 months of the election.

The review process is underway and my office is working to establish the timeline for the project, including dates for receiving public input via social media and advertising, as well as increasing awareness of the role of the Conflict of Commissioner given that written requests for investigations of possible contraventions of the *Act* can now be submitted by the public.

The next few months will be busy but I am invested in addressing above issues to improve the functioning of the legislation and to increase public understanding of the Office of the Conflict of Interest Commissioner.

2024 WORK

Correspondence will be sent to MLAs in the last week of January to begin the annual process of updating their private disclosures. Forms, a meeting schedule, and the required date of completion for disclosure statements for the 2024 calendar year will be provided. I anticipate that meetings with MLAs will be completed during the spring session of the Legislative Assembly, and public disclosures created and posted shortly after.

CONCLUSION

I appreciate the cooperation and courtesy of all MLAs throughout the disclosure process.

I appreciate the support of all staff in the Office of the Speaker and the Office of the Clerk, with special thanks to Laura Morrell, whose input and assistance has been invaluable this year following the retirement of Barbara O'Donnell.