



Legislative Assembly of Nunavut

ANNUAL REPORT 2016

OFFICE OF THE INTEGRITY COMMISSIONER

Hon. J.E. (Ted) Richard
Integrity Commissioner
September 2016

Introduction

Integrity and ethical behavior are at the heart of public confidence in any democratically elected government. Citizens expect their elected representatives to perform their public duties and to manage their private affairs in a way that promotes that public confidence. Nunavummiut expect their elected representatives to place the public interest above private interests, and to resolve any conflict of interest that might arise in favour of the public interest.

These principles have existed since Canada was founded 150 years ago. In the last 25 years, Canadian legislatures have incorporated these principles into statute law. After the creation of Nunavut, the First Legislative Assembly passed the Integrity Act in 2001. The Act 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. It creates the position of Integrity Commissioner, an independent officer of the Legislative Assembly. The main role of the Integrity Commissioner is to assist members of the Legislative Assembly (MLAs) in fulfilling their commitment to act with integrity, and in avoiding any contravention of the Integrity Act.

The Act requires the Integrity Commissioner to report annually to the Speaker and to the Legislative Assembly. What follows is my report for the period September 9, 2015 to September 8, 2016.

The Integrity Act

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.

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;

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- (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.

The goal of most of the provisions in the Act is to minimize the possibility of conflicts arising between public and private interests. 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 Government of Nunavut (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. I was appointed on September 9, 2013 for a term of five years.

The Integrity Commissioner is an independent officer of the Legislative Assembly and cannot be removed from office except for cause or incapacity. He or she is responsible for impartially administering the Integrity Act. 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 help members understand their obligations under the Integrity Act and to provide guidance to prevent conflicts of interest from arising and to properly deal with those conflicts that do arise. The Integrity Commissioner is a resource for the MLAs. This advisory role is considered to be the most important function of the Integrity Commissioner.

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.

Public Disclosure Statements

All but one of the 21 sitting MLAs filed their annual Public Disclosure Statements (Form 1) prior to the deadline of January 29, 2016. One MLA was granted an extension, and filed 3 days after the deadline. The new MLA elected in the Netsilik by-election of February 8, 2016 filed his first Public Disclosure Statement (Form 1) within the 90-day deadline imposed by section 5 of the Act.

The contents of the Form 1 Public Disclosure Statement are prescribed in the Act, and in addition to assets, liabilities, incomes, contracts, shareholdings, etc, include details of any activity which is otherwise prohibited but which has been authorized by the Integrity Commissioner pursuant to the Act.

During the past year, members filed a Supplementary Disclosure Statement (Form 2) or a Disclosure Statement of Gifts and Personal Benefits (Form 3), when required by the Integrity Commissioner or on the member's own initiative. All of these filed public disclosure statements are available for examination by members of the public at the Office of the Clerk of the Legislative Assembly.

Annual Meetings with Integrity Commissioner

From May 30 to June 3, 2016 I met in person with each MLA individually to review the contents of their most recent disclosure statements, and to review again their specific and general obligations under the Integrity Act, and to respond to any queries

about those obligations. 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.

Advisory Role

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 did not hesitate to avail themselves of the advice of the Integrity Commissioner, particularly in advance of an action or activity being contemplated by the member, an action or activity that the member believed might possibly constitute a contravention of the Integrity Act. Most of these consultations were by e-mail, some by telephone, some in person. Many of these consultations were brief, e.g., a 10 minute telephone call, or a short exchange of email communications; whereas others were ongoing, with an exchange of information, lengthy correspondence and advice continuing for days or weeks. I have been able to respond to members' queries on a timely basis.

Subject-matters on which members sought advice in the past year were varied: possible conflict of interest (sections 8 and 15 of the Act); special restrictions on Ministers' outside activities (sections 16–17); specific information to include/not include in public disclosure

statements (section 5 and Forms 1, 2 and 3); prohibition against receipt of additional remuneration, gifts or benefits connected to the performance of the member's duties of office (section 13). The two most frequent categories during the past year were a) possible conflict of interest situations and b) the additional restrictions placed on Ministers' outside activities.

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

Formal Investigations

As stated earlier in this Report, the main role of the Integrity Commissioner is an advisory one, i.e., assisting the MLAs to understand their obligations under the Integrity Act and providing guidance to avoid conflicts arising between public and private interests. While the focus is on prevention, the Integrity Commissioner also has an investigative role under the Act, i.e., to determine whether an MLA has contravened the Act.

Allegations of an MLA's misconduct (i.e., a contravention of a specific provision of the Integrity Act) are received by the Integrity Commissioner and investigated and reported upon pursuant to a process detailed in sections 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 subsection 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 instances in the past year which required me to formally open a file to investigate alleged improper conduct of an MLA, i.e., an alleged contravention of the Integrity Act.

There has been no requirement for the Integrity Commissioner to commence a formal review of any alleged contravention of the Integrity Act by any MLA since 2012. In the early years of the

Legislative Assembly of Nunavut, there were several occasions when the Integrity Commissioner was required to investigate alleged improper conduct of an MLA, i.e., an alleged contravention of the Integrity Act and to report to the Legislative Assembly. Examples:

- in 2004 a member was found to have contravened the Integrity Act by failing to disclose a significant liability (indebtedness) in his annual Public Disclosure Statement on two occasions.
- in 2008 a member was found to have contravened the Integrity Act by failing to disclose in his annual Public Disclosure Statement, on four occasions, the name of a subsidiary of a private company in which he had an interest.
- in 2008 a Minister was found to have
 - a) contravened the “conflict of interest” provisions of the Integrity Act by participating in decisions in the performance of his Ministerial duties knowing that those decisions would further his own private interests and improperly further a friend’s private interest, and
 - b) contravened the “improper influence” provisions of the Integrity Act by seeking to influence another government official’s decision so as to further his own private interests and improperly further a friend’s private interest.
- in 2012 another Minister was found to have
 - a) contravened the “conflict of interest’ provisions of the Integrity Act on a number of occasions by participating in decisions in the performance of his Ministerial duties knowing that those decisions would further his own

private interests, and did not take steps to avoid the conflict of interest on those occasions, and

- b) contravened the “improper influence” provisions of the Integrity Act on a number of occasions by seeking to influence other government officials’ decisions so as to further his own private interests.

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.

The fact that there have been no formal investigations required since 2012 speaks well of a current culture of integrity, and ethical behavior by our democratically elected representatives, in Nunavut’s Legislative Assembly.

Members’ Code of Conduct

During my tenure as Integrity Commissioner, I have received a number of inquiries concerning the extent to which certain conduct or behaviour of MLAs falls within the jurisdiction of the Integrity Commissioner.

I wish to use the medium of this annual report to again clarify the distinction between, on the one hand, the statutory role and authority of the Integrity Commissioner, and on the other hand, both a) the power of the Legislative Assembly to discipline its members, and b) the Members’ Code of Conduct which members of the Fourth Legislative Assembly have adopted for themselves.

The Legislative Assembly and Executive Council Act, in particular section 18(1)(c) and section 11, provides that the Legislative Assembly has the power to discipline members, including the power to censure, to suspend and to expel members. The Legislative Assembly has exercised this power of discipline in the past, including the current Fourth Legislative Assembly.

At the commencement of the Fourth Legislative Assembly, its members adopted for themselves a Members' Code of Conduct, a document which was tabled at the first sitting of the Fourth Legislative Assembly in March 2014. The Code establishes clear expectations for MLAs in relation to their public behavior in the execution of their duties.

The purpose and objectives of the Integrity Act are summarized earlier in this Report. The Act imposes certain specific obligations and prohibitions upon each elected MLA, also summarized earlier in this Report. The role of the Integrity Commissioner is prescribed in the Act – it is generally to assist the MLAs in remaining in compliance with the Act, and also to investigate any alleged contraventions of the Integrity Act.

To reiterate, the Integrity Commissioner does not have a role in investigating any allegation of a breach of the Members' Code of Conduct.

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 Government of Nunavut (GN), i.e., executive assistants (EA) and executive secretaries (ES).

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 of any perceived or actual conflict of interest.

I gave a presentation to a group of EAs and ESs in May 2014 to review their responsibilities under their individual employment contracts, i.e., in relation to interaction with the Integrity Commissioner.

In the past year, there were several occasions on which Ministerial staff made a confidential disclosure to, and/or sought advice from, the Integrity Commissioner pursuant to this arrangement.

Independent Officers of the Legislative Assembly

In December 2014 the Management and Services Board (MSB) of the Legislative Assembly made a determination, with the goal of enhancing transparency and consistency at the most senior level of government, to require the Clerk of the Legislative Assembly, and four Independent Officers of the Legislative Assembly (Languages Commissioner, Information and Privacy Commissioner, Representative for Children and Youth, and Chief Electoral Officer) to submit confidential disclosure statements (with respect to assets, liabilities, sources of income, GN contracts and outside activities) to the Integrity Commissioner for his review. The MSB directed that the Integrity Commissioner report any findings of concern to the MSB.

The format of the confidential disclosure statement adopted is broadly consistent with the format of the public disclosure statement submitted by MLAs pursuant to the Integrity Act, as directed by the MSB directive.

The annual confidential disclosure statements were received by me directly from the five individuals earlier this year. I requested and received additional information when required, in order to do my review. I sent a confidential letter to the Chair of MSB (the Speaker) in each case advising of the result of my review.

With this MSB directive, the Clerk and the Independent Officers are each required to submit a disclosure statement on an annual basis, on a date to be set by my office.

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. (This is an assignment given to the Integrity Commissioner by the Legislative Assembly in the Elections Act and is unrelated to, and separate and apart from, the Integrity Commissioner’s main responsibilities under the Integrity Act.)

In my previous Annual Reports in 2014 and 2015 I summarized my activities under the Enforcement part of the Elections Act arising out of the general election held in October 2013.

During the past year there were no new enforcement matters brought to my attention arising from the 2013 general election, nor from the by-elections in Uqqummiut constituency in February 2015 and in Netsilik constituency in February 2016.

Other Inquiries from Public

As in previous years, during this past year, I received inquiries from the media and other sources regarding the office of the Integrity Commissioner and its mandate. While respecting the principle of

confidence referenced earlier in this Report, I provided information and assistance as appropriate.

Interaction with Provincial Colleagues

As Integrity Commissioner for Nunavut, I belong 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 have benefitted from the vast experience of these colleagues, and am fortunate to have them, individually and collectively, available as important resource persons when needed.

Conclusion

I want to thank all MLAs for their co-operation during the past year.

And I want to again express 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.

Respectfully submitted,

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