

**Madam Speaker and
Members of the
Legislative Assembly**

ISSUE

During the November 20th 2002 Question Period the Leader of the Opposition tabled documents indicating that Cackleberry Farm Store Limited had received a Jobs for Youth grant issued from the Employment Development Agency (E.D.A.) which is a Crown Corporation reporting to the Department of Development. Further documents were tabled indicating that Mr. Philip Brown the Member for Cascumpec-Grand River is a shareholder in Cackleberry Farm Store Limited.

The Leader of the Opposition questioned whether this was patronage being given to a Government Member.

The Premier inferred that the allegation by the Leader of the Opposition was a suggestion that Mr. Brown was in breach of the *Conflict of Interest Act* R.S.P.E.I. 1988 chap. C-17.1. The Premier, later in the same sitting day, indicated in the House that he intended to request that the Conflict of Interest Commissioner investigate the matter. By a letter dated November 21st 2002 and tabled by the Hon. Speaker on November 22, 2002, the Premier requested the investigation.

PROCEDURE

An investigation or request for opinion under the *Conflict of Interest Act* can only occur in very limited circumstances. The statute must be scrupulously followed before any investigation can be initiated. This being the first time that an investigation has been requested it is appropriate to review the basics of the *Act*.

The Conflict of Interest Commissioner cannot independently initiate an investigation under the *Act* rather the Commissioner can only respond to requests for an investigation made in accordance with the *Act*.

There are four ways that an investigation or opinion may be requested under the *Conflict of Interest Act*

1) By Complaint of a Member pursuant to sub-section 28(1) and (2) which provides as follows:

28.(1) A member who has reasonable and probable grounds to believe that another member has contravened

(a) this Act; or

(b) Prince Edward Island parliamentary convention,

may request that the Commissioner give an opinion as to the matter.

(2) The request shall

(a) be in writing;

(b) set out the grounds for the belief and the contravention alleged; and

(c) be supported by affidavit evidence.

This section contemplates a formal accusation of wrongdoing by one Member against another Member. In this situation the person raising questions of patronage is the Leader of the Opposition and he has chosen not to initiate a complaint under this sub-section. Initially it was thought that the Premier could frame a complaint under this provision however to do so would place the Premier in the position of having to demonstrate that he "...has reasonable and probable grounds to believe that another member has contravened ...this Act...". Clearly that is not the Premier's purpose in requesting that the matter be

investigated.

2) By Resolution of the Legislative Assembly pursuant to sub-section 28(4) which provides as follows:

28(4) The Legislative Assembly may, by resolution, request that the Commissioner give an opinion as to whether a member has contravened this Act or Prince Edward Island parliamentary convention.

3) By Request of the Premier pursuant to sub-section 28(5) which provides as follows:

28(5) The Premier may request that the Commissioner give an opinion as to whether a Minister has contravened
(a) this Act;
(b) any additional written guidelines established by the Premier for the guidance of Ministers; or
(c) Prince Edward Island parliamentary convention.

This section refers to Ministers only, it does not apply to private Members of the Legislative Assembly. Mr Brown is not a Minister and accordingly this section could not apply to him.

4) By Request of a Member pursuant to section 7 which provides as follows:

7(1) A member may, in writing, request that the Commissioner give an opinion and recommendations on any matter respecting the member's obligations pursuant to
(a) this Act,
(b) any additional written guidelines established by the Premier for the guidance of Ministers; or
(c) Prince Edward Island parliamentary convention.

(2) In response to a request made pursuant to subsection (1), the Commissioner
(a) may make any inquiries the Commissioner considers appropriate; and
(b) shall provide the member with a written opinion and recommendations.

(3) The opinion and recommendations of the Commissioner are confidential, but may be released by the member or with the member's written consent.

In the interests of giving effect to the Premier's request and to have the matter resolved, Mr Brown has requested by correspondence dated November 24th 2002 that the Commissioner provide an opinion concerning the issue stated above. Mr Brown has also directed that the opinion be delivered to the Speaker of the Legislative Assembly and be immediately tabled by the Speaker in the House.

CONFLICT OF INTEREST ACT

The applicable section of the *Conflict of Interest Act* is section 14 which is in the following terms:

"14 (1) No member shall knowingly be a party to a contract with the Government of Prince Edward Island under which the member receives a benefit.

(2) No member shall have an interest in a partnership or in a private company that is a party to a contract with the Government of Prince Edward Island under which the partnership or company receives a benefit. (Emphasis my own.)

(3) Subsections (1) and (2) do not apply to a contract that existed before the member's election to the Legislative Assembly, but they do apply to its renewal or extension.

(4) Subsection (2) does not apply if the Commissioner is of the opinion that the interest is unlikely to affect the member's performance of the member's duties. (Emphasis my own.)

(5) Subsection (2) does not apply if the member has entrusted the interest to one or more trustees on the following terms:

- (a) the provisions of the trust shall be approved by the Commissioner;*
- (b) the trustees shall be persons who are at arm's length with the member and approved by the Commissioner;*
- (c) the trustees shall not consult with the member with respect to managing the trust properly, but may consult with the Commissioner;*
- (d) annually, the trustees shall give the Commissioner a written report stating the nature of the assets in the trust, the net income of the trust for the preceding year and the trustees' fees, if any;*
- (e) the trustees shall give the member sufficient information to permit the member to submit returns as required by the Income Tax Act (Canada) and shall give the same information to Revenue Canada."*

There is no suggestion that Mr. Brown was personally a party to a contract with the Government of Prince Edward Island under which he received a benefit. Therefore the absolute prohibition found in section 14(1) has no application. Section 14(3) likewise has no bearing as there is no suggestion that Mr. Brown is benefiting from a pre-existing contract. Mr. Brown's interest in Cackleberry Farm Store Limited has not been placed in trust and accordingly sub-section 14(5) is not applicable.

Sub-sections 14(2) and (4) are the provisions applicable to the issue raised by the Leader of the Opposition.

PERSONS INTERVIEWED

Mr Philip Brown, MLA for Cascumpec-Grand River
Ms. Corinne Cameron, Prince County Jobs for Youth Co-ordinator
Ms Mary Hunter, Special Projects Co-ordinator, Employment Development Agency
Ms Margaret Marsden, co-owner of Cackleberry Farms Limited
Ms. Freda Perry, Assistant Manager Evangeline Credit Union

Mr. Edison Shea, Director of Corporations provided information
Mr. Allan Marsden was out of the province and was not interviewed.
Neither Premier Patrick Binns nor Mr. Ronald MacKinley, Leader of the Opposition had any further information to provide concerning this matter.

FACTS

Mr Philip Brown, the Member for Cascumpec-Grand River confirmed that he is a co-owner with Mr. Allan Marsden of a company known as "Cackleberry Farm Store Limited". Mr Allan Marsden is also the husband of Ms. Maureen Marsden with whom he is a co-operator of a second company known as "Cackleberry Farms Limited".

Mr Brown had previously disclosed his interest in Cackleberry Farm Store Limited as he is required

to do pursuant to the *Conflict of Interest Act*. This interest is revealed in his Public Disclosure Statement filed with the Clerk of the Legislative Assembly. Cackleberry Farm Store Limited operates a retail outlet in Gateway Village in Borden-Carlton. The company sells ice cream, produce, giftware and souvenirs.

Mr Brown advised that prior to his becoming an MLA his company Cackleberry Farm Store Limited had received Jobs for Youth funding from the EDA however since his election in April 2000 his company has not made any further application for similar assistance.

Mr Brown surmised that the EDA documentation must have mistakenly referred to "Cackleberry Farm Store Limited" when it was really referring to "Cackleberry Farms Limited".

Ms Corinne Cameron, Jobs for Youth Co-ordinator for East Prince advised that no application for assistance was received from Cackleberry Farm Store Limited rather she dealt only with Cackleberry Farms Limited. She advised that she took the application for assistance from Ms Maureen Marsden on behalf of Cackleberry Farms Limited.

The EDA "Application Form Private Sector Employers" was made out in the name "Cackleberry Farm Ltd" of RR#1 Richmond. Cackleberry Farms Limited operates a farming business in Grand River, Richmond raising fruit and vegetables. The application was for two students to be farm labourers.

Ms Cameron advised that she forwarded the application to head office in Charlottetown and sometime later the contract was sent to her and it was then forwarded by her to Ms Maureen Marsden for signing. Only then was it discovered by Ms Marsden that the company name was in error. Rather than "Cackleberry Farms Limited" the contract was in the name of "Cackleberry Farm Store Limited".

Ms Cameron advises that she had never heard of a company named "Cackleberry Farm Store Limited" but rather than send the erroneous contract back to head office in Charlottetown for correction, either she

or Ms Marsden crossed out "Store Limited" on the contract leaving only "Cackleberry Farm". The amended contract was signed and returned to head office for processing.

As Ms Cameron was not aware of the significance of the different corporate name, she did not draw the amended company name to anyone's attention in Charlottetown. As a consequence the processing of the funding assistance continued in the name of "Cackleberry Farm Store Limited"

Ms Cameron confirmed that Mr Philip Brown was not involved in any way with the Jobs for Youth application of Cackleberry Farms Limited.

After the student employment ended, Ms Marsden on behalf of "Cackleberry Farms Limited" submitted a claim for reimbursement for the wages paid to the student during the summer. The EDA "Jobs for Youth Program Claim For Reimbursement" form was completed by Ms Marsden on behalf of Cackleberry Farms Limited, RR#1, Richmond.

Because no correction had occurred to head office records, the reimbursement cheque dated September 28, 2001 in the amount of \$772.06 was wrongly made payable to "Cackleberry Farm Store Limited" and forwarded to its address in Borden-Carlton.

Ms Marsden advised that because of the fact that her husband was co-owner with Mr Brown she was able to receive the funds that had been sent in error to Cackleberry Farm Store Limited.

Ms Freda Perry of the Evangeline Credit Union advises that the September 28, 2001 cheque made payable to Cackleberry Farm Store Limited in the amount of \$772.06 was deposited to the account of Cackleberry Farms Limited.

Despite all the administrative errors and oversights by EDA, the monies eventually ended up in the

right hands.

Ms Mary Hunter, Special Projects Manager, Employment Development Agency advises that EDA records for 2001 do not indicate any involvement whatsoever by Mr Brown in the project involving Cackleberry Farms Limited.

Ms Hunter confirms that various officials at EDA committed clerical or administrative errors that perpetuated the initial error of entering the wrong company name. Ms Hunter's review of the file confirms and acknowledges the EDA error that Cackleberry Farm Store Limited was wrongly listed as receiving Jobs for Youth funding.

Ms. Hunter advises that various new procedures have been introduced to the system which are meant to remedy many of the problems identified in this file as well as the observations contained in the Auditor-General's Report of 2002. The adequacy of those initiatives are not within my jurisdiction to comment upon.

CONCLUSION

I am satisfied that Cackleberry Farm Store Limited has been mistakenly listed as a 2001 recipient of Jobs for Youth assistance from the EDA. Mr. Brown is therefore not in breach of section 14(2) of the *Conflict of Interest Act*.

Parenthetically, it should be noted that there is no prohibition on a Member having an interest in a partnership or in a private company that is party to a contract with the provincial government under which that partnership or company receives a benefit. Section 14(2) of the Act provides that having such an interest is allowable "...if the Commissioner is of the opinion that the interest is unlikely to affect the Member's performance of the member's duties."

Dated November 26th, 2002

A. Neil Robinson
Conflict of Interest Commissioner