



Legislative Assembly of Nunavut

Annual Report

of

The Integrity Commissioner

for the period

April 1, 2012 to March 31, 2013

Norman Pickell

Integrity Commissioner

Integrity Commissioner's Annual Report 2012 - 2013

Foreword	1
Introduction	1
Firsts for the Integrity Commissioner	1
Activities During 2011-2012:	2
Annual Meetings with Members	2
Members' Disclosure Statements	3
Advice	4
Blind Trust Agreements	4
Review of the Conduct of Members of the Legislative Assembly	5
2012 Review of Fred Schell	5
- Length of Time to Conduct the Review	5
- Recusal Applications during the Review	7
- Conduct of Hearing	8
- Results of the Review	9
Briefing of a New Cabinet Minister	9
Restrictions on Cabinet Ministers	9
Auditor General of Nunavut	10
Executive Assistants and Executive Secretaries	11
Legislative Assembly of Alberta	11
Other Inquiries	11
Statistics for the Period - April 1, 2012 - March 31, 2013	11
<i>Nunavut Elections Act</i>	12
Travel to Nunavut	12
Contact with my Colleagues	12
Observations:	13
Gifts and Hospitality	13
Closing Remarks:	14
Integrity Commissioner's Website	14
Tributes and Appreciation	14

Annual Report for 2012-2013 of the Integrity Commissioner

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Foreword:

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. Since July 3, 2008, it has been my honour and privilege to be the Integrity Commissioner of Nunavut.

This is my fifth Annual Report to the Legislative Assembly of Nunavut. It covers the period from April 1, 2012 until March 31, 2013.

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.”

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 of Nunavut. 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.

Firsts for the Integrity Commissioner:

There were several “firsts” in the 12 months covered by this Report:

1. The Integrity Commissioner did not travel to Iqaluit to conduct his Annual Meetings with each of the Members.

2. The Integrity Commissioner provided a briefing to a Cabinet Minister shortly after her election to Cabinet.
3. The Integrity Commissioner conducted the first formal Hearing for a Review of a Member's conduct.
4. The Integrity Commissioner retained Commissioner's Counsel for the formal Hearing for the Review.
5. The Integrity Commissioner was served with an Application for Recusal, which is an application to have that particular Integrity Commissioner remove himself from conducting a Review of a Member's conduct.

I will be saying more about each of these "firsts" in this Report.

Activities During 2012-2013

Annual Meetings with Members:

Prior to 2012 the *Integrity Act* required all Members of the Legislative Assembly to meet in person, at least annually, with the Integrity Commissioner to obtain advice on their obligations under the *Integrity Act*.

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 after being elected. Thereafter, each Member can have his or her Annual Meeting by telephone with the Integrity Commissioner, unless the Integrity Commissioner is of the opinion that the meeting should be held in person.

Hence, 2012 was the first year that the Integrity Commissioner has not travelled to Iqaluit to conduct Annual Meetings with the Members.

Because of the nature of the role of the Integrity Commissioner, I believe that it is important to have a good working relationship between the Integrity Commissioner and each Member of the Legislative Assembly. As Integrity Commissioner since 2008, I have been fortunate to have had several in-person meetings with each Member. This has helped to develop a good bond between each Member and myself.

I always looked forward to my trips to Iqaluit for the Annual Meetings and to meeting with each Member in person. However, I recognize that those trips came with an expense that is not incurred by conducting the meetings by telephone.

Hopefully, between the initial in-person meeting and telephone conversations from time to time with each Member, a good bond can still be developed between the Member and the

Integrity Commissioner. I am encouraged by the increase in the number of phone calls and emails from Members requesting advice during the period covered by this Report.

While all of the 2012 individual Annual Meetings with the Members were conducted by telephone, it took until January 2013 before the last Annual Meeting was held. (I granted extensions to those Members who did not have their Annual Meeting prior to the end of 2012.)

Because the 2012 Annual Meetings took so long to complete, I have implemented a slightly different procedure in 2013 for the setting up of the individual Annual Meetings. Now the onus will be on each Member to arrange a date for his or her Annual Meeting with the Integrity Commissioner.

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.

In 2012, I did not find it necessary to have a meeting with any of the spouses of the Members.

Members' Disclosure Statements:

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

As part of this transparency, all Members of the Legislative Assembly are required to file a Public Disclosure Statement annually by a date established by the Integrity Commissioner. The Statement lists the nature and source of the Member's assets, liabilities and income.

Because of the changes in the way that each Member's Annual Meeting is held, I have set May 15, 2013 as the date for the filing of the 2013 Annual Disclosure Statements. Since that date falls outside of the time period covered by this Report, the only thing I will say about this year's Disclosure Statements is that several of the Members filed their 2013 Disclosure Statements before April 1, 2013.

Copies of the 2012 Public Disclosure Statements, which were filed by March 30, 2012, are available to the public by contacting the Office of the Clerk of the Legislative Assembly.

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.

The number of phone calls and emails from Members requesting advice has been increasing each of the last 4 years. The actual numbers are as follows:

			<u>over the previous year</u>	
2009 – 2010	-	13		
2010 – 2011	-	15	+ 2	a 15 % increase
2011 – 2012	-	23	+ 8	a 53 % increase
2012 – 2013	-	33	+ 10	a 43 % increase

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. I encourage each Member to contact me at any time.

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.

I am pleased to report that during my time as Integrity Commissioner, no Member has breached his or her Blind Trust Agreement. (The first Review that I did as Integrity Commissioner involved a Member breaching his Blind Trust Agreement prior to my appointment as Integrity Commissioner.)

From time to time, the Trustees of the Blind Trust Agreements consult with me on various issues having to do with the trusts. I encourage such consultation to continue.

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 – whether inside or outside of Nunavut – can ask for a Review of a Member. That also means that senior civil servants can request a Review. I agree with that approach. Sometimes the only person who knows that a Member may have breached the *Integrity Act* is someone within a Department.

As long as a Member is maintaining a culture of integrity, that Member does not need to worry about being scrutinized by anyone, including a government employee. Of course, if a Member makes a practice of skating close to the edge, that Member is almost inviting a request to have his or her conduct reviewed by the Integrity Commissioner.

The *Integrity Act* also permits the Integrity Commissioner to commence a Review of a Member's conduct on the Integrity Commissioner's own initiative. During my time as Integrity Commissioner, I have not done that.

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 four 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.

2012 Review of Fred Schell:

The fourth Review of a Member that I did was in 2012. 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 30, 2012.

I want to comment in this Report on 4 aspects of that Review.

1) Length of Time to Conduct the Fred Schell Review:

Section 40(3) of the *Integrity Act* directs me to complete my Review within 90 days of commencing the same. The Management and Services Board may grant an extension pursuant to section 40(4) upon my request.

Since I requested an extension, I am required by section 57(1.1) of the *Integrity Act* to provide in this Annual Report the reason for the request.

Briefly, the reasons for my request for an extension were as follows:

1. I received certain information from the Secretary of Cabinet on April 23, 2012.
2. I concluded on May 4, 2012 that there were sufficient grounds to warrant commencing a Review pursuant to section 36 of the *Integrity Act*.
3. As a result of communication with Mr. Schell's first lawyer, it became evident that a formal Hearing was going to have to be held in Iqaluit so that witnesses could be examined and cross-examined.
4. It was learned in early July that the earliest possible dates for a Hearing were going to be in September – considering the number of witnesses and the preparation that had to be done in advance of the Hearing.
5. Since September took us past the original 90-day date of August 2, 2012, I immediately wrote to the Chairperson of the Management and Services Board, requesting an extension.
6. On July 16, 2012, I received confirmation of the extension until October 31, 2012.
7. On the same day that I received confirmation of the extension, I received notification that Mr. Schell's first lawyer was withdrawing from the file for personal reasons. I was told the reasons and they were not because of anything that Mr. Schell had said or done.
8. By July 19, 2012, Mr. Schell had hired a new lawyer.
9. When the schedules of everyone, including the witnesses and lawyers, were looked at, it appeared that the best day to start the Hearing was October 10, 2012.
10. The Hearing lasted 5 days, finishing on Monday, October 15th.
11. I returned to Goderich, Ontario on October 16th and commenced writing my Report on October 17th.
12. I submitted my Report to the Speaker of the Legislative Assembly on October 29, 2012.

More details of my reasons for requesting the extension are contained on pages 42, 43 and 44 of my Report to the Speaker.

2) Recusal Applications during the Review:

For the first time in the history of Nunavut's *Integrity Act*, an Integrity Commissioner was served with an Application for Recusal, which is an application to have that particular Integrity Commissioner remove himself from conducting a Review of a Member's conduct.

In order to be successful on such an application, the Member must show a reasonable apprehension of bias on the part of the Integrity Commissioner against the Member.

Most Canadian jurisdictions, including Nunavut, have a one-step process for conducting a Review of a Member's conduct. In other words, Nunavut's Integrity Commissioner:

- a) receives the request to conduct the Review of a Member;
- b) performs an investigative role to determine if there are sufficient grounds to warrant commencing a Review of a Member;
- c) may even initiate his or her own Review of a Member;
- d) receives and hears evidence in the course of conducting the Review of the Member;
- e) performs an adjudicative role and makes findings of fact;
- f) finds whether or not the Member has contravened the *Integrity Act*; and
- g) makes recommendations in a Report to the Speaker of the Legislative Assembly.

This is different from the procedure in the Northwest Territories, for example, where the Conflict of Interest Commissioner conducts an investigation following which the Conflict of Interest Commissioner may direct that an inquiry be held before another person called a Sole Adjudicator.

A Review of a Member's conduct under the *Integrity Act* is not a judicial proceeding. But the Integrity Commissioner does have a duty to act fairly when conducting a Review.

During the Review of Mr. Schell's conduct, his lawyers served me with a total of two Recusal Applications. My detailed Rulings on each of those Applications are attached to my Report to the Speaker which was tabled in the Legislative Assembly. Those Rulings – the first one being 31 pages and the second one being 18 pages – are also found on the Integrity Commissioner's website.

At the end of each Ruling I essentially made the following statement:

“An informed person, viewing everything that has taken place in this Review to date realistically and practically, and having thought the matter through, would likely conclude that I would conduct the Review of Mr. Schell’s conduct fairly.”

3) Conduct of Hearing as part of the Review:

In the history of the *Integrity Act* of Nunavut, there have been a total of 6 Reviews of the conduct of Members. The Review which I completed in October 2012 is the first time that a formal Hearing has been held.

The previous Reviews were done through affidavits, emails and one-on-one questioning between the Integrity Commissioner and the Member whose conduct was being reviewed. I hope that most Reviews can be done in that manner.

In the 2012 Review, I concluded that it would be best to hold a formal Hearing in Iqaluit for the purpose of receiving the evidence and submissions. My reasons were as follows:

1. the nature of the allegations;
2. the number of witnesses that needed to give evidence;
3. the facts appeared to be in dispute; and
4. the need, therefore, for the witnesses to be both examined and cross-examined.

The review process must be fair and transparent to the Member whose conduct is being reviewed. As part of that fairness, the Integrity Commissioner who is conducting the Review must keep an open mind until all of the evidence has been presented and submissions made at the conclusion of the evidence.

I am trained as a lawyer and know how to examine and cross-examine witnesses. But I decided to retain a lawyer – Commissioner’s Counsel – to examine and cross-examine the witnesses on my behalf. Part of my reasoning for this decision were the reasons I listed above as to why I decided to hold a Hearing. In addition, I believed that having Commissioner’s Counsel would be fairer and more transparent to the Member. Commissioner’s Counsel could ask probing questions of all of the witnesses, including the Member under review, without the Member thinking that I was taking sides. I could listen to each witness, take notes and decide what the true facts were.

A lawyer from Nunavut’s Department of Justice applied for and was given permission to appear at the Hearing. Her primary roles were:

1. to be available to provide legal advice to any employees of the Government of Nunavut who were witnesses at the Hearing; and

2. since the Member being reviewed was a Cabinet Minister, to object to any questions that she felt infringed on Cabinet Privilege.

4) Results of the Review:

I found that Mr. Schell contravened the *Integrity Act* in the following ways:

- a) While Minister responsible for Nunavut Housing Corporation, he had a conversation about his own business with the President and Chief Executive Officer of Nunavut Housing Corporation.
- b) While Minister responsible for Nunavut Housing Corporation, Mr. Schell telephoned the Manager of Nunavut Housing Corporation about his (Mr. Schell's) own personal affairs.
- c) As Minister of Human Resources, Mr. Schell abused his ministerial authority to further his own private interests by making inappropriate inquiries about two Government of Nunavut employees.
- d) Mr. Schell gave false evidence at the Hearing examining his conduct as a Member of the Legislative Assembly.

I found that Mr. Schell **did not**:

- a) Violate the terms of his Blind Trust Agreement.
- b) Mislead the Secretary to Cabinet and the Integrity Commissioner with respect to the circumstances surrounding the appointment of his Executive Assistant.
- c) Carry on a business or contract with the Government of Nunavut without the authorization of the Integrity Commissioner.

Briefing of a New Cabinet Minister:

For the first time during my time as Integrity Commissioner, I was asked to provide a briefing to a newly elected Cabinet Minister. I did so in May 2012. The Premier thought that it would be useful. I had been part of the Minister's orientation shortly after her election to the Legislative Assembly as a Regular Member. But Cabinet Ministers have additional obligations and restrictions under the *Integrity Act*. I support the idea of Cabinet Ministers having a meeting with the Integrity Commissioner shortly after their election to Cabinet.

Restrictions on Cabinet Ministers:

From time to time, I am asked questions about what a Cabinet Minister can and cannot do.

I was going to comment on this topic in my Annual Report last year. But because I was conducting a Review of a Cabinet Minister at the time, I did not feel that it was appropriate for me to make any comment on what Cabinet Ministers should and should not do.

In 2012, Premier Eva Aariak asked me to look at the Ministerial Administrative Procedures Manual and to provide recommendations to her on possible additions and amendments to the Manual. I have done that.

As part of the orientation of the Members of the Legislative Assembly after the 2008 territorial election, I prepared an "Orientation Manual for Members." There will be a territorial election later this year. I hope to prepare an additional manual entitled "Orientation Manual for Cabinet Ministers" for this fall's orientation.

Hence, I will not say anything about Restrictions on Cabinet Ministers in this Annual Report.

Auditor General of Nunavut:

The Auditor General of Canada is also the Auditor General of Nunavut.

In November I had a telephone meeting with two senior officials from the office of the Auditor General of Nunavut. This was part of a Strategic Planning exercise wherein representatives of the Auditor General were meeting with various officials of the Government of Nunavut, including Members of the Legislative Assembly and Deputy Ministers.

I told them that I could not reveal any confidential information about my work.

During the meeting, we discussed several issues, including:

1. The change in the format of my Annual Meetings with each Member;
2. How my orientation of Members and Cabinet Ministers takes place;
3. How my orientation of Deputy Ministers and Executive Assistants took place in January 2009;
4. The security of the Integrity Commissioner's files and fax machine in my office;
5. The challenges that I have as Integrity Commissioner because of the small population of Nunavut which my provincial and federal colleagues may not have;
6. The process that is followed when conducting a Review of a Member's conduct; and
7. The *Integrity Act* in general.

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).

Legislative Assembly of Alberta:

I was invited by the Chair of the Select Special Conflicts of Interest Act Review Committee to make submissions regarding possible changes to Alberta's *Conflict of Interest Act*. I did so in February 2013. (This was done without any cost to Nunavut.)

As I have said before, Nunavut's *Integrity Act* is a model which other jurisdictions may want to consider.

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, 2012 to March 31, 2013:

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

	<u>2012/13</u>	<u>2011/12</u>
MLA/Minister/Premier or their Staff on their behalf	33	23
Trustees of the Blind Trusts	11	2
Deputy Ministers	1	1
Executive Assistants/Executive Secretaries on own behalf	0	0
Media	5	5
Public	5	3
Other Commissioners	6	1
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Total Inquiries	61	35

Three of the inquiries from the public concerned matters over which I have no jurisdiction. One of the inquiries was from a company doing business in Nunavut. The fifth inquiry was from the Auditor General of Nunavut, to which I have already referred in this Report.

Nunavut Elections Act.

I have certain responsibilities under the *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.

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.

There were no by-elections held during the period covered by this Report. Therefore, there was no need 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.

As I stated earlier in this Report, it was not necessary for me to travel to Iqaluit to have my 2012 Annual Meeting with each Member. For the period covered by this Report, the only trip I made to Iqaluit was in October 2012 for the purpose of conducting the formal Hearing in the Review of Mr. Schell's conduct.

I was in "the place of many fish" for one week. My wife, Nancy, accompanied me on this trip (at my expense). While I was busy during each day with the Hearing, Nancy had fun touring the city, including the stores and museums. In the evenings, we always found something to do. One night the Canadian Rangers accompanied the Grey Cup into the Nakasuk Elementary School. It was followed by a wonderful evening of music and dance. On the Sunday morning, Nancy and I had the privilege of attending a service conducted by Rev. Jonas Allaloo in the beautiful St. Jude's Cathedral. Nancy fell in love with Iqaluit and the people whom she met.

I am willing to travel to Nunavut whenever the need arises.

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 2012, which was held in Fredericton, New Brunswick. The topics discussed at these Annual Meetings are 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 on matters that assist me in the interpretation and application of Nunavut's *Integrity Act*. 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.

In return, I have sometimes been consulted by some of those same colleagues when one of them has a difficult issue with which to deal.

Observations:

Gifts and Hospitality:

I am continually being asked about gifts and hospitality, including free tickets to sporting events, free dinners and free trips.

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:

“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.

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. A 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.

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 continue to be grateful for the opportunity to be of service to all of Nunavummiut.

Nakurmiik.

Norman Pickell
Integrity Commissioner
April 18, 2013