



**OFFICE OF THE CONFLICT OF INTEREST COMMISSIONER
PROVINCE OF NEW BRUNSWICK**

**REPORT TO THE SPEAKER
OF THE
LEGISLATIVE ASSEMBLY OF NEW BRUNSWICK
OF THE
INVESTIGATION**

**BY THE HON. STUART G. STRATTON, Q.C.
CONFLICT OF INTEREST COMMISSIONER**

**INTO ALLEGATIONS BY MR. BERNARD RICHARD, THE MLA
FOR SHEDIAC-CAP-PELÉ AND LEADER OF THE OFFICIAL
OPPOSITION, OF A POSSIBLE VIOLATION
OF THE *MEMBERS' CONFLICT OF INTEREST ACT*
BY THE HONOURABLE JEANNOT VOLPÉ,
THE MLA FOR MADAWASKA-LES-LACS
AND MINISTER OF NATURAL RESOURCES AND ENERGY**

SEPTEMBER 28, 2001

I REQUEST FOR INVESTIGATION

By letter dated May 29, 2001, with enclosures, Mr. Bernard Richard, the MLA for Shediac-Cap-Pelé and Leader of the Official Opposition, (Mr. Richard), wrote to me alleging a possible violation of the *Members' Conflict of Interest Act*, (the Act), by the Honourable Jeannot Volpé, the MLA for Madawaska-les-Lacs and Minister of Natural Resources and Energy, (the Minister).

More specifically, Mr. Richard requested me to review the circumstances involving a letter that was sent by Ms. Jocelyne Michaud, President of the Progressive Conservative Association for Madawaska-les-Lacs, (the riding association), to a number of forestry related companies across New Brunswick, soliciting the purchase of tickets for a fundraising dinner to be held in the Minister's riding on Saturday, May 28, 2001. According to the letter, tickets were available at \$100.00 each or \$1000.00 per table for ten persons.

The letter soliciting the purchase of tickets concluded by stating that “[y]our presence at this dinner will grant you the opportunity to meet our MLA and Minister of Natural Resources and also to participate in our fundraiser.” Also, the letter advised the recipients that “[t]he Honourable Margaret-Ann Blaney, Minister of Transportation, will be our guest speaker for this social gathering.”

In his affidavit in support of his request for an investigation, Mr. Richard deposes that the letter in issue “was sent to both potential corporate and individual donors throughout the province” including “a number of forestry related companies” and that “a number of follow-up phone calls were made by members of the Progressive Conservative Association for Madawaska-les-Lacs to some of those forestry related companies to determine how many tickets they were purchasing.” Mr. Richard also deposes that “targeting forestry related companies as recipients of the letter possibly constitutes a breach of subsection 5(1), 5(2) and section 6 of the *Members' Conflict of Interest Act*.”

In addition to citing sections 5 and 6 of the Act as the foundation for his request for a review of this matter, Mr. Richard also cites and relies upon a comment I made in my Report to the Speaker in the Weir-Blaney matter (December 5, 2000). In that Report I expressed the opinion that “the solicitation of political donations by the Minister of Transportation from members and associate members of the

Road Builders Association, a specific and important group doing major work for the Department, is conduct that ought not to be repeated.”

Subsections 5(1) and 5(2) of the Act deal with insider information. They prohibit the use of information that is obtained by a Member in his or her capacity as a Member and that is not available to the general public to further or seek to further the Member’s private interest. Mr. Richard asserts that “the list of forestry related companies would not be information ordinarily available to the general public” and that “[a]s Minister of Natural Resources and Energy, the [Minister] and his staff would be privy to such information.” Therefore, he alleges “privileged information may have been acquired and or communicated to further the [Minister’s] private interest.”

Section 6 of the Act deals with the issue of influence. This section prohibits a Member from using his or her office to seek to influence a decision made by another person so as to further the Member’s private interest. Notwithstanding the distinction drawn between a “private interest” and a “political interest” in my Report to the Speaker in the Weir-Blaney matter, Mr. Richard asserts in his affidavit that “the inclusion of forestry related companies in those companies and individuals receiving the solicitation letters and the follow-up calls to those forestry related companies does create a reasonable perception in the minds of the public that favoritism could result.”

II INVESTIGATION

On May 30, 2001, I wrote Mr. Richard acknowledging receipt of his letter of May 29 and enclosures. On the same day, May 30, I also wrote Ms. Jocelyne Michaud, with a copy to the Minister, enclosing copies of Mr. Richard’s letter and enclosures and requesting her response to Mr. Richard’s allegations. I also requested her to advise me where she had obtained the names and addresses of the persons and corporations to whom she had written letters concerning the purchase of tickets. When I did not receive a response from Ms. Michaud by June 15, I wrote to her again that day requesting her to give the matter her immediate and urgent attention.

By letter dated June 21, 2001, Ms. Michaud responded to my correspondence and apologized for her

delay. In her letter Ms. Michaud informed me that during the months of February and March, 2001, “the committee and directors of the Madawaska-les-Lacs Progressive Conservative Association organized the [fundraising dinner] including preparing a letter to various persons, companies and associations, inviting them to the event.”

In addressing the question as to where she had obtained the names and addresses of the persons and companies to whom she had written inviting them to attend the Minister’s fundraising dinner, Ms. Michaud responded as follows:

“Since the election of Mr. Jeannot Volpé, as member for the Legislative Assembly of New Brunswick in 1995, the Madawaska-les-Lacs Progressive Conservative Association has kept files collected from the public electoral lists supplied by both Federal and Provincial governments, as well as lists of persons, companies and other associations which were contacted and solicited since the election of Mr. Volpé for either fund raising events or meetings, including membership drives.

We also have used and have in our possession the directory entitled “New Brunswick Forestry Sector Groups” published by the New Brunswick Forest Products Commission for the year 2000. We used that brochure to select names of companies and other forest interest related groups which we may wish to invite to our activities. Also we used the Edmundston Chamber of Commerce publications for other names and addresses of local enterprises.”

In her letter of June 21, Ms. Michaud stated that the Minister did not attend the meetings during which the preparations for the fundraising dinner actually took place. He did, however, attend some meetings of the Board of Directors of the Association where he was “informed of the general organization of this event without necessarily informing him of the names of persons, companies, enterprises and organizations who would be invited to this event.” Ms. Michaud then made these comments:

“We are confident that all of the . . . addresses and lists of persons, companies, enterprises and organizations were all public within the meaning of the *Members’ Conflict of Interest Act*.”

“We can assure you that Mr. Volpé did not provide us with any information that is not available to the general public nor was it done to further Mr. Volpé’s private interest . . . through this fund raising event.”

As to section 6 of the Act dealing with influence Ms. Michaud had this to say:

“We have no knowledge that Mr. Volpé used his office to seek to influence a decision made by another [person] so as to further Mr. Volpé’s private interest or to further another person’s private interest as forbidden under Section 6 of the Act.”

As I was not completely satisfied with Ms. Michaud’s response to the allegations made by Mr. Richard in his initial letter to me, on July 4, 2001, I wrote Ms. Michaud and the Minister again. In my letter, I pointed out to Ms. Michaud, as one example, that she had failed to respond to Mr. Richard’s allegations that follow-up telephone calls were made to forestry related companies and individuals by members of her riding association. I further advised them that I saw at least three issues that I must determine in the investigation, namely:

1. Whether insider information was used in establishing the mailing list of persons, companies and associations to whom letters were sent soliciting the purchase of tickets for a fundraising dinner for the Minister;
2. Whether in compiling the mailing list, the riding association had targeted provincially based forestry related companies who do business with the Minister’s department; and
3. Whether in either situation the riding association, as agent for the Minister, sought to use the Minister’s office to further the Minister’s private interests.

I then suggested that we could proceed further in addressing these issues in either of two ways. I could meet personally with Ms. Michaud and the Minister or they could respond in writing as they preferred. I asked them to let me know their preferences as soon as convenient.

Because I had not received any response from Ms. Michaud, I telephoned her on July 19 at which time Ms. Michaud informed me she had retained a lawyer to act for the riding association. In a later telephone conversation, the lawyer in question advised me that Ms. Michaud and the Minister would be responding to Mr. Richard’s assertions by affidavits, which were subsequently received here

August 8.

Ms. Michaud, in her affidavit, confirms that the letter solicitating the purchase of tickets referred to by Mr. Richard in his correspondence had indeed been sent out to various individuals, corporations, enterprises, groups and organizations throughout the province including forestry related companies and individuals. It is her evidence that approximately 319 invitation letters were sent out and of this number approximately 73 of them were sent to forestry related companies and individuals.

Ms. Michaud further deposes that the names and addresses of invitees consisted of past and current members of the Madawaska-les-Lacs Progressive Conservative Association “as well as individuals, companies, enterprises and groups whose names and addresses had been obtained in our Association files.” She adds that the names and addresses of other invited parties, including forestry related companies and individuals, were gathered “from public records including the *New Brunswick Forestry Sector Groups* published by the New Brunswick Forest Products Commission in the year 2000”.

According to Ms. Michaud’s affidavit, Minister Volpé was not a member of the organizing committee for the dinner nor did he assist at any of the organizing committee meetings. He was, however, informed at meetings of the Board of Directors of the riding association as to the progress being made in the organization of the fundraising dinner.

Ms. Michaud admits in her affidavit that members of the organizing committee made follow-up telephone calls to the invitees, but added that they did so “in order to determine the number of food plates to be served at the dinner and the space necessary for the event and not specifically to find out how many tickets would be purchased by companies as may have been alleged by Mr. Bernard Richard in his affidavit and letter.”

Ms. Michaud finally asserts her belief that the organizing committee did not specifically target forestry related companies, groups or individuals “since only 73 out of 319 letters were sent to

forestry companies, groups or individuals”. She concludes her affidavit by stating that “[t]he dinner was not specifically organized for fund raising, but for a gathering of members and non-members of the Association and of various local groups and companies, some related to commercial, manufacturing, agricultural, forestry, municipal government sectors, as well as other outside Madawaska-les-Lacs groups and individuals including, but not restricted to forestry related enterprises.”

Minister Volpé, in his affidavit, deposes that although he is a member of the Board of Directors of the Madawaska-les-Lacs Progressive Conservative Association, he was not a member of the organizing committee for the dinner here in question nor did he attend any meetings of the committee. He adds that the dinner was organized “in continuation of similar dinners organized since [his] election as [a] Member of the Legislative Assembly . . . in 1995, also to raise funds for the association’s activities, but not solely for that purpose.”

The Minister’s affidavit in many instances repeats assertions made by Ms. Michaud in her affidavit. By way of example, the Minister deposes that the invitees to the dinner included past and current members of the Association as well as other individuals, companies, enterprises and groups whose names were gathered from public publications such as the *New Brunswick Forestry Sector Groups* published by the New Brunswick Forest Products Commission. He asserts that “all such publications used by the organizing committee were, at the time the letters of invitation were sent out, public publications.” The Minister also deposes that he did not provide insider information to the organizing committee.

The Minister concludes his affidavit by stating that “[t]he forestry related companies which were invited constituted approximately 23% of the invited guests to the dinner, a number which I suggest is not enough to constitute a target group, in a province where the economy is principally related to the development of the forest and its products.”

III ISSUES

Mr. Richard asserts that the Minister may have obtained privileged information and communicated that information to the benefit of his private interest and thereby breached subsections 5(1) and 5(2) of the *Members' Conflict of Interest Act*. Those subsections provide as follows:

5(1) *A member shall not use information that is obtained in his or her capacity as a member and that is not available to the general public to further or to seek to further the member's private interest or to further or seek to further another person's private interest.*

5(2) *A member shall not communicate information described in subsection (1) to another person if the member knows or reasonably should know that the information may be used for a purpose described in that subsection.*

In citing these subsections, Mr. Richard contends that the list of forestry related companies would not be information ordinarily available to the general public, but that as Minister of Natural Resources and Energy, Minister Volpé and his staff would be privy to such information. Therefore, Mr. Richard alleges privileged information may have been acquired and communicated to further the private interests of the Minister.

A second issue involves the possible application of section 6 of the Act in the circumstances of this case. That section provides as follows:

6 *A member shall not use his or her office to seek to influence a decision made by another person so as to further the member's private interest or to further another person's private interest.*

In relying upon this section, Mr. Richard asserts that the invitation to forestry related companies and individuals to purchase tickets to the Minister's fundraising dinner creates a reasonable perception in the minds of the public that favoritism could result.

IV ANALYSIS

A Section 5 Issue

It has been established that invitation letters in the form attached as schedules "A" and "B" hereto were mailed by a committee of the riding association to various individuals, corporations, enterprises, groups and organizations throughout the Province of New Brunswick.

Also, it has been admitted that these invitation letters were mailed to various companies and individuals involved in forestry related enterprises and, according to Ms. Michaud's affidavit, some of them hold Crown lands wood allocations throughout the province. This notwithstanding, Ms. Michaud deposes that the organizing committee for the fundraising dinner did not invite these companies and individuals "intentionally in violation of the *Members' Conflict of Interest Act*".

In his affidavit, Mr. Richard deposes that the list of forestry related companies would not be information ordinarily available to the general public; that as Minister of Natural Resources and Energy, Minister Volpé and his staff would be privy to such information; and that privileged information may have been acquired and or communicated to further the Minister's private interest.

In furtherance of the issue as to the availability of the directory of forestry related groups, I would report that a member of the legislative staff assigned to assist me went to the office of the Forest Products Commission unidentified and unannounced and was given a copy of the *New Brunswick Forestry Sector Groups* directory without any question. In light of this fact, and in the absence of any evidence to the contrary, I find that the directory of forestry related groups is not insider information, but rather is information ordinarily available to the general public.

As already noted, Minister Volpé has deposed in his affidavit that he was not a member of the organizing committee for the fundraising dinner nor did he attend any meetings of that committee. He further deposed that he did not use or communicate any information in contravention of section 5 of the Act to seek to further his or anyone else's private interest.

There being no evidence contradicting the facts deposed to by the Minister, I find that the Minister neither obtained nor communicated any information to the organizing committee for the fundraising dinner that was not available to the general public. I therefore conclude that the assertions by Mr. Richard that the Minister breached section 5 of the Act have not been established.

B Section 6 Issue

As previously noted, section 6 of the Act deals with the issue of influence. The section prohibits a Member from using his or her office to seek to influence a decision made by another person so as to further the Member's private interest. In discussing this section, I suggest that there are two questions that must be addressed:

1. Did the Minister use his office to seek to influence another person's decision?
2. If the answer to the first question is yes, was the attempt to influence another person's decision done to further the Minister's private interest?

I further suggest that the first question requires the determination of two factors. First, (1(a)), whether the Minister used his office, and secondly, (1(b)), whether the Minister used his office to seek to influence another person's decision.

1(a). Use of the Minister's Office

Although the solicitation letters here in issue were sent out on the letterhead of the Progressive Conservative Association of Madawaska-les-Lacs, these letters named the Minister as an invitor to a "benefit dinner" and referred to his status as the Minister of Natural Resources and Energy. While both the Minister and Ms. Michaud in their affidavits assert that the dinner was not organized solely for fundraising purposes, it is, I think, clear that the principal purpose of the dinner was the raising of funds for the activities of the riding association. Moreover, I think it is also clear that the Minister and his riding association were using his office as Minister in their attempt to raise funds. The dinner invitations themselves support these conclusions as they state that "[y]our presence at this dinner will grant you the opportunity to meet our MLA and Minister of Natural Resources and also to participate in our fundraiser."

1(b). Seek to Influence Another Person's Decision

The question as to the number of solicitation letters sent out and to whom they were sent, as well as the follow-up phone calls that were made to the invitees are, in my view, relevant to whether there was an attempt to influence. As already noted, approximately 319 invitations were sent out by the organizing committee, approximately 73 of which were sent out to forestry related companies and

individuals throughout New Brunswick, all of whom do business with or are affected by the Minister's department.

It should be noted that the issues in the present case are in many ways similar to those raised in the Weir-Blaney matter. In that case, the Progressive Conservative riding association for the Minister of Transportation sought cash donations from members and associate members of the Road Builders Association of the province, a practice that the riding association offered to discontinue; an offer that I recommended be accepted by the Members of the Legislative Assembly. In the present case, the Progressive Conservative riding association for the Minister of Natural Resources and Energy sought donations through the purchase of dinner tickets from forestry related enterprises and individuals. In each case, however, the basic question is the same. Does the fact that these two Ministers through their agents, the riding associations, by seeking financial contributions through donations or the purchase of dinner tickets, constitute the use of their offices to seek to influence the decision of those solicited?

More specifically, in this case, did the Minister seek to influence the forestry related enterprises and individuals to purchase a ticket or tickets in the hope or expectation that they would receive a more favorable consideration than if the enterprises or individuals did not do so? As stated previously in this Report, these enterprises and individuals do business with or are affected by the Minister's department.

It is to be noted that the solicitation letter here in issue was written for and on behalf of a member of the Executive Council, not a backbencher. Further, the solicitation letter was not confined to the Minister's constituency, but was circulated province-wide. Moreover, the invitees included forestry companies, which are involved in a competitive industry doing business with or are affected by government decisions and policies. A decision to contribute or ignore the fundraising letter had the potential to affect the livelihood of thousands of New Brunswickers.

Upon reviewing the submissions of Mr. Richard, Ms. Michaud and Minister Volpé, I have concluded

that the forestry related companies and individuals who were solicited, by letter and by phone calls, and invited to purchase tickets faced the potential to gain or lose depending upon their contributions or lack thereof. I hasten to point out, however, that it was not alleged nor was it established that any gain or loss had actually occurred. In the result, however, I find that the Minister, through his agent, the riding association, did use the Minister's office to seek to influence the decision of those forestry related companies and individuals who were invited to participate in his fundraising dinner.

2. *Further the Member's Private Interest*

Although I have answered yes to the first question posed, the second, too, must be examined and answered to resolve the issue being considered herein, namely, whether what occurred here constituted an attempt to influence another person's decision for the purpose of furthering the Minister's private interest.

In answering this second question, it must be noted that the term "private interest" appears in both sections 5 and 6 of the Act. The term "private interest" is defined in the negative in the definition section of the Act as follows:

"private interest" does not include an interest in a matter
(a) that is of general public application,
(b) that affects a person as one of a broad class of persons, or
(c) that concerns the remuneration and benefits of a member or an officer or employee of the Assembly;

As was pointed out in my Report to the Speaker concerning the Weir-Blaney matter, the definition of "private interest" contained in the New Brunswick Act is the same as the definition of that term as contained in the conflict of interest Acts in British Columbia (*Members' Conflict of Interest Act*, S.B.C. 1990 c.54, s.1); Ontario (*Members' Integrity Act, 1994*, S.O. 1994 c.38, s.1); and Alberta (*Conflicts of Interest Act*, S.A. 1991 c. C-22.1, s.1). All of these Acts, as does ours, define the term "private interest" in the negative or, in other words, what are not private interests.

In British Columbia, a committee of their Legislature, when considering a review of their *Members' Conflict of Interest Act*, recommended that their Act retain the present negative definition of "private

interest” rather than being amended to include a positive definition. The rationale for the committee’s recommendation was stated in these terms:

“It was agreed that the negative definition, supplemented by the growing body of rulings by Commissioners, provided enough clarity to the definition in terms of what is and what is not covered by the term “private interest.”

The “growing body of rulings by Commissioners” with respect to the term “private interest” referred to by the committee of the British Columbia Legislature may have been a reference to decisions such as that by Commissioner W.D. Parker in the Sinclair Stevens matter [Commission of Inquiry into the Facts of Allegations of Conflict of Interest Concerning the Honourable Sinclair M. Stevens. *Report*, 1987.] Although that decision was principally concerned with the release of budget information, Commissioner Parker also referred to “private political interests”. He wrote:

“It should be noted that the allegations contain as an element the suggestion that Mr. Stevens’ favourable treatment of Hyundai was motivated not only by considerations involving the potential political benefit that would accrue to him through having the parts plant placed in his own riding, but by his private business interests as well. If the allegation had related only to Mr. Stevens’ private political interests, I would have had grave doubts about whether, even if true, such an allegation was an allegation of conflict of interest into which I should inquire and report. This is a complex question that requires a careful assessment of the proper extent to which a minister of the Crown can act to forward his or her own partisan political ends. I do not find it necessary, however, to deal with the question of whether such a political interest, standing alone, would be sufficient to be considered as creating a conflict. It is because this assertion is combined with the allegation that Mr. Stevens was motivated by his private business interests as well that I shall deal with it as an allegation of conflict of interest.” [emphasis added]

In a subsequent decision, Mr. Robert C. Clark, the Ethics Commissioner for the Province of Alberta, (Mitchell-Klein, April 21, 1997), noted the distinction between “private interests” and “political interests”. He, too, expressed grave doubts as to whether the furtherance of political interests is the furtherance of a private interest. While not dealing expressly with political donations, Mr. Clark stated that he did not believe that the Alberta Legislature intended the *Conflicts of Interest Act* and the Ethics Commissioner to prevent Members from doing those things which they believe will maximize their public acceptance and hence their chance of being re-elected.

I applied similar reasoning in the Weir-Blaney matter and concluded that the term “private interest” as used in the New Brunswick *Members’ Conflict of Interest Act* did not, in that case, include a political interest or, more specifically, financial support for the desire for election or re-election to political office. I also expressed the opinion that in order to constitute a breach of the Act, a “private interest”, rather than a “political interest” must be involved. The raising of election funds in that case was, in my view, a “political interest” rather than a “private interest”.

Since writing that Report, I have come across the thoughtful and well reasoned decision of Commissioner E.N. (Ted) Hughes, then the Conflict of Interest Commissioner in British Columbia, in the Robin Blencoe matter, (August 16, 1993). I hasten to point out, however, that Commissioner Hughes’ decision was principally concerned with the question of an “apparent conflict of interest”, an interest which is included in the British Columbia *Members’ Conflict of Interest Act* in these terms:

2(2) For the purposes of this Act, a Member has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the member’s ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest.

As I noted in the Weir-Blaney matter, the New Brunswick *Members’ Conflict of Interest Act* does not contain any similar provision.

Nonetheless, in his Report Commissioner Hughes did expressly address the question of what constituted a “private interest”. Following an examination of court decisions, he concluded that a “private interest” is not limited to pecuniary interest or economic advantage. Moreover, it was Commissioner Hughes’ opinion that a “private interest” could include “any real or tangible benefit that enures to the personal benefit of the Member.” Commissioner Hughes went on to say that “[c]ampaign contributions and assistance, whether financial or otherwise, can, in my opinion, in some circumstances, be a “private interest”.” Commissioner Hughes concluded this portion of his Report with the following statement:

“It is to be emphasized, however, that a Member who has received a campaign contribution, financial or otherwise, must not, at least in some circumstances . . .

thereafter put him or herself in a position to confer an advantage or a benefit on the person who made that contribution.”

Thus, to summarize, there have been rulings by Commissioners under conflict Acts similar to our own, that the definition of “private interest” as used in those Acts, does not include “political interests”. It is Mr. Hughes’ opinion, however, that at least in British Columbia the issue of campaign contributions, in some circumstances, can be a matter of “private interest”. On reflection, I would concur with Mr. Hughes’ view and echo the statement by Commissioner Parker in the Sinclair Stevens matter that such issues are complex and, in my opinion, can only be resolved on a case by case basis.

The basic question here is whether the fact that the Minister of Natural Resources and Energy, through his agent, the organizing committee of his riding association, by seeking financial contributions through the purchase of dinner tickets by forestry related enterprises and individuals, constitute the use of the influence of his office to further his private interest?

We are again here dealing with the fundraising activities on behalf of a Cabinet Minister who has powers and responsibilities greater than those of a backbencher. What must be decided in such cases is whether the canvassing of donations from those who do business with the Minister’s department accrue to the Minister’s “private interest”, or does it simply raise a political and ethical question not covered by the present legislation.

I want to record that I agree with the proposition that fundraising is an important and legitimate part of the political process and that the raising of funds for political purposes does not generally constitute a breach of the *Members’ Conflict of Interest Act* as there is usually not a furtherance of a private interest. This notwithstanding, I have been persuaded that there may be special circumstances which could bring the Act into play. As one example of special circumstances, there is a serious question in my mind as to the propriety of a Minister’s riding association targeting a particular industry or specific individuals for political donations when that industry or those individuals do substantial business with the Minister’s department. To target a particular industry

or specific individuals in this manner may, in my opinion, amount to the furtherance of a Minister's private interest because it could put the Minister in a position to confer an advantage or a benefit on the persons who made the contributions.

The record will indicate that this present case is the second to come before this office involving similar issues. This despite my admonition that such fundraising practices as took place in the Weir-Blaney case ought not to be repeated. The evidence in the present case established that of 319 solicitation letters sent out to various individuals, corporations, enterprises, groups and organizations throughout the province, 73 or 23% of those letters went out to forestry related groups and individuals. In addition, in the present case, follow-up telephone calls were made to those invitees who did not initially respond to the solicitation letters. It is not clear whether these follow-up calls were made only to those in the forestry sector groups or to all companies and individuals who failed to respond to the initial invitation. In any event, it is important to note that in the present case the directory entitled *New Brunswick Forestry Sector Groups* contains a listing of over 100 enterprises and approximately 300 individuals.

Despite the troublesome number and percentage of invitations sent out by the Minister's riding association to forestry related groups and individuals, when one considers the number of such enterprises and individuals actually listed in the directory, as noted above, or engaged in that industry, I find Mr. Volpé's argument on the numbers issue compelling. As he put it in his affidavit, the number of invited guests from forestry related groups "is not enough to constitute a target group, in a province where the economy is principally related to the development of the forest and its products." Having accepted the Minister's argument on the numbers issue, I would conclude that the solicitation letters and follow-up phone calls were not, in this case, sufficient to establish a furtherance of the Minister's private interest.

Before disposing of this issue, I must address Mr. Richard's contention that the solicitation invitations and follow-up calls by Minister Volpé's riding association could create a reasonable perception in the minds of the public that favoritism may result. I have considered this submission

but must again point out that the New Brunswick *Members' Conflict of Interest Act* does not encompass “apparent” conflicts of interest. Only British Columbia has enacted legislation specifically addressing “apparent” conflicts of interest, although the Federal Conflict of Interest Code does refer to “potential or apparent” conflicts of interest. While not addressing the merits of whether our legislation should encompass “apparent” conflicts of interest, I do suggest that if we had such legislation in this province, the results in this case could have been different.

In any event, I have reluctantly concluded that the solicitation of funds by members of Minister Volpé’s riding association from forestry related enterprises and individuals did not, in this case, breach section 6 of the Act. The evidence presented to me does not, in my opinion, sufficiently establish the special circumstances I believe necessary to conclude that the numerous forestry related enterprises and individuals in the province were the target of the invitations sent out by the riding association.

V CONCLUSION

It is my opinion that the request for an investigation in this instance was neither frivolous or vexatious, nor was it made in bad faith. There were, in my opinion, sufficient grounds for an investigation.

It is my finding that Minister Volpé neither obtained nor communicated any information not available to the general public to the benefit of his private interest. I must therefore conclude that the assertion by Mr. Richard that the Minister breached section 5 of the Act has not been established.

It is the meaning and application of section 6 of the Act that was here again of principal concern to me. That section prohibits a Member from using his or her office to seek to influence the decision of another person so as to further the Member’s private interest.

The distinction between a “private interest” and a “political interest” has again been reviewed herein and I have expressed the opinion that there may be special circumstances when the canvassing for

campaign contributions can be a “private interest”. One such circumstance is, in my view, the targeting by a Minister’s riding association of a particular industry or group for political donations when that industry or group does substantial business with the Minister’s department. There was not, in my opinion, sufficient evidence in this case to substantiate that this had occurred in this instance or that section 6 had otherwise been breached.

I would respectfully remind those who read this Report that the *Members’ Conflict of Interest Act* is legislation enacted to promote public confidence in elected public officials as they conduct public business. As one Commissioner has written, “the heart and soul of the legislation is the restoration of public confidence in the conduct of the people’s business by politicians who have achieved electoral success.” In my opinion, while not established in this case, the targeting by a Minister’s riding association of a particular industry or group for political donations when that industry or group does substantial business with the Minister’s department is conduct that lessens the public’s confidence in their elected officials.

I would therefore end this Report by suggesting that however one might attempt to define the purpose of the *Members’ Conflict of Interest Act*, it is, I think, clear that the Act has been put in place to ensure that Members of the Executive Council and the Legislative Assembly should always adhere to the highest standard of ethics as they go about the people’s business. While there is no evidence before me that any written guidelines exist within the Executive Council concerning Ministers seeking political donations from companies or individuals who do business with their departments, clearly under the Act a Cabinet Minister is held to a higher standard of conduct than other Members of the Legislature. In this regard, I would respectfully remind the members of the Executive Council of the oath they took on assuming their offices: “I will not for gift, reward or promise thereof advise either the promotion of or hindrance of any matter to be treated of or done in the said council”.

In the result, having found that no breach of the Act has occurred, the question of sanctions does not arise.

The Honourable Stuart G. Stratton, Q.C.
Conflict of Interest Commissioner

September 28, 2001