

**Office of the Conflict of Interest Commissioner
Province of Prince Edward Island**

**Report to the Premier of the Investigation into the Involvement of Hon. Mitch
Murphy, Provincial Treasurer and Murcon Construction Limited**

Mr. Speaker and Members of the Legislative Assembly

Background:

On November 23, 2006, Ms. Suzanne Hastings-James wrote to the Conflict of Interest Commissioner (hereinafter referred to as the "Commissioner") to initiate a formal conflict of interest complaint against the Honourable Mitch Murphy (hereinafter referred to as "Minister Murphy").

In response, Ms. Hastings-James was advised that the *Conflict of Interest Act* R.S.P.E.I. 1988 Chap. C-17.1 (hereinafter referred to as the "Act") does not provide any means for a private citizen to initiate complaints against Members of the Legislative Assembly. Ms. Hastings-James was provided with a copy of section 28 of the *Act* which states, in part, that requests for an opinion as to whether a member has contravened the Act may be made by another Member, the Premier, or the Legislative Assembly as a whole.

By letter dated, December 5, 2006, Ms. Hastings-James advised the Premier of her complaint and requested that the matter be investigated by the Commissioner.

By letter dated January 12, 2007, the Premier requested that the Commissioner provide an opinion concerning the relationship between Minister Murphy and a private company known as Murcon Construction Limited. The request was made pursuant to section 28(5) of the *Act*, which is in the following terms:

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.*

By letter dated January 12, 2007, Minister Murphy requested that the Commissioner provide an opinion concerning his involvement with Murcon Construction Limited. In that correspondence Minister Murphy acknowledged that he is a director and shareholder in the company and has been since June of 1986 and that he had not disclosed his involvement with the company as required by the *Act*.

The Minister indicated in part as follows:

".....as a Member of the Legislative Assembly of Prince Edward Island, I am fully aware of my responsibilities pursuant to the Conflict of Interest Act. Although I received no benefit and was not active in the company, my involvement in the company should have been disclosed. I regret that it was not and I take full responsibility for this omission....."

Issue:

To conduct an investigation to determine the circumstances surrounding Minister Murphy's relationship and involvement in Murcon Construction Limited; determine, whether any conflict of interest was created or has occurred and make a report.

Persons Interviewed:

Ms. Suzanne Hastings-James, Professor, University of Prince Edward Island;
Mr. Earle Murphy, President, Murcon Construction Limited;
The Honourable Mitch Murphy, Provincial Treasurer;
Ms. Beth MacKenzie, MLA for Park Corner-Oyster Bed;
Mr. Frank Driscoll, retired Chief Sheriff;
Mr. Ron Dowling, Chief Sheriff;
Mr. Philip LeBlanc, Sheriff, Prince County;
Mr. Edison Shea, Director of Corporations for the Province.
Neither Premier Pat Binns nor Mr. Robert Ghiz, Leader of the Opposition, had any further information to provide concerning this matter.

Facts:

In 1976, Murcon Construction Limited was incorporated and from that date carried on a residential construction and carpentry business. The initial shareholders were Earle Murphy, Donna Murphy, Pope Connick, and Joan Connick.

In 1978, Pope Connick and Joan Connick left the company and transferred their shares to Earle Murphy, Donna Murphy, and their son Ronald Murphy. As of June 1986, the shareholdings in the company were as follows: Earle Murphy - 2,497 common shares; Donna Murphy - 2 common shares; and Ronald Murphy - 1 common share.

On August 3, 1987, Mitch Murphy was added as a shareholder and director of the company. As of that date, the shareholdings in the company were amended to the following: Earle Murphy - 498 common shares; Donna Murphy - 2 common shares; Ronald Murphy - 1,000 common shares; and Mitch Murphy - 1,000 common shares. That share structure has remained to the present date.

From 1978 until recently, Earle Murphy was the principal individual who managed, directed and carried on the residential construction and carpentry business of Murcon Construction Limited.

Mr. Earle Murphy advised that he is now unclear as to why he made himself a minority shareholder in his company. He no longer recalls why he added his son Mitch Murphy as a shareholder and made him a co-equal majority shareholder with his other son Ronald. Mr. Earle Murphy believes that the reason had to do with whether he could draw unemployment insurance benefits if he were a majority shareholder in the company that employed him. Mr. Earle Murphy confirms that it was at his request that

his son Mitch Murphy became a shareholder and director in the company. He further advised that his son Mitch Murphy took no part in the company's business either by way of investment, labour or profit.

The Annual Returns for Murcon Construction Limited were filed with the Registrar of Companies from 1987- 2003 inclusive. There have been no Annual Returns filed on behalf of the company for any year since 2003.

From 1986 until his election as an MLA in November of 1996, Mitch Murphy took no part in Murcon Construction Limited. During that period he was employed as a teacher, first for three (3) years in Alberta and later with the Western School Board of Prince Edward Island.

Upon election to the Legislature in 1996, Mitch Murphy became subject to the conflict of interest legislation then existing. Minister Murphy acknowledges that he did not disclose that he had shares in Murcon Construction Limited at that time. His explanation for his non-disclosure is that it did not occur to him.

In 1999, the present *Act* came into effect. The current Commissioner was appointed on December 10, 1999. Since 1999, Minister Murphy has been subject to the *Act* which governs the actions of all Members of the Legislative Assembly. Annually, since the spring of 2000, Minister Murphy has filed Private Disclosure Statements or Revised Private Disclosure Statements as required by the *Act*. In addition, semi-annually the Minister receives a Statement of Material Change to allow for amendments to the Private Disclosure Statement. The purpose of these statements is to identify all private interests of the Minister. Minister Murphy did not disclose his shareholdings and directorship in Murcon Construction Limited in any of these statements.

On August 22, 2005, Ms. Hastings-James obtained a default judgment in Small Claims Court against Murcon Construction Limited in the amount of \$6,066.19. This judgment arose out of work done to her home by the company. Her efforts to have the judgment satisfied were unsuccessful.

By correspondence dated October 17, 2005, Ms. Hastings-James wrote to Murcon Construction Limited addressing each of the shareholders, including Minister Murphy. Ms. Hastings-James recalls that she addressed the letter to the company's address. Minister Murphy denies that he received a copy. His father Earle Murphy advised that he did not tell his son, the Minister, about the matter because "the matter did not involve him".

On December 29, 2005, Ms. Hastings-James wrote to the Chief Justice of the Supreme Court of Prince Edward Island regarding her frustration with the Small Claims Court process. She sent copies of her letter to a number of people, including all Members of the Legislative Assembly. Minister Murphy does recall this letter and did note that Murcon Construction Limited was named in the letter. Minister Murphy advises that although the copy of the letter did not identify him as a shareholder, it did remind him

that he was a shareholder of the company. Minister Murphy took no action to contact the Commissioner to amend his private disclosure forms as it was his understanding at the time that his father had wound down his business and that the company was dissolved.

On February 14, 2006, Ms. Hastings-James again wrote to the Chief Justice, copying amongst others the Members of the Legislative Assembly. Once again, only the company name was mentioned. No mention was made that Minister Murphy was a shareholder. The Minister does not recollect receiving a copy of this letter.

During the spring of 2006, Ms. Hastings-James contacted her MLA, Ms. Beth MacKenzie, to enlist her aid in bringing her concerns with the Small Claims Court process to the attention of the Attorney General. A meeting with Ms. MacKenzie and the Attorney General was arranged at which Ms. Hastings-James' situation involving Murcon Construction Limited was discussed. Although Ms. MacKenzie was advised by Ms. Hastings-James that Minister Murphy was a director of Murcon Construction Limited, Ms. MacKenzie did not mention that fact to the Attorney General as she presumed that Minister Murphy's directorship in the company had been placed in trust in accordance with the *Act*.

Ms. MacKenzie then advised Ms. Hastings-James that her concerns about the Small Claims Court process had been brought to the attention of the Attorney General. Ms. Hastings-James did not request Ms. MacKenzie to do anything further concerning the matter. Ms. MacKenzie did not inform Minister Murphy of her conversations with Ms. Hastings-James.

Mr. Edison Shea, Director, Consumer Corporate and Insurance for the Province advises that Murcon Construction Limited has not filed Annual Returns in respect of the years ending December 31, 2004; December 31, 2005 and December 31, 2006. Mr. Shea advises that when a company is in arrears in filing its Annual Returns for one year it may be dissolved by his office pursuant to the *Companies Act*. Mr. Shea confirms that as of the present date Murcon Construction Limited has not been dissolved.

Analysis:

This matter arose out of a dispute between Ms. Suzanne Hastings-James and Murcon Construction Limited, a residential construction and carpentry company operated by Earle Murphy the father of Minister Murphy.

The dispute ultimately resulted in Ms. Hastings-James obtaining a judgment against Murcon Construction Limited. Frustrated in being unable to collect on her judgment, Ms. Hastings-James brought her concerns about the Small Claims Court process to the Chief Justice of the Supreme Court; all Members of the Legislative Assembly; and through her MLA to the Attorney General. All to no avail.

During the course of her dispute with Murcon Construction Limited, Ms. Suzanne Hastings-James became aware that Minister Murphy was a shareholder and director of Murcon Construction Limited.

On November 23, 2006 Ms. Hastings-James wrote to the Commissioner to initiate a formal conflict of interest complaint against Minister Murphy. In response, the Commissioner advised that conflict of interest complaints or investigations cannot be initiated by private citizens but only by another Member, the Premier or the Legislative Assembly as a whole. Subsequent to that advice, Ms. Hastings-James contacted the Premier to request that he initiate an investigation under the *Act*. The Premier determined that the information provided warranted an investigation to determine whether the *Act* had been contravened. On January 12, 2007 the Premier requested that the Commissioner investigate and report on the matter.

Ms. Hastings-James' complaint against Minister Murphy is, as she stated in her correspondence of November 23, 2006:

“ . . . I feel that as Provincial Treasurer of the province, he is in conflict of interest in not claiming this liability in his personal disclosure statement and in not paying his debts as ordered by the Court of this province. . . “

With respect to the second part of her complaint, Ms. Hastings-James was advised that the dispute with respect to the judgment debt is a matter for the Courts to determine and is beyond the Commissioner's jurisdiction under the *Act*. The judgment was obtained against Murcon Construction Limited, not against the shareholders either jointly or severally. The debt owed by Murcon Construction Limited is enforceable against the company and not against the shareholders personally, including Minister Murphy.

All Members of the Legislative Assembly have obligations imposed on them by the *Act*. 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 Members of the Legislative Assembly.

To achieve the purpose of the *Conflict of Interest Act* there are three (3) fundamental mechanisms to control conflicts of interest by Members of the Legislative Assembly.

1. Members of the Legislative Assembly are required to make full disclosure of their private interests as well as the private interests of the member's spouse and dependents 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 of the Legislative Assembly.

2. Members of the Legislative Assembly must reorganize their private interests or relationships that might impair their judgment 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.
3. Members of the Legislative Assembly must remove themselves from discussions or decisions on matters in which they have a private interest.

All Members of the Legislative Assembly must comply with subsections 25(1) and (2) of the Act, which are in the following terms:

“25. (1) Subject to subsection (9), every member shall file with the Commissioner a private disclosure statement, in the form provided by the Commissioner,

- (a) within 60 days of being elected; and*
- (b) subsequently, once in every following calendar year on or by the date established by the Commissioner.*

(2) The private disclosure statement shall

- (a) identify the assets and liabilities of the member and each person who belongs to the member’s family, and state the value of the assets and liabilities;*
- (b) state any income the member and each person who belongs to the member’s family have received during the preceding 12 months or are entitled to receive during the next 12 months, and indicate the source of the income;*
- (c) state all benefits the member, each person who belongs to the member’s family, and any private company, or partnership in which any of them has an interest, have received during the preceding 12 months or are entitled to receive during the next 12 months as a result of a contract with the Government of Prince Edward Island, and describe the subject matter and nature of the contract;*
- (d) if the private disclosure statement mentions a private company or partnership,*
 - (i) include any information about the activities of the private company or partnership and sources of income that the member is able to obtain by making reasonable inquiries, and*
 - (ii) state the names of any other companies or partnerships that are affiliates;*
- (e) list all corporations and other organizations in which the member or a person who belongs to the member’s family is an officer or director or has a similar position; and***
- (f) include any other information that the Commissioner requires.” (Emphasis added)*

The Minister acknowledges that he did not comply with the requirements of this provision of the Act. The Minister’s explanation for this failure is that “. . . it never crossed his mind.” He explained that he had no involvement with the company, did not believe that it

created a conflict of interest, and with all the other matters that he deals with as a Minister his “paper” involvement with the company did not come to mind.

Each year, all Members of the Legislative Assembly, including the Minister, meet with the Commissioner to discuss the Private Disclosure Statement either previously filed or to be filed with the Commissioner. In the spring of 2000 and each succeeding year thereafter, Minister Murphy met with the Commissioner. Despite those meetings, the Minister did not disclose his interest in Murcon Construction Limited.

A Member has a duty under section 25 of the *Act* to scrupulously scrutinize his assets and liabilities and ensure that all are disclosed to the Commissioner. In each of the years from 2000 to the present, the Minister failed that responsibility. In addition, each year each Member of the Legislative Assembly is forwarded a Statement of Material Change to remind each Member to advise of any material changes to the assets or liabilities so that they might be brought to the attention of the Commissioner and disclosed by way of the Public Disclosure Statement as may be required. In each of the years from 2000 to the present, the Minister did not file any Statement of Material Change in relation to Murcon Construction Limited.

Minister Murphy acknowledges receipt of correspondence from Ms. Hastings-James dated December 29, 2005 which expressly reminded him of his status as shareholder of Murcon Construction Limited. The Minister ought then to have realized that his disclosure statements were incomplete and he should have contacted the Commissioner and advised accordingly.

Had Minister Murphy disclosed his interest in Murcon Construction Limited, the procedure to remedy the situation would have been relatively straightforward. Given the nature of his holdings in a family corporation used by his father as a vehicle for his residential construction and carpentry business, the advice of the Commissioner would have been for the Minister to divest himself of his shares to some other person including any other family members who presently hold shares in Murcon Construction Limited.

Ms. Hastings-James has speculated and it has been reported in the media that she is concerned as to whether Minister Murphy’s involvement with Murcon Construction Limited has led to her lack of success in having her judgment against the company satisfied. Ms. Hastings-James speculates as to whether Minister Murphy used his political influence to thwart her judgment being satisfied. If this were true Minister Murphy would have been in a conflict of interest and in violation of section 9 which defines a “conflict of interest” as follows:

“9. No member shall make a decision or participate in making a decision in the execution of the member's office if the member knows or reasonably should know that in the making of the decision there is an opportunity (a) to further the member's private interest; or (b) improperly to further another person's private interest.”

In that regard, the Commissioner spoke with Mr. Ron Dowling, the present Chief Sheriff of Prince Edward Island, who was at that time the Sheriff of Prince County. Mr. Dowling recalls that Ms. Hastings-James, on one occasion, speculated as to whether political interference was being exerted against the Sheriff's Office because of Minister Murphy's involvement with the company. Mr. Dowling was concerned enough by the allegation that he took a particular interest in this matter. Mr. Dowling explained at some length to Ms. Hastings-James the difficulties in satisfying judgments against small companies; advised that the vast majority of judgments obtained in Small Claims Court remain unsatisfied as the judgment debtors do not have assets sufficient to satisfy the judgment and Mr. Dowling advised her that satisfying a judgment against a small company no longer operating is not usually successful unless assets owned by the company can be identified and located. In the case of Murcon Construction Limited no such assets had been located.

Also, given the seriousness of the allegations or speculations, the Commissioner contacted Mr. Philip LeBlanc, who, at the time, was Deputy Sheriff of Prince County and is now the Sheriff of Prince County, Prince Edward Island. Mr. LeBlanc was familiar with the case, he had some involvement during the course of attempts to satisfy the judgment. Mr. LeBlanc stated that there was no political interference from any source and he was unaware of anything that would set this case apart from any other handled by the Prince County Sheriff's Office.

Finally, on this point, the Commissioner contacted Mr. Frank Driscoll, the former Chief Sheriff of Prince Edward Island. Mr. Driscoll indicated that at no time did any person give direction of any kind to his office as to how the judgment against Murcon Construction Limited was to be processed. Mr. Driscoll, who retired in June of 2006, indicated that, in his thirteen (13) years of experience, it was his observation that over three-quarters of the judgments obtained in Small Claims Court remain outstanding in whole or in part as the judgment debtor does not have assets sufficient enough to satisfy the outstanding judgment.

Based on the information received, the Commissioner is satisfied that there is no evidence, nor is there any circumstance, that suggests that there was any political interference in the process to collect the outstanding judgment obtained against Murcon Construction Limited.

Conclusion

Members of the Legislative Assembly have certain obligations imposed on them by the *Conflict of Interest Act*. One of those obligations is the duty to fully disclose their assets and liabilities to the Commissioner including any interest in a private company. This requirement of the *Act* is to allow the Commissioner to counsel the Member concerning those interests or relationships that might impair their judgment in the discharge of their public duties.

Minister Murphy has acknowledged that he failed to disclose the fact that he held shares in a company under which his father operated his residential construction and carpentry business.

There is no evidence that Minister Murphy had any involvement in the company other than appearing on the corporate documentation as a shareholder and director. Minister Murphy stated in his letter of January 12, 2007 as follows:

“At no time, prior to or after being a director, did I invest any money in the company.

At no time, prior to or after being a director, did I receive any financial payment or benefit from the company.

At no time, prior to or after being a director, have I been involved in the day to day operations or decision making in the company.

In addition, never at any time during my duties as MLA for Kensington-Malpeque or Member of Executive Council, has this company sought ANY government assistance, financial or otherwise.

My involvement in the company may best be described as a “shareholder of convenience”.

The evidence indicates and nothing suggests otherwise, that Minister Murphy’s involvement with Murcon Construction Limited is just as he states.

The business known as Murcon Construction Limited was operated and controlled by Mr. Earle Murphy in a manner equivalent to a sole proprietorship. However, having decided to incorporate the business, the *Companies Act* required that there be at least three shareholders. As in most small companies family members often hold those shares but take little or no part in the company operations.

In 1986 at his father’s request, Minister Murphy consented to his name being added as a shareholder and director. That was his last active participation in the company. There is no evidence or suggestion that his involvement was otherwise.

A “conflict of interest” is defined in section 9 of the *Act* in the following terms:

“9. No member shall make a decision or participate in making a decision in the execution of the member's office if the member knows or reasonably should know that in the making of the decision there is an opportunity

(a) to further the member's private interest; or

(b) improperly to further another person's private interest.”

Speculation that Minister Murphy may have used his political office to influence the judicial system and Sheriff’s Office in favour of Murcon Construction Limited are without any foundation or substance. The evidence of the Sheriff’s Office is unequivocal that neither Minister Murphy nor any other person in authority took any steps or made any representations that interfered with the normal process in Small Claims Court or the Sheriff’s Office.

Minister Murphy took no part in the operations of Murcon Construction Limited and the company never applied for nor received any contracts or benefits from government. There is nothing to suggest that the Minister used his political office to assist the company. By itself, his involvement as a director and shareholder never created a conflict of interest within the meaning of the *Act*. To create a conflict of interest there would have to be evidence Minister Murphy used his political office to further the affairs of Murcon Construction Limited. No such evidence exists and the Minister is not in a conflict of interest.

That finding is not the end of the matter.

The Minister is presently a shareholder and director in Murcon Construction Limited. By virtue of section 17 and 18 of the *Act*, he as a Minister is prohibited from those activities except in circumstances prescribed by the Commissioner. Section 17 and s.s.18(1) provide as follows:

*“17. Subject to section 20, a **Minister shall not**,*

(a) engage in employment or the practice of a profession;

(b) engage in the management of a business carried on by a corporation; or

*(c) **hold an office or directorship**, unless holding the office or directorship is one of the Minister’s duties as a Minister, or the office or directorship is in a social club, religious organization or political party.*

*18(1) Subject to section 20, a **Minister shall not hold** or trade in securities, **stocks**, futures or commodities.” (Emphasis added)*

A Minister may hold shares by placing such shares in trust as per ss 18(3) which is in the following terms:

“18 (3) A Minister may comply with subsection (1) by entrusting the assets 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 from the Minister and approved by the Commissioner;*
- (c) the trustees shall not consult with the Minister with respect to managing the trust property, but may consult with the Commissioner;*
- (d) at the end of each calendar year and at one or more intervals during the year, the trustees shall give the Minister a written report stating the value, but not the nature, of the assets in the trust;*
- (e) the year-end report required by clause (d) shall also state the net income of the trust for the preceding year and the trustees' fees, if any;*
- (f) the trustees shall give the Minister sufficient information to permit the Minister to submit returns as required by the Income Tax Act (Canada) and shall give the same information to Revenue Canada;*
- (g) the trustees shall give the Commissioner copies of all information and reports given to the Minister;*
- (h) the trust shall provide that the Minister may, at any time, instruct the trustees to liquidate all or part of the trust and pay over the proceeds to the Minister. “*

Alternatively a Minister may carry on such an activity if the Minister obtains the permission of the Commissioner pursuant to section 20 of the Act.

“20. A Minister may engage in an activity prohibited by clause 17(b) or (c) or subsection 18(1) or 19(1) if the following conditions are met: (a) the Minister has disclosed all material facts to the Commissioner; (b) the Commissioner is satisfied that the activity, if carried on in the specified manner, will not create a conflict between the Minister's private interest and public duty; (c) the Commissioner has given the Minister approval and has specified the manner in which the activity may be carried out; and (d) the Minister carries the activity out in the specified manner.”

The Minister must bring himself into compliance with the Act. He has been directed to resign as director and divest himself of all shares that he holds in Murcon Construction Limited.

Minister Murphy was obliged by the Act to comply with the full disclosure requirement. Failing to do so resulted in him holding shares and being a director when he was expressly prohibited from doing so.

His explanation for his failure to disclose is that he forgot about his involvement with the company. I take the Minister at his word however, that cannot excuse the Minister from fulfilling his clear duty under the *Act*.

As the Minister states in his letter dated January 12, 2007:

“...As a Member of the Legislative Assembly of Prince Edward Island, I am fully aware of my responsibilities pursuant to the Conflict of Interest Act. Although I received no benefit and was not active in the company, my involvement in the company should have been disclosed. I regret that it was not and I take full responsibility for this omission...”

The Minister certainly did not gain anything by failing to disclose his interest and there is nothing to suggest that his failure to disclose was deliberate.

The fact is that the Minister did not take his disclosure responsibilities as seriously as the law required him to. His lack of diligence in reflecting on his private interests led to his failure to disclose his interest in Murcon Construction Limited.

The Minister has contravened the *Act* in failing to disclose his interest in Murcon Construction Limited contrary to subsection 25 (2)(e) which provides as follows:

“25.(2) The private disclosure statement shall. . .

(e) list all corporations and other organizations in which the member or a person who belongs to the member's family is an officer or director or has a similar position; and

Having found that the Minister has contravened the *Act*, section 32 provides as follows:

“32. (1) Where the Commissioner conducts an inquiry pursuant to subsection 29(1) or (2) and finds that the member has

(a) contravened any of sections 9 to 11, 13 to 15, 17 to 19 or 21 to 25;

(b) failed to file a private disclosure statement, revised private disclosure statement or a statement of material change within the time provided by section 25;

(c) failed to disclose relevant information in a private disclosure statement or a revised private disclosure statement; or

(d) contravened Prince Edward Island parliamentary convention,

the Commissioner shall recommend in the report

(e) that no penalty be imposed;

(f) that the member be reprimanded;

(g) that the member's right to sit and vote in the Legislative Assembly be suspended, with or without indemnity and allowance, for a specified period or until a condition imposed by the Commissioner is fulfilled; or

(h) that the member's seat be declared vacant.” (Emphasis added)

As can be seen there are four recommendations that may be made where a contravention of the *Act* has been found. In the circumstances involving Minister Murphy and Murcon Construction Limited I recommend that the Legislative Assembly reprimand the Member for contravening the *Act* in that he failed to disclose his involvement with the company.

A greater penalty would have been recommended if the Minister had been found to be in a conflict of interest in addition to failing to disclose his interest. I am satisfied that he was not in a conflict of interest and that his failure to disclose was unintentional.

Respectfully, I conclude this Report and advise that my recommendation must be considered and responded to by the Legislative Assembly in accordance with ss. 32(2)(3)(4) and (5) which are in the following terms:

32 (2) The Legislative Assembly shall consider and respond to a report made pursuant to subsection (1) within 30 days after the day the report is laid before it.

(3) If the Commissioner recommends that a penalty be imposed, the Legislative Assembly may approve the recommendation and order that the penalty be imposed, or may reject the recommendation, in which case no penalty shall be imposed.

(4) Notwithstanding any provision of the Legislative Assembly Act R.S.P.E.I. 1988, Cap. L-7, the Legislative Assembly does not have power to

(a) inquire further into a contravention;

(b) impose a penalty if the Commissioner recommended that none be imposed; or

(c) impose a penalty other than the one recommended.

(5) The Legislative Assembly's decision is final and conclusive.

Summary of Conclusions

- 1) That the Minister is not in a conflict of interest within the meaning of the *Act*.
- 2) That the Minister contravened the *Act* in not disclosing his directorship and shareholdings in Murcon Construction Limited. For this contravention of the *Act* I have recommended that the Legislative Assembly issue a reprimand to the Minister.
- 3) That the Minister as soon as is practicable resign his directorship and divest himself of all shares in Murcon Construction Limited.

Dated January 29, 2007

A. Neil Robinson
Conflict of Interest Commissioner