



**SEVENTH ANNUAL REPORT  
OF THE  
CONFLICT OF INTEREST COMMISSIONER**

**November 1, 2007**

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Hon. Kathleen M. Casey, Speaker  
Legislative Assembly  
P.O. Box 2000  
Charlottetown, PE  
C1A 7N8

Dear Madam Speaker:

It is my honour and duty to submit to you the Seventh Annual Report of the Office of the Conflict of Interest Commissioner for the period July 1, 2006 to June 30, 2007.

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,

A. Neil Robinson  
Commissioner

## SEVENTH ANNUAL REPORT OF THE CONFLICT OF INTEREST COMMISSIONER

This is the seventh annual report of the Conflict of Interest Commissioner covering the period July 1, 2006 to June 30, 2007.

### Conflict of Interest Commissioner

The Conflict of Interest Commissioner is an *independent* officer of the Legislative Assembly responsible for the administration of the *Conflict of Interest Act*. The Office was created in 1999 as a part-time position with part-time clerical assistance provided by the Legislative Assembly Office. The Commissioner reports to the Legislature through the Speaker with respect to Annual Reports, Investigative Reports and all other matters within the Commissioner's jurisdiction under the *Act*.

The Commissioner is appointed on the recommendation of the Standing Committee on Legislative Management and ultimately by a resolution of the Legislative Assembly supported by at least two-thirds of the Members. Though the appointment is for a term of 5 years, the Commissioner may be removed by a resolution of the Legislative Assembly supported by at least two-thirds of the Members present in the Legislature at that time. Given the nature of the Commissioner's responsibilities, the continuing confidence of the Legislative Assembly is essential.

The Commissioner has four separate but related duties under the *Act*:

First, the Commissioner acts as a confidential advisor to Members, counselling each of them as to their obligations under the legislation. A Member may request written advice or recommendations on any matter respecting the Member's obligations under the *Act*. Where the Member discloses all known relevant facts to the Commissioner and the Commissioner provides advice which is followed by the Member, then the Member cannot be sanctioned under the *Act*. Information disclosed to the Commissioner is confidential and cannot be disclosed except with the Member's written consent, as required by law or otherwise in accordance with the *Act*.

Secondly, all Members must complete and file with the Commissioner a Private Disclosure Statement to disclose all assets, income, liabilities and financial interests held by the Member, the Member's spouse or the Member's dependants. The Commissioner is required to meet with each Member at least once annually, to review the Member's Private Disclosure Statement to ensure that the Member has made full disclosure as required by the *Act*.

Thirdly, in accordance with the *Act*, the Commissioner prepares a Public Disclosure Statement for each Member of the Legislative Assembly. These statements are filed with the Clerk of the Legislative Assembly and are available for public inspection.

The fourth role of the Commissioner is to undertake inquiries into alleged contraventions of the *Act*. Where an allegation is made that a Member has contravened

the *Act* within the previous two years, the Commissioner will investigate. Upon completion of the investigation, the Commissioner provides a report on the matter to the Legislature through the Speaker. If the Commissioner concludes that the Member is in breach of the *Act*, the Commissioner will recommend a sanction ranging from a reprimand, to suspension without indemnity and allowance, to expulsion from the House and declaration that the seat is vacant. The Commissioner may also recommend no sanction if the breach that occurred was trivial or committed by inadvertence or an honest error in judgment.

Where the Commissioner recommends that a penalty be imposed, the Legislative Assembly may approve the recommendation and impose the penalty or may reject the Commissioner's recommendation. If the Legislative Assembly rejects the recommendation, the Legislature may not deal with the matter in any further manner.

### **Conflict of Interest Legal Framework**

Conflict of Interest rules for the Legislative Assembly are found in three statutes: *Criminal Code of Canada*; *Legislative Assembly Act* and the *Conflict of Interest Act*.

The Criminal Code of Canada creates a number of offences which are often referred to as frauds upon government. Sections 118-122 are intended to prevent bribes and influence peddling of government officials. Bribery is the most extreme instance of conflict of interest and is a criminal offence. The Criminal Code of Canada makes bribery punishable by up to 14 years' imprisonment for a parliamentarian who accepts or attempts to obtain any form of valuable consideration for doing or omitting to do anything in his or her official capacity.

Sections 16-22 of the *Legislative Assembly Act* outline certain disqualifications which would prohibit an individual from becoming a member of the Legislation Assembly including convictions or a "corrupt practice of bribery or undue influence". Further, by virtue of section 31 of the *Legislative Assembly Act*, the Legislative Assembly may summarily inquire and punish breaches of privilege and contempt for a number of offences otherwise punishable under the Criminal Code including the acceptance of a bribe by a member of the Legislative Assembly.

The *Conflict of Interest Act* stipulates that a member of the Legislative Assembly must not be involved in a decision during the course of public duties with the knowledge that there is an opportunity to further the member's private interests or improperly to further another person's private interests. (Section 9)

The *Act* defines "private interest" as follows:

- “(g) ‘private interest’ does not include an interest in a decision,
- (i) that is of general application
- (ii) that affects a member or a person belonging to the member's family as one of a broad class of persons,
- (iii) that concerns the remuneration of benefits of a member or an officer or employee of the Legislative Assembly, or

(iv) where the interest is so remote or insignificant in its nature that a decision affecting the interest cannot reasonably be regarded as likely to influence the member.”

Other provisions of the *Act* provide that Members may not:

- (i) use insider information to further their own private interests, (section 10);
- (ii) use the influence of their office to obtain a decision to further their own private interests, (section 11);
- (iii) be a party to a contract with the Crown under which the Member receives a benefit, (section 14);

In addition, pursuant to section 17, Members of the Executive Council (Ministers) must not:

- (i) engage in any employment or in the practice of any profession;
- (ii) manage a business carried on by a corporation;
- (iii) hold an office or directorship, unless holding the office or directorship is one of the Member’s duties as a member of the Executive Council or the office or directorship is in a social club, religious organization or political party;
- (iv) hold or trade in securities, stocks, futures or commodities. (Section 18)

The *Conflict of Interest Act* establishes the principle that all Members are expected to perform their public duties and arrange their private affairs in a manner that avoids conflicts of interest thereby promoting public confidence in the integrity of the Legislative Assembly. The Act adopts a principle-based approach rather than a rules-based approach. The Act does not enumerate an exhaustive list of every possible instance that is to be prohibited. To do so, would create a too strict approach to controlling the exercise of extra private interests which in turn might conflict with personal rights thereby deterring potential candidates from seeking public office. The *Conflict of Interest Act* attempts to strike a balance by providing general principles that can be applied to the practical situations that a Member of the Legislative Assembly might encounter.

### **Fundamentals of the *Conflict of Interest Act***

To achieve the purpose of the *Conflict of Interest Act* there are three fundamental mechanisms to control conflicts of interest by Members of the Legislative Assembly.

First, the Act requires full disclosure. MLA’s are required to make full disclosure of their private interests as well as the private interests of the member’s spouse and dependants to the Conflict of Interest Commissioner. This Disclosure permits the Commissioner to assess any potential conflict on the part of the member in carrying out his or her legislative or Executive Council responsibilities. As provided in the Act, the Commissioner makes a public disclosure of the Member’s private interests. The Public Disclosure Statements are available to the public and are retained in the possession of the Clerk.

The second broad principle is that Members of the Legislative Assembly must reorganize their private interests or relationships that might impair their judgement in the discharge of their public duties. Such a reorganization may involve divestiture of certain assets or the use of a trust administered by a trustee.

The third broad principle is that of recusal or withdrawal which requires members of the Legislative Assembly to remove themselves from discussions or decisions on matters in which they have a private interest.

There are many other mechanisms to insure transparency and accountability of the Members of the Legislative Assembly. These include the Office of the Information and Privacy Commissioner and the Office of the Auditor-General. Additionally, there is daily Question Period and there are various Committees of the Legislature. Such mechanisms are in place to ensure that Members of the Legislative Assembly are subject to the public's close scrutiny in the discharge of their public duties.

### **Annual Filing Requirements**

On May 28, 2007, a general provincial election was held which resulted in a change of government and the election of nineteen (19) new Members of the Legislative Assembly. Pursuant to section 25(1) of the *Conflict of Interest Act* all elected Members are annually required to file a Private Disclosure Statement within sixty (60) days of being elected. On June 1, 2007 all Members were advised that the deadline to complete the process was August 13, 2007. Due to the numerous meetings required to reorganize personal affairs, consult legal and financial professionals, an extension of that deadline was granted to September 14, 2007.

I am pleased to report that the filing of all Statements of Disclosure and all required meetings occurred prior to the extended deadline.

When all issues had been discussed and resolved it became my duty to prepare the Public Disclosure Statements which were completed and filed with the Clerk of the Legislative Assembly. This completed the process for the First Session of the Sixty-Third General Assembly of the Province of Prince Edward Island. The Public Disclosure Statements are available for public viewing at the office of the Clerk of the Legislative Assembly.

Based on my review of the Private Disclosure Statements provided by the Members and the personal interviews conducted, I am satisfied that all Members of the Legislative Assembly of Prince Edward Island are in compliance with the *Act*.

### **Investigations**

The *Conflict of Interest Act* provides that a Member of the Legislative Assembly may request that the Commissioner give an opinion whether another Member has contravened the Act or a Parliamentary Convention of Prince Edward Island. To request such an opinion, the Member must have reasonable and probable grounds supported by affidavit evidence. Also, by Resolution, the Legislative Assembly may request that the Commissioner render an opinion as to whether a Member has contravened the Act or

Parliamentary Convention. Further, either the Premier or the Executive Council may ask the Commissioner for an opinion about whether a Member of the Executive Council has violated the Act or Parliamentary Convention of Prince Edward Island. Any such request or complaint must comply with section 28(7) of the Act which is in the following terms:

*“29(7) No matter may be referred to or considered by the Commissioner if more than two years have elapsed from the date of the alleged contravention of this Act or Prince Edward Island parliamentary convention.”*

During the period covered by this report the former Premier requested an investigation concerned the non-disclosure of shares held by the former Provincial Treasurer in a family-owned business. The decision arising from that investigation can be viewed at [www.assembly.pe.ca](http://www.assembly.pe.ca)

There were no other formal requests or applications from any Member, the Premier, the Executive Council or the Legislative Assembly to investigate any possible contravention of the *Conflict of Interest Act*.

## **Conclusion**

The Act provides that Members of the Legislative Assembly must serve the public when discharging their public responsibilities. Where there is a conflict between the public interest and the Member's private interest, it is the public interest that should prevail.

During the past year I have once again been impressed with the cooperation displayed by our elected representatives. Without exception, each Member has followed the advice or instructions provided by this Office.

In closing, I wish to again express my gratitude to the Clerk of the Legislative Assembly Mr. Charles MacKay and Ms. Cheryl Stead, Administrative Officer in providing much needed administrative support and advice.

October 30, 2007

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A. Neil Robinson  
Commissioner