

Issue

By correspondence dated February 27, 2003, Mr. Wilbur MacDonald, the Member for Belfast-Pownal Bay and Mr. Eric Hammill, the Member for Borden-Kinkora requested an opinion as to whether they are in breach of section 14(6) of the *Conflict of Interest Act* R.S.P.E.I. 1998 chap. C-17.1, by reason of being in receipt of benefits payable under the Pension Plan for Members of the Legislative Assembly Province of Prince Edward Island.

Procedure

Messrs. MacDonald and Hammill requested that I conduct an investigation of this matter pursuant to section 7 of the *Act* 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.*

Background

Both Messrs. MacDonald and Hammill have recently attained the age of 69 years and as a consequence have been advised by the delegated administrator of the MLA Pension Plan that they are obliged to receive their retirement benefits.

Recently, both members became concerned that their receipt of MLA pension benefits may place them in breach of section 14(6) of the *Conflict of Interest Act*.

Conflict of Interest Act

The applicable subsections of the *Conflict of Interest Act* are subsections 14(1) and 14(6) which are 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.

(6) Subsection (1) does not prohibit a member from receiving benefits pursuant to the Civil Service Superannuation Act R.S.P.E.I.1988, Cap. C-9, the Teachers’ Superannuation Act R.S.P.E.I.1988, Cap.T-1 or any other Act or pension plan that provides for retirement benefits funded wholly or partly by the Government of Prince Edward Island except a pension resulting from prior service in the Legislative Assembly.” (Emphasis my own)

At present both Mr. MacDonald and Mr. Hammill are sitting Members of the Legislative Assembly

and are in receipt of retirement benefits payable under the Pension Plan for members of the Legislative Assembly Province of Prince Edward Island.

The Investigation

During my investigation I received information or documentation from the following individuals;

- Mr. Wilbur McDonald, MLA for Belfast-Pownal Bay
- Mr. Eric Hammill, MLA for Borden-Kinkora
- Mr. Terry Hogan, Manager of Employee Benefits of the Public Service Commission of the Province of Prince Edward Island and delegated administrator of the MLA Pension Plan.
- Mr. Charles MacKay, Clerk, Legislative Assembly, Province of Prince Edward Island

Facts

Eric Hammill, the member for Borden-Kinkora and Mr. Wilbur MacDonald, the member for Belfast-Pownal Bay have attained the age of 69 years.

Both Messrs. MacDonald and Hammill advise that they had received express direction from the delegated administrator of the MLA Pension Plan that by reason of turning age 69, they were each obliged to begin receipt of retirement benefits and that no option existed.

Mr. Terry Hogan, delegated administrator of the MLA Pension Plan confirms that he did inform each of the members in that manner. He further advised that those were the instructions that he had received from the Indemnities and Allowances Commission, administrator of the MLA Pension Plan.

Mr. Hogan advised that the reason that both Messrs. MacDonald and Hammill were obliged to start drawing their pension was by virtue of the text of the Pension Plan for Members of the Legislative Assembly Province of Prince Edward Island as amended and restated on April 1, 2001.

MLA Pension Plan

The Legislative Assembly has assigned responsibility for reviewing and determining remuneration and benefits paid to members of the Legislative Assembly to an independent commission known as the Indemnities and Allowances Commission. This is provided for in section 46 of the *Legislative Assembly Act R.S.P.E.I. 1974, CAP.L-7* which provides as follows :

- “46. (1)*The Speaker, after consultation with such persons as the Speaker considers appropriate, shall appoint an independent commission to be known as the Indemnities and Allowances Commission to review and determine the remuneration and benefits to be paid to the members of the Legislative Assembly, Ministers, the Speaker, Deputy Speaker, the Leader of the Opposition, Government House Leader, Opposition House Leader, Leader of a Third Party, Government Whip and Opposition Whip.*
- (2)*The Commission shall be comprised of three independent, neutral and knowledgeable persons from private life.*
- (3)*The persons appointed pursuant to subsection (1) shall serve until the*

dissolution of the Assembly during which they are appointed, or for a maximum of five years, and are eligible for reappointment.

(4) On the resignation, inability to act or death of a commissioner, the Speaker shall appoint a replacement.

(5) The persons appointed pursuant to subsection (1) have all the powers and privileges and immunities of a commissioner pursuant to the Public Inquiries Act R.S.P.E.I.1988, Cap.P-31.

(6) The Commission, annually and at such other times as the Speaker may request, shall carry out a review of remuneration and allowances paid to the persons referred to in subsection (1), and shall on or before the first day of December of each year deliver a report to the Speaker which shall be final and binding.

(7) The Speaker shall, within five sitting days of the commencement the Legislative Assembly next following the receipt of the report, cause a copy thereof to be laid before the Legislative Assembly.

*(8) The report shall, from such date as may be specified therein, have effect for the purposes of determining the remuneration and allowances of the persons referred to in subsection (1) **as if the provisions contained in it had been enacted by the Legislative Assembly.** (Emphasis added)*

(9) For the purposes of this section, remuneration and benefits include salaries, indemnities, allowances and pension benefits.1994,c.34,s.5;benefits 1997,c.28,s.3.”

The Indemnities and Allowances Commission has the authority and discretion to establish a pension plan for the members of the Legislative Assembly and in fact have done so in conformity with the *Income Tax Act* and Regulations governing registered pension plans.

Because the MLA Pension Plan is a “registered pension Plan” within the meaning of the federal *Income Tax Act* certain rules must be followed, one of which is that contained in regulation 8502 subsection (e):

“(e) the plan

(i) requires that the retirement benefits of a member under each benefit provision of the plan commence to be paid not later than

(A) the end of the calendar year in which the member attains 69 years of age

or

(B) in the case of benefits provided under a defined benefit provision such later time as is acceptable to the Minister, but only if the amount of benefits (expressed on an annualized basis) payable does not exceed in the amount of benefits that would be payable of payments of the benefits commenced at the time referred to in clause (A)...”

Sub-clause B is not applicable because the MLA Pension Plan benefits are indexed on each

succeeding January 1 and if allowed to continue to accrue, the benefits would become greater as they are indexed. Consequently, the payments that would begin once a member retired at an age greater than age 69 would be greater than the payment that would have been payable in the calendar year that the member turned 69. Therefore, subclause B above is not applicable and subclause A must be adhered to. As a result pension payment benefits must commence no later than the end of the calendar year that a member turns 69 years of age.

Mr. Hogan confirmed that because the MLA Pension Plan is a “registered pension plan” under the federal *Income Tax Act*, participants in the MLA Pension Plan whether sitting or former Members must begin receiving benefits no later than age 69.

Mr. Hogan advises that the MLA Pension Plan has a registered component and a non-registered component with both components being combined into one plan text. The total of which makes up the benefits to be paid to a member of the Legislative Assembly. Under the current plan, both benefit components are to be paid concurrently.

Concerning the Basic Retirement Pension component, Article 6.03 of the Pension Plan text provides as follows:

“A Participant, who continues to be a Legislative Member beyond the Normal Retirement Date, shall continue to contribute to the Plan until the Postponed Retirement Date. In this event the Participant’s pension will be calculated and payable as outlined in Article 6.01, with that article being read as if the words Normal Retirement Date were replaced by the Postponed Retirement Date.”

Notwithstanding anything to the contrary contained herein if a Participant remains a Legislative Member beyond December 31 of the year in which the Participant attains age 69, the Participant’s pension contributions shall cease and pension payments under Part II shall commence no later than the last day of the calendar year in which the Participant attains that age.” (Emphasis added)

Similarly, for the Supplemental Retirement Benefits component, the MLA Pension Plan provides in Article 13.04 as follows:

“Subject to 13.03 a Participant who continues to be a Legislative Member beyond the Normal Retirement Date, shall continue to participate in the Plan until the Postponed Retirement Date. In this event, the Participant’s pension will be calculated and payable as outlined in Article 13.07.”

Notwithstanding anything to the contrary contained herein, if a Participant remains a Legislative Member beyond December 31 of the year in which the Participant attains age 69, pension payments under part III shall commence no later than the last day of the calendar year in which the Participant attains that age.” (Emphasis added)

Therefore, both pension benefit components under the MLA Pension Plan shall be paid beginning no later than the last day of the calendar year in which the Participant attains the age of 69.

In addition to the Pension Plan text, the Summary Booklet titled “New MLA Plan Text” effective April 1, 2001 was distributed to each member of the Legislative Assembly and provides at page 11 as follows:

“Income Tax Requirements re Age 69

A Plan Participant may not postpone commencement of pension payments beyond the last day of the calendar year in which the Participant attains age 69.

A Participant's pension contributions shall cease when pension payments commence."

Clearly by virtue of the tabling of the Pension Plan on the December 4, 2001 and the distribution of the Summary Booklets the Legislature's intention was for its members, upon reaching the age of 69 years, to receive retirement benefits in addition to any indemnity or salary as a sitting member of the Legislative Assembly.

Mr. Hogan advises that the *Income Tax Act* does not require a Participant in a registered pension plan to retire before receiving benefits, however once a member begins to receive their pension benefits at age 69 they cease to accrue any further pension benefits.

Mr. Hogan further advises that he has conducted an informal survey of other Canadian jurisdictions and found that most other provinces have similar regimes to that of this province. In those jurisdictions current legislators begin receiving their benefits at age 69 in addition to their salary as members of their legislature. In the jurisdiction of Newfoundland and Labrador their plan is not a "registered pension plan". In Alberta and British Columbia no similar MLA pension plan is in existence. Federal Members of Parliament do not begin to receive pension benefits at age 69 rather members of Parliament are allowed to continue to accrue pension benefits until they are defeated in a subsequent election or retire from political life.

Existing Legislation Conflict

Section 14(6) of the *Conflict of Interest Act* has the effect of prohibiting a member of the Legislative Assembly from receiving pension benefits that he is obliged by virtue of the MLA pension plan to receive. In my view, this anomaly has been created because the Legislature did not contemplate the circumstances that are presented to Messrs. MacDonald and Hammill.

Apparently, the Legislative Assembly when enacting section 14(6) of the *Conflict of Interest Act* was attempting to prevent "double dipping" of a member receiving not only an indemnity or salary as an MLA, but also a pension benefit from a previous Legislative Assembly service.

The Legislature did not contemplate that a sitting Member of the Legislative Assembly would be obliged by reason of age to receive retirement benefits.

The *Legislative Assembly Act* by subsection 46(8) provides that the Report of the Indemnities and Allowances Commission "determining the remuneration and allowances" of MLA's once tabled before the Legislative Assembly has the same affect " ... **as if the provision contained in it had been enacted by the Legislative Assembly**".

The Pension Plan for the Members of the Legislative Assembly Province of Prince Edward Island was tabled in the Legislative Assembly on December 4, 2001. The provisions of the plan as stated in Article 6.03 and Article 13.04 are in contravention of section 14(6) of the *Conflict of Interest Act*.

The independent commission created by the Legislative Assembly to review and set indemnities and allowances has in fact created a plan which is in contravention to the *Conflict of Interest Act*.

The MLA Pension Plan is like any registered retirement savings plan (RRSP) and is a "registered

pension plan” under the *Income Tax Act*. All Canadians who participate in such plans must begin receiving benefits in the year they turn 69. In this instance, Messrs. Hammill and MacDonald are members of a broad class of Canadians who are obliged to begin receiving pension benefits solely by reason of attaining 69 years of age. Section 14(6) of the *Conflict of Interest Act* does not take into account the obligation of all Canadians participating in registered pension plans to begin drawing them in their 69th year. This anomaly must be addressed by the Legislature to make section 14(6) of the *Conflict of Interest Act* conform and be in accord with the provisions of the *Income Tax Act* and the MLA Pension Plan.

Conclusion

I am satisfied that the requirement for Messrs. Hammill and MacDonald to receive pension benefits under the MLA pension plan is a direct result of the general application of the *Income Tax Act* of Canada. I am also satisfied that this affects both members by reason of them belonging to a broad class of Canadians. They have done nothing to further their own private interests nor is their ability to act as members of the Legislative Assembly compromised in any way.

Recommendation

On the information provided it is my recommendation that the *Conflict of Interest Act* be amended to conform to the requirements of the *Income Tax Act* and the MLA Pension Plan.

March 10, 2003

A. Neil Robinson
Conflict of Interest Commissioner