



Legislative Assembly of Nunavut

ANNUAL REPORT 2014

OFFICE OF THE INTEGRITY COMMISSIONER

Hon. J.E. (Ted) Richard
Integrity Commissioner
October 2014

Introduction

This is the 15th Annual Report issued under the provisions of the Integrity Act and its predecessor statute. The Integrity Act requires that the Integrity Commissioner report annually to the Speaker on the activities of the Integrity Commissioner. This is the first Report issued by me as Integrity Commissioner. I was appointed on September 9, 2013 for a period of five years. This Annual Report 2014 covers the period September 9, 2013 to September 8, 2014.

The Integrity Act

The Integrity Act was enacted by the First Legislative Assembly of Nunavut in 2001. It affirms in law the commitment of the members of the Legislature to always serve the common good and to act with integrity. It establishes a system of standards and accountability for fulfilling that commitment.

The founding principles of the Integrity Act are as follows:

- a) integrity is the first and highest duty of elected office;
- b) the people of Nunavut are entitled to expect those they choose to govern them to perform their public duties and arrange their private affairs in a way that promotes public confidence in each member's integrity, that maintains the Legislative Assembly's dignity and that justifies the respect in which society holds the Legislative Assembly and its members;
- c) the members of the Legislative Assembly are committed, in reconciling their public duties and private interests, to honour that

expectation with openness, objectivity and impartiality, and to be accountable for so doing; and

d) the Legislative Assembly can serve the people of Nunavut most effectively if its members come from a spectrum of occupations and continue to participate actively in the economic and social life of the community.

Integrity and ethical behaviour are at the heart of public confidence in a democratically elected government. Nunavummiut expect their MLAs to act with openness, objectivity and impartiality. The MLA's duty to act in the public interest supersedes the MLA's private interest.

The Integrity Act describes the MLA's ethical obligations in these general terms:

(a) perform his or her duties of office and arrange his or her private affairs in such a manner as to maintain public confidence and trust in the integrity, objectivity and impartiality of the member;

(b) 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 that will bear the closest public scrutiny;

(c) arrange his or her private affairs in conformity with the provisions of this Act and act generally to prevent any conflict of interest from arising; and

(d) make all reasonable efforts to resolve any conflict of interest that may arise in favour of the public interest.

In addition, the Act imposes certain specific obligations and prohibitions upon each elected MLA, e.g.:

- obligation to periodically file a Public Disclosure Statement, describing the member's assets, liabilities, sources of income, etc.
- prohibition against receipt of "additional" remunerations, gifts or benefits connected to the performance of the member's duties of office
- prohibition against contracting with the GN or any of its public agencies
- avoiding, and declaring, any conflict of interest
- prohibition against improper use of insider information
- prohibition against exercising improper influence
- prohibition against improper lobbying

Role of the Integrity Commissioner

The Integrity Commissioner is appointed by the Commissioner of Nunavut, on the recommendation of the Legislative Assembly. The term of office is five years. He or she is an independent officer of the Legislative Assembly and cannot be removed from office except for cause or incapacity. He or she has taken an oath to perform the duties of the office impartially and not to disclose any confidential information or advice except in accordance with the Integrity Act. Decisions made by the Integrity Commissioner are not subject to any appeal.

The main role of the Integrity Commissioner is to assist MLAs in fulfilling their commitment to act with integrity. The Integrity Commissioner is a resource for the MLAs.

Each member is required to meet with the Integrity Commissioner within ninety days of his or her election, and annually thereafter. The main purpose of the meeting is to review the contents of the member's Public Disclosure Statements, and to obtain advice on the member's general and specific obligations under the Integrity Act. Between the dates of these meetings, a member can consult with the Integrity Commissioner at any time to obtain advice on the member's obligations under the Act.

Following the general election in October 2013, I gave a comprehensive oral presentation to the group of 21 elected MLAs, on the topic of the Integrity Act and their ethical responsibilities as MLAs. I also provided each member with a written version of that presentation so that they might have an opportunity to review it, together with the provisions of the Integrity Act, from time to time during their tenure of office as MLAs.

In November 2013 I also met with each of the MLAs individually to assist them with the preparation of their initial Public Disclosure Statements and to again discuss their specific obligations under the Integrity Act.

Following a by-election in Rankin Inlet in February 2014, I met with the newly-elected MLA and gave a similar orientation briefing and general advice to that member.

In May 2014 I again met with each individual MLA for the same purpose; thus, each MLA has complied with the statutory requirement to meet annually with the Integrity Commissioner.

My meetings and discussions with the individual MLAs are confidential in nature.

Public Disclosure Statements: all members filed their initial Form 1 Public Disclosure Statement following their election, in accordance with ss.5(1) of the Integrity Act. Two members were granted an extension of the filing deadline. Several members have subsequently filed corrections/additions to their Public Disclosure Statements, either at the request of the Integrity Commissioner or at their own initiative. All Public Disclosure Statements are available for viewing by any member of the public at the Office of the Clerk of the Legislative Assembly.

As stated earlier in this Report, any MLA can at any time consult with the Integrity Commissioner to obtain advice on his or her obligations under the Integrity Act. The consultations, and the advice given, whether verbal or in writing, are confidential, subject to a few specific exceptions. During the past year, members of the present Assembly did not hesitate to seek such advice from the Integrity Commissioner. I am encouraged by this. It is my preference that members contact me for advice, particularly **in advance** of any action or activity that the member believes might constitute a contravention of the Integrity Act. There is obviously wisdom in being proactive.

It is perhaps not surprising that members sought such individual advice on numerous occasions in the past year, given the number of newly-elected members following the 2013 election, and further, given the fact that some members assumed Ministerial responsibilities for the first time. (The Integrity Act places additional restrictions and obligations on Ministers, e.g., prohibition against carrying on a business, prohibition against holding shares in private companies, etc.)

As an indication of the variety of topics on which members sought the advice of the Integrity Commissioner during the past year (apart from discussions during the scheduled in-person meetings), these are some of the statutory provisions addressed, and the number of individual inquiries/opinions for each of these categories:

- specific entries in Public Disclosure Statements (s.5) – 10
- conflict of interest (s.8, s.15) – 5
- no contracts with GN (s.14) – 5
- no extra remuneration/gifts/benefits (s.13) – 11
- Minister not to carry on business (s.16) – 2
- Minister not to hold shares (s.17) – 4
- other/misc. – 5

I am pleased to report that, without exception, all of the members accepted and followed the advice and recommendations of the Integrity Commissioner.

Blind Trust Agreements: the Integrity Act provides that a Minister or other MLA may transfer certain assets or business interests to an arm's-length trustee, on conditions approved by the Integrity

Commissioner, in order to avoid a contravention of the Integrity Act. When I assumed office as Integrity Commissioner in September 2013, there were three Blind Trust Agreements in place. Two of these have since been terminated or wound up for the reason that the particular member was not re-elected in the general election of October 2013. The third Blind Trust Agreement is currently in the course of being wound up, as being unnecessary, in the opinion of the Integrity Commissioner. As at the date of this Annual Report, there are no Blind Trust Agreements extant.

Formal Reviews: in addition to the main “advisory” role that the Integrity Commissioner has with respect to MLAs, the Integrity Commissioner also has an investigative role under the Integrity Act, i.e., to determine whether an MLA has contravened the Act.

Allegations of an MLA’s misconduct (i.e., a contravention of a provision of the Integrity Act) are received by the Integrity Commissioner and investigated and reported upon pursuant to a process detailed in s.36–45 of the Act.

Any member of the public, including another MLA, can request that the Integrity Commissioner review an alleged contravention of the Integrity Act by an MLA. There is a class of senior public officials who are excluded from initiating a review by the Integrity Commissioner. These officials are listed in ss.36(1.1) of the Act. The Legislative Assembly itself can, by resolution, request a review by the Integrity Commissioner. The Premier can request a review with respect to a Minister. The Integrity Commissioner can also conduct a review on his own initiative.

The request for a review by the Integrity Commissioner is made in writing, sets out the alleged contravention, the grounds for believing that the contravention occurred, and is supported by an affidavit of the person making the request. Upon receipt of the request the Integrity Commissioner gives notice to the affected MLA, and commences the review as soon as practicable. The Integrity Commissioner has a discretion to conduct the review in private or in public. The Integrity Commissioner is to make his or her report within 90 days of commencing the review, although there is provision for an extension of time in appropriate circumstances.

Following the review, the Integrity Commissioner will make a determination whether the MLA has contravened the Integrity Act, and, if so, the Integrity Commissioner can recommend one or more sanctions to the Legislative Assembly.

I am pleased to report that there were no requests received for a formal Review by the Integrity Commissioner during the past year. (one complaint was received during the election campaign period in October 2013; however, the complainant did not proceed or follow through with the complaint. There were thus insufficient grounds to warrant commencing a Review.) This bodes well for a culture of integrity, and public confidence, in our democratically elected Fourth Legislative Assembly.

In the 13 years since the Integrity Act was enacted there have been only six formal Reviews conducted by the Integrity Commissioner, resulting in sanctions imposed by the Legislative Assembly against a

sitting member. The types of transgressions or unethical conduct found by the Integrity Commissioner can be summarized as follows:

- failures to disclose a significant financial liability, or a significant business interest, in the member's Public Disclosure Statement
- failure to arrange the member's private affairs in such a manner as to maintain public confidence in the member's integrity
- failures to avoid a conflict of interest
- exercising improper influence, as MLA or Minister, on the decision of a government official, in order to further the member's private interests or those of his friends or acquaintances

The formal Reports resulting from these earlier Reviews of members' conduct were tabled in the Legislative Assembly at the time, and can be viewed on the Integrity Commissioner's website at www.integritycom.nu.ca.

Executive Assistants and Executive Secretaries

In addition to the statutory responsibilities of the Integrity Commissioner in relation to the members of the Legislative Assembly, the Management and Services Board of the Legislative Assembly has given an additional assignment to the Integrity Commissioner in relation to the personal staff employed by each Minister of the GN, i.e., executive assistants and executive secretaries.

Each EA and ES, upon commencement of employment, signs a written contract with his or her Minister and the GN. In addition to the usual employment terms regarding duties, compensation and other benefits, there are provisions regarding conflict of interest. In order to avoid any real or perceived conflict of interest the EA or ES is required to make a confidential disclosure to the Integrity Commissioner within 30 days of commencing employment (and thereafter as appropriate) regarding the employee's business activities, personal holdings and volunteer and related outside activities in which GN policies or funds may be impacted. The contract provides that the Integrity Commissioner is to review the disclosure and gives direction for resolution for any perceived or actual conflict of interest.

In May 2014, at the request of the Principal Secretary to the Premier, I gave a presentation to a group of EAs and ESs. The presentation covered two topics: a) a review of a Minister's ethical responsibilities under the Integrity Act, so that the EA or ES might assist his or her Minister in avoiding any contravention of the Integrity Act; and b) a review of the employee's own responsibilities under his or her employment contract, i.e., in relation to interaction with the Integrity Commissioner. There were 18 EAs and ESs in attendance at the presentation.

In the past year, there were nine occasions on which an EA or ES made a confidential disclosure to, and/or sought advice from, the Integrity Commissioner pursuant to this arrangement.

Deputy Heads

Also in May 2014, at the request of the Principal Secretary to the Premier and the Secretary to Cabinet, I gave a presentation to a group of Deputy Ministers. The subject-matter of the presentation was the ethical responsibilities of their Ministers under the Integrity Act, so that they might be of some assistance to their individual Ministers in that regard. There were 16 Deputy Ministers in attendance at that presentation.

Very recently, the Management and Services Board of the Legislative Assembly has requested the Integrity Commissioner to take on another assignment, and that is to conduct periodic reviews and assessments of disclosure statements of DMs, as requested by the Premier. This new process for dealing with the mandatory disclosures of DMs has not yet been put in place.

Nunavut Elections Act

The Elections Act establishes an electoral system for the election of the members of the Legislative Assembly of Nunavut. It establishes rules governing elections, and creates offences relating to illegal activities and breaches of the election rules. A summary conviction offence under the Elections Act normally is punishable in court by a fine or imprisonment, or both. In the “Enforcement” part of the Elections Act, the Act establishes a diversion process whereby an alleged offender can avoid a formal prosecution in Court. This is done by entering into a Compliance Agreement with the Integrity Commissioner. A Compliance Agreement is an agreement whereby

an alleged offender agrees, in exchange for the stay of prosecution of the offence, to one or more conditions, e.g.:

- to accept responsibility for the offence
- to make a public apology
- to do or refrain from doing any action relating to the offence
- to pay a sum of money to the GN, or
- to perform community service

Entering into a Compliance Agreement is voluntary and without prejudice to the position of the alleged offender.

The involvement of the Integrity Commissioner in negotiating a Compliance Agreement commences when the police advise the Integrity Commissioner of any case where, in the course of an investigation, the police have reasonable and probable grounds for believing that an individual has committed an offence under the Elections Act.

A general election was held in October 2013. As at the date of writing this Report, I have received from the police advice with respect to four individuals alleged to have committed an offence under the Elections Act. No Compliance Agreement has yet been signed by any of these individuals.

Interaction With Provincial Colleagues

The Integrity Commissioner belongs to a national network of Commissioners with similar mandates in the other northern territories, the provinces, the federal House of Commons and the federal Senate. It is entitled Canadian Conflict of Interest Network,

or CCOIN for short. This group of Conflict of Interest Commissioners, Ethics Commissioners and Integrity Commissioners meet annually, and keep in close contact throughout the year to share common experiences, challenges and best practices to assist each other with their duties of office. I attended my first meeting with this group at the annual meeting in Winnipeg in September 2014, and met my colleagues in person. I have already benefitted from the vast experience of these colleagues, and am fortunate to have them, individually and collectively, as important resource persons when needed.

Conclusion

I want to thank all MLAs for their co-operation during my first year as Integrity Commissioner.

I also want to extend my appreciation to the Clerk of the Legislative Assembly and his staff for their administrative and general support and assistance to me in carrying out my duties of office. It is my observation that the Legislative Assembly is well-served by its staff of persons with such dedication and professionalism.

Respectfully submitted,

Hon. J.E. (Ted) Richard
Integrity Commissioner