



Legislative Assembly of Nunavut

Annual Report

April 1, 2008 to March 31, 2009

Norman Pickell

Integrity Commissioner

Integrity Commissioner's Annual Report 2008 – 2009

Foreword	1
Introduction	1
Activities During 2008-2009:	2
Orientation by the Integrity Commissioner	2
Members' Disclosure Statements	3
Advice	3
Members' Activities on Behalf of Constituents	3
Blind Trust Agreements	4
Review of the Conduct of Members of the Legislative Assembly	4
Executive Assistants and Executive Secretaries	5
Inquiries	5
Contact with my Colleagues	6
<i>Nunavut Elections Act</i>	6
Travel to Nunavut	7
Observations and Recommendations	7
Behaviour of the Members in the Legislative Assembly	7
Future Possible Amendments to the Integrity Act	8
Expansion of Accountability	8
Closing Remarks	9
Integrity Commissioner's Website	9
Tributes and Appreciation	10
Appendix – Possible Amendments to the <i>Integrity Act</i>	Appendix

Annual Report 2008-2009

Integrity Commissioner

Foreword

Since July 3, 2008, it has been my honour and privilege to be the Integrity Commissioner of Nunavut. I was actually the Acting Integrity Commissioner from July 3, 2008 until being confirmed by a unanimous vote in the Legislative Assembly on September 9, 2008 for a five-year term.

The Integrity Commissioner is an independent officer of the Legislative Assembly of Nunavut. This means he is free from all influences and outside direction in carrying out his duties. The Integrity Commissioner is responsible to the entire Legislative Assembly and to the public.

This is my first Annual Report to the Legislative Assembly. It primarily covers the period from July 3, 2008 until March 31, 2009. David Phillip Jones, who was the Acting Integrity Commissioner from April 1, 2008 until my appointment in July, advises me that he has nothing to add to this Report.

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*. It was tabled in the Legislative Assembly on May 22, 2001. The following quote from J. Richard Finlay, at the Centre for Corporate and Public Governance, 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 First Legislative Assembly gave high priority to building a sound ethical foundation for Nunavut. The *Integrity Act* of Nunavut sets the standards for ethical behaviour of all Members of the Legislative Assembly. By calling it the *Integrity Act*, the legislature is letting the public know that the emphasis is on integrity, and not simply avoiding conflicts of interest. The Act focuses on positive behaviour and high standards of conduct, rather than on what cannot be done.

The *Integrity Act* establishes a system of standards and accountability for the conduct of Members of the Legislative Assembly. The Act states that integrity is the first and highest duty of elected office. Each Member of the Legislative Assembly must act in a manner that will bear the closest public scrutiny.

Each Member of the Legislative Assembly must always serve the common good in keeping with traditional Nunavummiut values and democratic ideals. A Member must do his or her work in ways that favour the public good over private interests. Earning the public trust must be a constant work in progress.

Activities During 2008-2009

Orientation by the Integrity Commissioner:

When talking about integrity, the emphasis should be on prevention. Accordingly, one of the key functions of the Integrity Commissioner is to educate Members of the Legislative Assembly and others before a conflict or problem develops.

In November 2008, shortly after the Territorial Election, I met with all of the Members of the Legislative Assembly – the ones re-elected and those newly elected – for a full day in a classroom setting. I also met with each of them individually. During that time we discussed the responsibilities that the Members have under the *Integrity Act*.

In January 2009, I had a similar discussion with the Deputy Ministers and Heads of Nunavut's Crown Corporations. This was followed the next day by a meeting with the Executive Assistants and Executive Secretaries to the Cabinet Ministers. While we talked about the responsibilities that elected Members have under the *Integrity Act*, we also discussed the obligations that senior civil servants and staff themselves have.

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. All Members, with the exception of one, filed their Public Disclosure Statements on time. I granted an extension to the Honourable Hunter Tootoo to file his Public Disclosure Statement.

Copies of these disclosure statements, including any supplementary ones, 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*. In fact, I welcome them to do so. This advice is usually given on a confidential basis.

I would rather provide advice before something is done which might be a violation of the *Integrity Act*, instead of receiving a complaint that alleges that a Member has broken the law.

Since my appointment last July, I have received numerous inquiries from the Members as well as from their staff. I encourage this to continue.

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 not:

1. communicate with judges or justices of the peace regarding cases before the courts;
2. contact court or police officials regarding matters that are before the courts or that are being investigated;
3. attempt to interfere with the judicial or quasi-judicial process at any level.

Blind Trust Agreements:

The *Integrity Act* recognizes that the public benefits from having Members of the Legislative Assembly who come from a variety of occupations and experience. 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 does not have any input on the decisions made.

Since being appointed Integrity Commissioner, I have had to deal with blind trusts, both in the context of a Review of a Member's conduct and in Members wanting to fulfill their obligations under the *Integrity Act*.

I encourage any Member of the Legislative Assembly and any Executive Assistant or Executive Secretary to a Cabinet Minister to contact me at any time about blind trusts and how they can be used in their particular circumstances.

Review of the Conduct of Members of the Legislative Assembly:

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

In some jurisdictions, only an elected Member can ask the Integrity Commissioner to conduct a Review of an alleged breach. However, in Nunavut, any person, including a Member of the Legislative Assembly, can ask for a Review.

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.

From the beginning of the *Integrity Act* in July 2001 until June 2008, there had been only two formal Reviews of the conduct of a Member. The Reports from those Reviews, which found breaches of the *Integrity Act*, are available on the Integrity Commissioner's website. On July 3, 2008, the day that I was appointed Acting Integrity Commissioner, I was given a file to look at to see if it warranted a Review. As a result, I conducted the third formal Review of a Member under the *Integrity Act*. I found that the Member had breached the blind trust provisions, the influence provision and the conflict of interest provisions of the *Integrity Act*. My Report, dated September 8, 2008, which was adopted by the Legislative Assembly, is found on the Integrity Commissioner's website.

Executive Assistants and Executive Secretaries:

As a result of changes in November 2008 to the contracts of the Executive Assistants and Executive Secretaries to Cabinet Ministers, the Integrity Commissioner now has a role in helping the Executive Assistants and Executive Secretaries avoid conflicts of interest. In the few months that I have been working with the Executive Assistants and Executive Secretaries, it is apparent that some changes need to be made to the wording of those contracts. I am in the process of working with the Cabinet on those changes.

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 the public, I often have to restrict my remarks to those of a general nature.

When I complete a Review of the conduct of a Member of the Legislative Assembly, in most situations I submit my Report to the Speaker, who then brings it into the Legislative Assembly where it becomes public. My Report is also added to the Integrity Commissioner's website.

During my investigation of the conduct of a Member of the Legislative Assembly, I do not believe that it is appropriate for me to comment to the media about the facts. Once my Report has been received by the Speaker, I do not want to make any further comments about it (other than in my Annual Report and similar forums).

Contact with my Colleagues:

Every territory and province in Canada, as well as the House of Commons and the Senate has an Integrity Commissioner. In some of those jurisdictions they are called Ethics Commissioners or Conflict of Interest Commissioners. We all belong to the Canadian Conflict of Interest Network - CCOIN.

I attended the CCOIN Annual Meeting in Quebec City in September 2008. We discussed current issues with which some of us are having to deal.

The Quebec City meeting also gave me an opportunity to meet all of my colleagues in person soon after assuming my position as Integrity Commissioner. There have been occasions when I have needed to consult with my territorial, provincial and federal colleagues. At this time I want to express my appreciation for the collegiality and support shown to me by them. They have helped to make my first few months on the job much easier.

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 two 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. Notice of the compliance agreement is published.

The *Nunavut Elections Act* also requires the Chief Electoral Officer, the RCMP, the Prosecutor and the Integrity Commissioner to enter into an Enforcement Protocol Agreement outlining the enforcement roles of the various parties.

I signed a revised Enforcement Protocol Agreement dated October 1, 2008 which was used in the Territorial Election on October 23, 2008.

As of March 31, 2009, no Compliance Agreement in exchange for a stay of prosecution relating to the 2008 Territorial Election had been signed. Since March 31, 2009, I have offered Compliance Agreements to various parties. More will be said about those in next year's Annual Report.

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 help of the telephone, email and fax, most of my work as Integrity Commissioner is done from Goderich. I am available to travel to Nunavut whenever the need arises. In fact, in addition to coming to Iqaluit in June 2008 to be interviewed for the position, I made four trips to Nunavut as Integrity Commissioner from July 2008 to January 2009, including a visit to Rankin Inlet to meet with the Chief Electoral Officer.

Observations and Recommendations

Behaviour of the Members in the Legislative Assembly:

I want to commend the Members for their behaviour in the Legislative Assembly. It has been a privilege for me to sit in the public gallery on two different occasions and observe the proceedings.

In some jurisdictions in Canada, the Members' conduct in the Legislative Assembly falls below the standard of acceptable behaviour. However, based on my personal observations, this is not true in Nunavut.

I believe that the reason the level of behaviour in Nunavut's Legislative Assembly is so high is because the Members are embracing the traditional Nunavummiut values referred to in section 1 of the *Integrity Act*, which are embodied in *Inuit Qaujimajatuqangit* – IQ.

Future Possible Amendments to the Integrity Act:

The *Integrity Act* provides for a mandatory review of the Act every five years. However, nothing prevents the Legislative Assembly from making amendments to the *Integrity Act* at any time. I recognize that it is for the Legislative Assembly, and not for me, to decide if and when the *Integrity Act* will be amended.

In my first few months of working with the *Integrity Act*, I have discovered some sections that the Legislative Assembly may wish to consider amending. Attached as an Appendix to this Annual Report is a document that I have prepared entitled “**Possible Amendments to the Integrity Act**”.

Expansion of Accountability:

As I have already stated, *For a Culture of Integrity* formed the basis of Nunavut’s *Integrity Act*.

The *Integrity Act*, which covers only Members of the Legislative Assembly, sets an example of honesty, openness and accountability for all who govern and administer the Territory. As noted on page 20 of *For a Culture of Integrity*, in 1999 the Northwest Territories Review Panel made the following recommendations:

34. Deputy Ministers and those functioning at an equivalent level should be subject to the same standards as Ministers. Those standards should be legislated and should include the filing of an annual financial statement and an annual meeting with the Conflict of Interest Commissioner.
36. Such appointed officials should be subject to post-employment restrictions with respect to lobbying activities and assuming employment with organizations that had significant dealings with their department or agency. The period of restriction should be six months.

When the Legislative Assembly passed the *Integrity Act*, it was decided the Act should focus at that time exclusively on persons elected to the Legislative Assembly. Since then, the first Integrity Commissioner, the Honourable Robert Stanbury, has suggested on several occasions that perhaps the time has come to complete the system of standards and accountability to cover senior unelected officials in expanded or parallel legislation.

In his 2004-2005 Annual Report, Commissioner Stanbury made the following comment:

“Remaining unresolved is the longstanding recommendation that Deputy Ministers and those functioning at an equivalent level be subjected to the same legislated standards as Ministers.”

The 2006-2007 Annual Report of the Integrity Commissioner had the following paragraph:

“Attention could ... be turned to expanding the reach of now-established principles of public integrity to the entire governance and administration of the Territory. Senior officials still lack a system of legislated standards and accountability similar to that self-imposed by legislators. A code of conduct for all Government of Nunavut employees is said to be under study, as well as “whistle-blowing” protection for disclosure of wrong-doing. The value of lobbyist regulation, introduced by other jurisdictions, might be considered. All these initiatives have the potential to contribute to a Nunavut-wide culture of integrity in its public institutions.”

From my reading of past Annual Reports of the Integrity Commissioner, it appears that the “code of conduct” referred to above has been under study in Nunavut since 2003.

As I have already mentioned, Executive Assistants and Executive Secretaries to Cabinet Ministers now have some of their actions scrutinized by the Integrity Commissioner. I am also aware that some of the terms of employment for Deputy Ministers and Heads of Crown Corporations are similar to many of the concepts in the *Integrity Act*. Those are good first steps.

From time to time in recent months, support has been expressed in the Legislative Assembly for some of these recommendations that have been made in prior Annual Reports of the Integrity Commissioner.

Closing Remarks

Integrity Commissioner’s Website:

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

It includes general information about the *Integrity Act*, a complete copy of the *Integrity Act*, all of the Annual Reports which are submitted by the Integrity Commissioner to the Legislative Assembly, any Special Reports which are prepared by the Integrity Commissioner, Reviews that have been done concerning the conduct of Members, the blank Public Disclosure Forms, and information about the Integrity Commissioner, including how to contact him.

Tributes and Appreciation:

First, I want to thank and pay tribute to the Honourable Robert Stanbury, who was Nunavut's first Integrity Commissioner. He served as such from July 1, 2001, when the *Integrity Act* came into force, until March 31, 2008, when he retired for reasons of health and family obligations. He was instrumental in helping to nurture the *Integrity Act* from its birth into maturity.

Next, I want to thank David Phillip Jones, the Conflict of Interest Commissioner for Yukon, for serving as Acting Integrity Commissioner of Nunavut from April 1, 2008 until my appointment on July 3, 2008.

I am thankful for the cooperation and assistance that I receive from the Clerk of the Legislative Assembly and all of his staff, the Law Clerk, the Chief Electoral Officer and the RCMP.

I want to thank the Standing Committee *Ajauqtiit* and the members of it who interviewed me and placed my name in nomination before the Second Legislative Assembly of Nunavut.

I also appreciate the courtesy and cooperation that I have received from the Members of both the Second and Third Legislative Assemblies.

In closing, let me say that those parts of Nunavut that I have had the pleasure of visiting are spectacular and the people whom I have met are extremely friendly.

Norman Pickell
Integrity Commissioner
May 25, 2009

Appendix to Integrity Commissioner's Annual Report 2008-2009

Possible Amendments to the Integrity Act

The *Integrity Act* provides for a mandatory review of the Act every five years. However, nothing prevents the Legislative Assembly from making amendments to the *Integrity Act* at any time.

I recognize that it is for the Legislative Assembly, and not for me, to decide if and when the *Integrity Act* will be amended. In my first few months of working with the *Integrity Act*, I have discovered some sections that the Legislative Assembly may wish to consider amending.

1. Annual Meeting with Integrity Commissioner – Spouses of MLAs:

Presently:

Section 34 reads as follows:

- (1) A member shall meet, at least annually, with the Integrity Commissioner to obtain advice on the member's obligations under this Act.
- (2) A member shall use his or her best efforts to ensure that **the member's spouse** attends the meeting with the Integrity Commissioner."

Commentary:

Most Canadian jurisdictions provide for an annual meeting between the member and the Integrity Commissioner. Nine jurisdictions also include the member's spouse. The Ethics Commissioner of the House of Commons is given discretion as to whether it is necessary to meet each year with the spouse. That legislation states the Ethics Commissioner "**may** request the attendance of ..."

I believe that there will be times when meetings between the spouses and the Integrity Commissioner will be beneficial. I am prepared to meet with the spouses of MLAs each year when I meet with the members. But I realize that such meetings come with a cost for the spouse, including travel to and from Iqaluit, hotel and meals and lost income.

Proposal:

- Option A** - leave the section alone and require the spouses to attend the annual meetings with the Integrity Commissioner.
- Option B** - give discretion to the Integrity Commissioner who “may request” the attendance of a spouse.
- Option C** - make provision for some or all of the meetings between the spouse and the Integrity Commissioner to be via telephone or video conference.
- Option D** - combine Options B and C and let the Integrity Commissioner decide what means is appropriate if a meeting with the spouse is needed.

2. Blind Trusts – Private Company:

Presently:

Subsection 14(8) reads in part as follows:

“Subsections (1) and (2) [regarding parties to a contract with the Government] do not apply if the member has entrusted his or her interest in the contract or his or her interest in the partnership or **private company** to one or more trustees on the following terms:”

Portions of section 16 read as follows:

“(1) A Minister shall not

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

(c) carry on a business through a partnership or sole proprietorship;”

“(2) Paragraph (1)(c) does not apply if a Minister entrusts the business or his or her interest in the business to one or more trustees on the following terms:”

Commentary:

It is possible that a Minister may have a business through a private company, in the same way that a member has. However, on a strict reading of subsection 16(2), a Minister is unable to place his or her interest in a private company in a blind trust, since subsection 16(2) only applies to businesses carried on through partnerships and sole proprietorships.

Proposal:

I would respectfully suggest that section 16 be amended in such a way that it is clear that a Minister can place his or her interest in a private company in a blind trust. This could be accomplished by amending subsection 16(1)(c) to read as follows:

“(1) A Minister shall not

(c) carry on a business through a partnership, sole proprietorship or **corporation;**”

Subsection 16(2) would then allow a Minister to place his or her interest in a private company in a blind trust. This would permit the Minister to keep his or her interest in a private company and not have to dispose of it. The Minister would still be able to perform his or her duties in a manner that promotes public confidence in that Minister’s integrity.

3. Blind Trusts – Consultation by Trustee:

Presently:

Subsections 14(8)(c) and 17(3)(c) read as follows:

“the trustees shall not consult with the member/Minister with respect to managing the trust property **unless the Integrity Commissioner has authorized the consultation and the consultation is with respect to a proposed or threatened event that might have a material effect on the trust;**”

Subsection 16(2)(c) reads as follows:

“the trustees shall not consult with the Minister with respect to managing the trust property;”

Commentary:

Section 14 trusts include trusts set up to carry on a member's business. Section 16 trusts include trusts set up to carry on a Minister's business. Section 17 trusts allow a Minister to place his or her investments in a trust.

Both section 14 trusts and section 16 trusts are meant to serve the same purpose, and therefore should have similar wording. With the present wording, it seems that Ministers who have section 16 trusts are being unfairly disadvantaged.

Proposal:

I would respectfully suggest that subsection 16(2)(c) be amended to include the part that I have bolded above so that the amended section would read as follows:

“the trustees shall not consult with the Minister with respect to managing the trust property **unless the Integrity Commissioner has authorized the consultation and the consultation is with respect to a proposed or threatened event that might have a material effect on the trust;**”

4. Blind Trusts – Information Given by Trustee:

Presently:

Subsections 14(8)(f), 16(2)(f) and 17(3)(f) all read as follows:

“the trustees shall give the member/Minister sufficient information to permit him or her to submit returns as required by the *Income Tax Act* (Canada);”

But only subsection 16(2)(e) reads as follows:

“the trustees shall, at the end of each calendar year and at one or more intervals during the year, give the **Minister** a written report stating the value, but not the nature, of the assets in the trust and shall, in the year-end report, also state the trust's net income for the preceding year and the trustees' fees, if any;”

Commentary:

Section 14 trusts are for members. Section 16 and 17 trusts are for Ministers. All are meant for the same purpose. In fact, trusts set up pursuant to sections 14 and 16 include businesses, one for members and one for Ministers. Yet only Ministers receive the additional information, and then only if it is a section 16 trust. It would seem that the trustees should be able to give the same information to both members and Ministers, regardless of the type of trust.

Proposal:

I would respectfully suggest that both subsections 14(8) and 17(3) be amended to include the wording of subsection 16(2)(e).

5. Blind Trusts – Reimbursement for Trust Costs:

Presently

Section 18 reads as follows:

“A **Minister** shall be reimbursed for the reasonable fees and disbursements actually paid for the establishment and administration of a trust under subsection 16(2) or 17(3), as approved by the Integrity Commissioner, but is responsible for any income tax liabilities that may result from the reimbursement.”

Commentary

There is no similar section for a regular member being reimbursed for fees and disbursements that a member pays to establish and administer a trust under subsection 14(8).

Proposal:

I would respectfully suggest that a sub-section 14(9) be added to read as follows:

“A **member** shall be reimbursed for the reasonable fees and disbursements actually paid for the establishment and administration of a trust under subsection 14(8), as

approved by the Integrity Commissioner, but is responsible for any income tax liabilities that may result from the reimbursement.”

All of which is respectfully submitted.

Norman Pickell
Integrity Commissioner
May 25, 2009