



Province of New Brunswick

OFFICE OF THE INTEGRITY COMMISSIONER

The Honourable Alexandre Deschênes, Q.C.

ANNUAL REPORT
MEMBERS' CONFLICT OF INTEREST ACT
2015 and 2016

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February 28, 2018

The Hon. Chris Collins
Speaker of the Legislative Assembly
Legislative Building
P. O. Box 6000
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Dear Mr. Speaker:

I have the honour of submitting the 2015 and 2016 Annual Report of the Office of the Integrity Commissioner. This is the sixteenth and seventeenth annual report and my first, as my term of office as Integrity Commissioner began on December 16th, 2016. This report is created and filed pursuant to section 31 of the *Members' Conflict of Interest Act*.

Respectfully,

The Honourable Alexandre Deschênes, Q.C.
Integrity Commissioner
for the Province of New Brunswick

INTRODUCTION

This combined report for years 2015 and 2016 is the sixteenth and seventeenth report issued under the provisions of the *Members' Conflict of Interest Act* and my first Report as Integrity Commissioner. The Honourable Alfred R. Landry, Q.C. retired on July 31, 2015, and Anne E. Bertrand, Q.C. was appointed on December 11, 2015, as interim Conflict of Interest Commissioner. Her mandate as such ended on December 11, 2016, when I was appointed as the Conflict of Interest Commissioner.

On December 16th 2016, the *Integrity Commissioner Act* obtained royal assent. It provides that the Conflict of Interest Commissioner shall be deemed to have been appointed as the first Integrity Commissioner and my appointment as the Conflict of Interest Commissioner was revoked. The *Integrity Commissioner Act* also provides that as of September 1, 2017, the rights and responsibilities conferred to the Right to Information and Protection of Privacy Commissioner be bestowed upon the Integrity Commissioner.

This is a good occasion to publicly express my gratitude to Anne E. Bertrand, Q.C., who agreed to act as interim Conflict of Interest Commissioner for a full year until my appointment over and above her demanding responsibilities as Right to Information and Protection of Privacy Commissioner. Her devotion to the task during that time speaks volumes about her commitment as an Officer of the Legislative Assembly.

I also wish to express my gratitude to all Members of the Legislative Assembly for their unanimous support of my appointment as New Brunswick's first Integrity Commissioner. I will make every effort to conduct myself in a manner to honour the confidence of the House.

As a newly appointed legislative officer, I have the unenviable task of filing annual reports for the years 2015 and 2016, a period of time during which I was not involved to any extent in administering the *Members' Conflict of Interest Act*. In essence, I am being asked to report on the activities of two previous commissioners who no longer have any standing to report on their experiences. I can only ask for their leniency in judging my report which will no doubt fail to reflect the real extent of their devotion and hard work in the execution of their responsibilities.

STRATEGIC REVIEW PLAN WITH RESPECT TO THE OFFICE OF THE CONFLICT OF INTEREST COMMISSIONER

As is now well known, the Legislative Administration Committee (LAC) undertook a review of the legislative officers, their offices and the processes that support their work. On November 10, 2015 (LAC) issued a News Release announcing that in order to contribute to the overall goal of the Strategic Program Review, a review would be conducted to improve efficiency and effectiveness of all legislative officers. Under the leadership of Mr. François Levert, the review would be carried out over a two-month period ending January 2016.

In April of 2016 Mr. François Levert submitted a report to the Legislative Administrative Committee entitled Strategic Program Review, Review of the Officers of the Legislative Assembly.

As a result of Mr. Levert's review, the Office of the Integrity Commissioner was created on December 16, 2016, and New Brunswick's first Integrity Commissioner was appointed. At the same time, the Conflict of Interest Commissioner was eliminated and the Integrity Commissioner took over the duties and

responsibilities previously held by the Conflict of Interest Commissioner. As this report is being drafted, the Integrity Commissioner is responsible for the administration of the *Members' Conflict of Interest Act* and the *Lobbyists' Registration Act*, the latter having been proclaimed on April 1st 2017. As of September 1st, 2017, the Integrity Commissioner has assumed the duties and responsibilities previously bestowed upon the Right to Information and Protection of Privacy Commissioner, that commission having been dissolved.

NEW MEMBER

On October 5, 2015, a by-election was held in the riding of Carleton, following the resignation of the former member.

DISCLOSURES

The year 2015 is the first year that the Members of the Legislative Assembly were reduced from 55 members to 49 following the September 22, 2014, election. When the Honourable Alfred R. Landry, Q.C. retired in July 2015, all files under the commissioner's responsibility were secured until Anne E. Bertrand, Q.C. was appointed as Interim Commissioner.

On June 30, 2016, the public disclosures statements for the year 2014 and 2015 were filed with the Clerk of the Legislative Assembly where they are available for public inspection during the normal business hours of the Office of the Clerk of the Legislative Assembly. The public disclosure statements for the year 2016 have been filed for all members. These documents are now available on the Legislative Assembly's website.

QUINQUENNIUM REPORT

On October 4, 2011, the Honourable Patrick A.A. Ryan, Q.C., submitted a Quinquennium Report to the Speaker of the Legislative Assembly, pursuant to section 43.1 of the *Members' Conflict of Interest Act*.

Section 43.1(1) of the *Members' Conflict of Interest Act* provides that the Commissioner shall initiate a review of the Act every five years. The next review of the legislation is scheduled for 2017. Some of the recommendations made in 2011 have in fact been adopted recently by the legislature. In view of the recent appointment of the first Integrity Commissioner on December 16th, 2016, and that the year 2017 will be the first full year of his involvement with the *Members' Conflict of Interest Act*, it would be advisable to remit the 5-year review to the year 2018. Despite the fact that the 5-year review will take place later, I nevertheless feel that some amendments to the *Members' Conflict of Interest Act* (the Act) should take place as follows and wish to highlight some notable amendments to the Act.

- a) As matters now stand, the Act does not have a definition of what constitutes a "conflict of interest." (See, for example, section 4 of the *Federal Conflict of Interest Act*.) Although there exists some specific prohibited conduct that constitute "real" conflict of interest situations, it is clear that "perceived" or "apparent" conflict of interest situations are not covered by the legislation. In my view, sections 4, 5 and 6 of the Act describe the type of prohibited acts which clearly constitute "real" as opposed to "apparent" conflict of interest situations. Former commissioner Ryan in his 5-year review of the Act has provided a roadmap to the type of legislative action required to remedy what all previous commissioners have supported.
- b) The "cooling off" period of 12 months envisaged by section 17.1(1)(b) of the Act for former members was too narrow. It provided that former members were prohibited from making

representations on their behalf or on behalf of other persons with respect to a contract or financial benefit for a full year after leaving office. The scope of the prohibition was not broad enough to prohibit a former member from lobbying public office holders immediately after ceasing to be a Member of the Legislative Assembly with respect to all matters described as lobbying activities under the *Lobbyists' Registration Act*. The Act has been amended to prohibit all lobbying activities described in the *Lobbyists' Registration Act*. Members of the Executive Council are not targeted by the amendment.

- c) The Act has also been amended to compel member's private statements to disclose if they hold outside employment or involved in a personal service contract with information about such outside employment or contract and the sources of their income from the employment or contract. That information will be disclosed in the public disclosure statement filed by the commissioner.

INVESTIGATIONS AND LEGAL PROCEEDING AGAINST THE COMMISSIONERS

The process for initiating an investigation into breaches of the *Members' Conflict of Interest Act* is set out in section 36; requests for investigations may come by way of resolution of the Legislative Assembly or by sworn affidavit of any person. It should be noted that in some provinces, only Members of the Legislative Assembly can request an investigation alleging a conflict of interest on the part of another member. In New Brunswick, any person can request such an investigation against a member. For that reason your commissioner has taken the position that the affidavit filed in support of a complaint alleging a conflict of interest against a Member of the Legislative Assembly must contain sufficient reliable information to trigger an investigation. In general, the affiant must swear or affirm that he or she has personal knowledge of the facts or, if the facts are not within the personal knowledge of the affiant, he or she must reveal the source of his or her information and that he or she believes the facts as related by that source to be true. These requirements may seem too rigorous to some but, in my view, they are necessary to eliminate frivolous or unsubstantiated requests for an investigation. The commissioner may, in some exceptional circumstance, relax the general rule and it is a position that may evolve in the fullness of time.

In the Annual Report of 2014, the Honourable Alfred R. Landry, Q.C. reported that the complainant of one of the reports filed in 2013 had made an application for judicial review to the New Brunswick Court of Queen's Bench, challenging the former Commissioner's decision to dismiss her complaint filed pursuant to the *Members' Conflict of Interest Act*. The Queen's Bench judge had dismissed her application. Her appeal to the New Brunswick Court of Appeal was dismissed. With respect to her application for a judicial review of the Commissioner's decision to dismiss her complaint, the Court stated:

"With respect to former Commissioner Ryan, the motion judge could find no evidence of bad faith in his dealings with the appellant either in processing her complaint or authoring his report at the conclusion of the investigation. The motion judge correctly concluded the Commissioner has immunity under sections 34 and 35 of the *Act* as well as the benefit of immunity pursuant to the privilege of the Legislative Assembly." (Rose v. Province of New Brunswick et al, [2015] N.B.J. No. 94 (NBCA)."

The complainant's application for leave to appeal to the Supreme Court of Canada was dismissed. [2015] S.C.C.A. No. 248. It should be noted that the immunity provisions of sections 34 and 35 of the *Members' Conflict of Interest Act* have been carried over to the *Integrity Commissioner Act*. (Section 14).

INVESTIGATIONS AND INQUIRIES

No investigations or inquiries occurred during 2015 or 2016.

ADVICE

No advice was given by me in 2016. The reason, of course, was that I was appointed as Conflict of Interest Commissioner and Integrity Commissioner in mid-December 2016.

GIFTS

Some misunderstanding still exists with respect to the acceptance of gifts. In general terms, the rules are as follows:

A member is not allowed to accept a gift, fee or other personal benefit that is connected in any way with the performance of his or her duties of office unless the benefit received is an incident of protocol or social obligations of his or her office and does not exceed the sum of two hundred and fifty dollars. If the gift or benefit received is an incident of protocol but exceeds that sum, it must be disclosed immediately on a gift disclosure form provided by the Office of the Integrity Commissioner. This Office has provided a guide with respect to gifts that are not received as an incident of protocol and it is available on our website.

CANADIAN CONFLICT OF INTEREST NETWORK

The Canadian Conflict of Interest Network is composed of the Conflict of Interest Commissioner from each of the ten provinces, the three territories and two from the federal government representing the members of Parliament and the Senate. They meet annually in September. Meeting dates and venues are fixed two years in advance, each province taking turn to convene the meeting. The annual meetings for the year 2015 and 2016 were held in Quebec City and Edmonton respectively. There was no representation from New Brunswick. The latest meeting of Conflict of Interest Commissioners was held in Prince Edward Island in September 2017. I attended the meeting as New Brunswick's Integrity Commissioner.

As a result of the consolidation of the Office of the Conflict of Interest Commissioner with the Right to Information and Protection of Privacy Commissioner's Office and the Registrar of Lobbyists Office, the Integrity Commissioner will periodically be called upon to attend more than one annual meeting. That is so because many provinces have a separate office and Commissioner for such functions.

BUDGET

During the fiscal period ended March 31, 2015, expenditures in the Office of the Conflict of Interest Commissioner for salaries, benefits, office equipment and supplies totaled \$202,385.25 as compared to \$217,743.37 in 2014. The decrease from 2015 compared to 2014 is associated with the Application for leave to appeal to the Supreme Court of Canada which was dismissed on October 15, 2015, and had less impact on the budget. For the fiscal year ending March 31, 2016, expenditures in the Office of the Conflict of Interest Commissioner for salaries, benefits, office equipment and supplies totaled \$142,265.68 as compared to \$202,385.25, this decrease is supported by the fact that the Office had no Commissioner for five months of the fiscal year 2015-2016.

CONCLUSION

This Office continues to receive exceptional services and support from various highly qualified and professional individuals: Donald J. Forestell, Clerk of the Legislative Assembly and his staff; Katie Hill, CPA, CA, Director of Finance and Human Resources and her staff; Shayne Davies, Clerk Assistant and Clerk of Committees; Jeffrey Quinn, Assistant to Bruce Mather, Administrator of Information Technology; Rebecca Colborne, Debates Translation and her staff each provide important contributions to this Office. Last, but not least, my administrative-assistant Rosanne Landry-Richard has been of invaluable assistance to me as I took on the responsibilities of the Office as Integrity Commissioner. Pursuant of my powers of delegation, she is now the administratrix of and responsible for performing numerous tasks connected with the *Lobbyists' Registration Act* over and above the work involved under the *Members' Conflict of Interest Act*.

Dated at Fredericton this 28th day of February, 2018.

The Honourable Alexandre Deschênes, Q.C.
Integrity Commissioner
Province of New Brunswick