



Legislative Assembly of Nunavut

Annual Report

April 1, 2011 to March 31, 2012

Norman Pickell

Integrity Commissioner

Integrity Commissioner's Annual Report 2011 - 2012

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Annual Report for 2011-2012 of the Integrity Commissioner

Ullukkut

Foreword:

This is my fourth Annual Report to the Legislative Assembly of Nunavut. It covers the period from April 1, 2011 until March 31, 2012.

Since July 3, 2008, it has been my honour and privilege to be the Integrity Commissioner of Nunavut. The Integrity Commissioner is an independent officer of the Legislative Assembly. This means he or she is free from all influences and outside direction in carrying out his or her duties. The Integrity Commissioner is responsible to the entire Legislative Assembly and to all of Nunavummiut.

Introduction:

Ethics and integrity remain at the heart of public confidence in government. Avoiding a conflict of interest is part of “integrity.” But integrity embraces much more. Integrity is about values and behaviour.

The document that gave birth to Nunavut’s *Integrity Act* was entitled *For a Culture of Integrity*. The following quote from J. Richard Finlay appeared at the beginning of that document:

“... there is no substitute for a culture of integrity compliance alone with the law is not enough. History shows that those who make a practice of skating close to the edge always end up going over the line.”

When you have a culture of integrity, you bring integrity to the forefront. You openly discuss it. You constantly practice it. Integrity becomes a way of life.

Integrity is doing the right thing, even when no one is watching.

The *Integrity Act* establishes a system of standards and accountability for the conduct of Members of the Legislative Assembly. The Act focuses on positive behaviour and high standards. It states that integrity is the first and highest duty of elected office. Each Member must act in a manner that will bear the closest public scrutiny. Nunavummiut expect this of their elected representatives.

Earning the public trust is a constant work in progress.

Activities During 2011-2012

Members' Disclosure Statements:

Transparency of Members' private interests is a fundamental feature of the *Integrity Act*.

All Members of the Legislative Assembly are required to file a Public Disclosure Statement at the times set out in the *Integrity Act*. These statements list the nature and source of their family assets, liabilities and income. I am pleased to report that all Members filed their Public Disclosure Statements on or before Friday March 30, 2012, being the date that I had established pursuant to the *Integrity Act*.

Copies of these Public Disclosure Statements, including any supplementary ones, are available to the public by contacting the Office of the Clerk of the Legislative Assembly.

Annual Meetings with Members:

In 2011 the *Integrity Act* required all Members of the Legislative Assembly to meet, at least annually, with the Integrity Commissioner to obtain advice on their obligations under the *Integrity Act*.

I was in Iqaluit at the beginning of June 2011 and had my Annual Meetings with all of the Members.

In March 2012, the *Integrity Act* was amended.

The *Integrity Act* now requires each Member to have an initial in-person meeting with the Integrity Commissioner within 90 days of being elected. Thereafter, each Member is to have his or her Annual Meeting by telephone with the Integrity Commissioner at least once in every calendar year. (There are some exceptions to the meeting being conducted by telephone.)

Prior to the *Integrity Act* being amended in March 2012, a Member was required to use his or her best efforts to ensure that the Member's spouse also attended the annual meeting with the Integrity Commissioner. Often I found that such a meeting with spouses was not necessary. Sometimes it was also expensive to bring the spouses to Iqaluit to meet with me.

With the amendment, I now have the discretion to decide if it is necessary to meet with a Member's spouse. If I decide such a meeting is necessary, it can be done by telephone.

Other Meetings with Members:

I was also in Iqaluit in October 2011 and met with 3 newly-elected Members of the Legislative Assembly. At those meetings, we discussed their obligations under the *Integrity Act*. I also helped them complete their first Public Disclosure Statements.

Advice:

All Members of the Legislative Assembly, including regular Members, Cabinet Ministers and the Premier, know that they can ask the Integrity Commissioner at any time for advice on their obligations under the *Integrity Act*. This advice is usually given on a confidential basis.

This past year I received requests for advice and guidance from the Members. I encourage this to continue.

My focus is on prevention. I would rather provide advice before something is done which might contravene the *Integrity Act*, instead of later having to deal with a complaint about a Member.

Blind Trust Agreements:

The *Integrity Act* recognizes that the public benefits from having Members of the Legislative Assembly come from a variety of occupations and experiences. It is too much of a sacrifice to expect a Member who has a business to sell it upon being elected. Likewise, if a Member has an extensive investment portfolio, he or she should not normally be required to sell the investments.

Accordingly, the *Integrity Act* provides for Blind Trust Agreements as one method of giving the public the confidence it needs in those Members who have a business or investment portfolio. A Blind Trust Agreement allows the business or investments to continue. However, the Member is restricted on what information he or she can receive about the business or the investments and generally does not have any input on the decisions made.

A total of 3 Members of the Legislative Assembly currently have Blind Trust Agreements.

From time to time the Trustees of the Blind Trust Agreements consult with me on various issues having to do with the trusts.

Review of the Conduct of Members of the Legislative Assembly:

While the emphasis should be on preventing a breach of the *Integrity Act*, from time to time it is necessary to look at whether a Member has contravened the Act.

In some jurisdictions, only an elected Member can ask the Integrity Commissioner to conduct a Review of an alleged breach. However, under Nunavut's legislation, any person in Nunavut, including high-ranking civil servants, can ask for a Review of a Member.

Pursuant to section 31 of the *Integrity Act*, no employer can take or threaten any action with respect to the employment of any person because the person has provided information to the Integrity Commissioner.

The Reports from the three Reviews that I have given to the Speaker to date, as well as the two Reviews conducted by my predecessor, are available on the Integrity Commissioner's website.

2011 Review of Fred Schell:

The third Review of a Member that I did was in 2011. I was asked to examine the conduct of Fred Schell, Member of the Legislative Assembly for South Baffin. My Report was tabled in the Legislative Assembly on October 18, 2011.

Section 40(3) of the *Integrity Act* directs me to complete my Review within 90 days of commencing the same. The time may be extended pursuant to section 40(4) if the Integrity Commissioner is of the opinion that additional time is required to complete the Review.

After I commenced my Review of Mr. Schell, he made a formal request for a 45 day extension of the time for me to complete my Review. Since I thought that his request was reasonable, I requested an extension from the Management and Services Board – which request was granted. While the details of the reasons for the extension are contained on pages 17 and 18 of my Report to the Speaker dated October 18, 2011, in summary they were:

1. Mr. Schell's vacation plans;
2. A delay in Mr. Schell hiring a lawyer; and
3. A change of lawyers because of the vacation plans of the first lawyer that Mr. Schell had hired.

When a Review is initiated, Members need to decide quickly whether or not they want the assistance of a lawyer.

I found that Mr. Schell contravened the *Integrity Act* by improperly sending an email on June 23, 2009 to an official in the Government of Nunavut regarding a meeting that had taken place with that government official on June 22, 2009.

Three other allegations were made against Mr. Schell as well. I found that he did not do anything wrong in connection with those allegations.

My Report was rejected by the Legislative Assembly. I agree with that rejection for the reasons that were stated in the Legislative Assembly on October 31, 2011.

The rejection by the Legislative Assembly was because of the third allegation referred to in my Report. That third allegation had to do with Mr. Schell asking a question inside the Legislative Assembly on October 29, 2010 which had a connection to his own business (that he had placed in a blind trust).

By the time that I asked Mr. Schell's lawyer for submissions, I had already decided that Mr. Schell had not violated the *Integrity Act* by asking his question on October 29, 2010. As a result, I told his lawyer that he did not need to make any submissions regarding that third allegation.

What I overlooked – and what his lawyer likely would have pointed out to me if he had made submissions regarding that allegation – was that I have no jurisdiction over comments made by Members inside the Legislative Assembly. This is because of “Parliamentary Privilege.” One of the most fundamental of the Parliamentary Privileges is a Member's freedom of speech. Whatever is said by a Member inside the Legislative Assembly cannot be questioned by anyone, including the Integrity Commissioner, outside of the Legislative Assembly. The Speaker of the Legislative Assembly has sole jurisdiction over comments made by Members inside the Legislative Assembly.

Thus, the then-Deputy Minister of Justice – who was the complainant in the Review – should not have asked me to consider Mr. Schell's conduct inside the Legislative Assembly.

Section 48 of the *Integrity Act* is clear on what happens when the Integrity Commissioner's Report is tabled in the Legislative Assembly. The Legislative Assembly can only do one of two things:

1. It can accept **all** of the Integrity Commissioner's recommendations; or
2. It can reject **all** of the Integrity Commissioner's recommendations.

The Legislative Assembly cannot pick and choose which parts of the Integrity Commissioner's Report to accept.

If the Legislative Assembly had accepted all of the recommendations that I had made in my Report, it would have been waiving Parliamentary Privilege, something which it should not do.

I apologize for breaching Parliamentary Privilege in my Review of Mr. Schell's conduct. It was inadvertent on my part.

I agree with the steps taken by the Legislative Assembly in response to my Report. It rejected my Report. But because of my finding that Mr. Schell had violated the *Integrity Act* by sending the email referred to above, and because the Legislative Assembly has the right to discipline its own members, the Legislative Assembly censured Mr. Schell and ordered him to pay a \$ 1,000.00 fine. Mr. Schell also publicly apologized in the Legislative Assembly for his conduct.

Executive Assistants and Executive Secretaries:

The Integrity Commissioner has a role in helping the Executive Assistants and Executive Secretaries to Cabinet Ministers avoid conflicts of interest. I encourage them to contact me regarding their own situations whenever they want to do so.

I did not receive any inquiries this past year from any Executive Assistants or Executive Secretaries on their own behalf (although some did contact me on behalf of their Ministers).

Other Inquiries:

In addition to receiving inquiries from the Members of the Legislative Assembly and their staff, the media and the public also contact me from time to time. I respond to the media and the public as best I can. However, much of the work that I do, including most of the advice that I provide, is confidential. Therefore, when speaking to the media and to the public, I often have to restrict my remarks to those of a general nature.

Statistics for the Period from April 1, 2011 to March 31, 2012:

Number and source of inquiries under the *Integrity Act*:
(not counting when I was actually in Iqaluit):

	<u>2011/12</u>	<u>2010/11</u>
MLA/Minister/Premier or their Staff on their behalf	23	15
Trustees of Blind Trusts	2	7
Deputy Ministers	1	2
Executive Assistants/Executive Secretaries on own behalf	0	0
Media	5	2
Public	3	3
Other Commissioners	1	3
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Total Inquiries	35	32

All three inquiries from the public were from residents of Nunavut. Two concerned matters over which I have no jurisdiction. The third inquiry was from a company doing business in Nunavut.

Contact with my Colleagues:

Every territory and province in Canada, as well as the House of Commons and the Senate has an Integrity Commissioner, Ethics Commissioner or Conflict of Interest Commissioner. We all belong to the Canadian Conflict of Interest Network - CCOIN.

I attended the CCOIN Annual Meeting in September 2011, which was held in Victoria, British Columbia. The topics discussed at these Annual Meetings have been and will be of great assistance to me as I carry out my responsibilities as Integrity Commissioner of Nunavut.

There have been occasions throughout the year when I have needed to consult with my territorial, provincial and federal colleagues. I want to express my appreciation for the collegiality and support shown to me by them. They have helped to make my job much easier.

Members' Activities on Behalf of Constituents:

The *Integrity Act* does not prohibit activities in which Members properly engage on behalf of constituents in accordance with parliamentary convention.

Members can make sure that their constituents who ask for help are treated fairly in pursuing contract or employment opportunities. Members also have the right to make sure that the process of evaluating bids is a fair and objective process.

But a Member should not interfere or attempt to interfere with the normal procedures for Government hiring or the awarding of Government contracts.

For example, it would be improper for a Member to write a letter urging that a tender award be overturned because the losing company was located in the Member's constituency. But it would be proper for a Member to write a letter in support of a local youth group's application for CLEY funding to attend a cultural event.

If a Member is in doubt about the appropriateness of sending a letter, he or she is welcome to contact me and to provide me with a draft of the letter.

The judiciary is a separate and independent branch of government. Members and their staff must:

1. not communicate with judges or justices of the peace regarding cases before the courts;
2. not contact court or police officials regarding matters that are before the courts or that are being investigated; and
3. not attempt to interfere with the judicial or quasi-judicial process at any level.

Gifts, Personal Benefits and Hospitality:

The *Integrity Act* states that a Member shall not accept any remuneration, gift or personal benefit that is connected directly or indirectly with the performance of the Member's duties of office.

But section 1 of the *Integrity Act* states (in part):

“The purpose of this Act is to affirm in law the commitment of the members of the Legislative Assembly to serve always the common good in keeping with **traditional Nunavummiut values**”

The majority of Nunavummiut are Inuit. Traditional Inuit culture places a great deal of emphasis on community, sharing and respect for others. The communities are small. Social times are important. The *Integrity Act* encourages Members of the Legislative Assembly to participate actively in the social life of their community.

I ask that all Members keep in mind section 4(b) of the *Integrity Act* which states:

“Each member shall refrain from accepting any remuneration, gift or benefit the acceptance of which **might** erode public confidence and trust in the integrity, objectivity or impartiality of the member, and in all other respects **act in a manner which will bear the closest public scrutiny.**”

The *Integrity Act* uses the phrase “unlikely to affect the Member’s performance of his or her duties of office” when considering some of the exceptions to the prohibition on accepting gifts or hospitality.

The issues around “gifts, benefits and hospitality” are complex. In my 2009-2010 Annual Report, I gave some examples of what would be considered acceptable and unacceptable gifts, benefits and hospitality for a Member to receive. It is very difficult to come up with absolute rules. Each situation is often different.

That is why it is preferable for a Member to contact me about a potential gift, benefit or some free hospitality. Then we can discuss the specific situation in order to determine if the Member should accept the offer.

The *Integrity Act* states that if a Member, a Member’s spouse or another family member receives a single gift, benefit or hospitality which exceeds \$400 in value, the Member must file a Public Disclosure Statement of Gifts with the Clerk of the Legislative Assembly. The Disclosure Statement must also be filed if the Member and his or her family receive gifts and benefits from one source which exceed \$400 in any 12-month period. These Disclosure Statements must be filed within 30 days after receipt of the gift or personal benefit.

However, the filing of the Gift Disclosure Statement only applies if the gift, personal benefit or hospitality should have been received in the first place. The filing of the Gift Disclosure Statement does not make an inappropriate gift an acceptable gift. In other words, first decide if the gift is acceptable. If the answer is “No,” then the Member should not accept the gift. If the gift is acceptable, then look at the value of the gift to decide if a Public Disclosure Statement needs to be filed.

Nunavut Elections Act

All Canadian territorial, provincial and federal election statutes have enforcement provisions. Usually these enforcement provisions include the laying of charges by the police and the prosecution of those charges in the courts.

Nunavut and Canada's House of Commons are unique. At the present time, they are the only jurisdictions in Canada which provide for Compliance Agreements as an alternative to judicial enforcement.

Under the *Nunavut Elections Act*, the Integrity Commissioner has the authority to negotiate a Compliance Agreement with persons alleged to have committed offences under that Act. Compliance Agreements may provide for a variety of sanctions.

Even though there were 3 by-elections held during the period covered by this Report, there was no need for my services or for any Compliance Agreements.

Travel to Nunavut:

While I have an office in the Legislative Assembly Building in Iqaluit, my main working office is in Goderich, Ontario.

With the assistance of the telephone, email and fax, most of my work as Integrity Commissioner is done from Goderich. I am willing to travel to Nunavut whenever the need arises.

For the period covered by this Report, I made trips to Iqaluit in June and October 2011. During my June trip I conducted my Annual Meetings with all of the Members, some spouses of Members, and some other officials. The main purpose of my trip in October was to meet with 3 newly elected Members. I also met with some other government officials during that trip.

Observations and Recommendations

Behaviour of the Members in the Legislative Assembly:

In some jurisdictions in Canada, the Members' conduct in the Legislative Assembly often falls below the standard of acceptable behaviour. However, based on my personal observations whenever I have observed the proceedings, this is not true in Nunavut. I commend all Members for their good behavior in the Legislative Assembly.

Amendment to the Integrity Act:

The only amendment to the *Integrity Act* during the period covered by this Report was in March 2012 and to which I have already referred. It amended the provisions regarding the Members' Annual Meetings with the Integrity Commissioner.

Closing Remarks

Integrity Commissioner's Website:

The Integrity Commissioner's website is found at www.integritycom.nu.ca.

The website includes:

- general information about the *Integrity Act*;
- a complete copy of the *Integrity Act*;
- all of the Integrity Commissioner's Annual Reports which have been received by the Legislative Assembly;
- any Special Reports which are prepared by the Integrity Commissioner;
- all Reviews which have been done concerning the conduct of Members;
- the blank Public Disclosure Forms; and
- information about the Integrity Commissioner, including how to contact me.

Tributes and Appreciation:

I appreciate the courtesy and cooperation that I have received from the Members of the Legislative Assembly this past year.

I am also thankful for the cooperation and assistance that I received throughout the year from the Clerk of the Legislative Assembly and all of his staff.

I am grateful for the opportunity to be of service to Nunavummiut.

Nakurmiik.

Norman Pickell
Integrity Commissioner
May 16, 2012