



Legislative Assembly of Nunavut

ANNUAL REPORT 2015

OFFICE OF THE INTEGRITY COMMISSIONER

Hon. J.E. (Ted) Richard
Integrity Commissioner
October 2015

Introduction

This is the 16th 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 second Report issued by me as Integrity Commissioner. I was appointed on September 9, 2013 for a period of five years. This Annual Report 2015 covers the period September 9, 2014 to September 8, 2015.

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.

Public Disclosure Statements

All 21 sitting MLAs filed their annual Public Disclosure Statements (Form 1) prior to the deadline of January 30, 2015. The MLA elected in the Uqqummiut by-election of February 9, 2015 filed his first Public Disclosure Statement (Form 1) within the 90-day deadline imposed by section 5 of the Act. During the past year, members filed a Supplementary Disclosure Statement (Form2) or a Disclosure Statement of Gifts and Personal Benefits (Form3), 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

In May 2015 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.

Consultation and Advice

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.

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); distinction between proper activities carried out by a member on behalf of a constituent (section 12), on the one hand, and on the other hand, improper influence of a government decision so as to further a person's private interest (section 10). The two most frequent categories were a) possible conflict of interest situations and b) whether to accept and/or disclose receipt of, remuneration, gift or personal benefit connected to the performance of the MLA's duties of office.

A word about the gifts and personal benefits issue, and a common misconception. The Integrity Act prohibits an MLA from accepting a gift or personal benefit connected to the performance of his/her duties of office. There are exceptions, specified in subsection 13(2) of the Act. For the exceptions (those gifts or personal benefits which are acceptable) the Act requires that the MLA file a public disclosure statement indicating the nature of the gift, its source and the circumstances under which it was given and accepted. This public disclosure is required whenever the value of the gift/benefit exceeds \$400. There is a common misconception that an MLA may accept any gift or benefit so long as its value does not exceed the \$400 threshold. To be clear, the \$400 rule only applies to an acceptable gift or person benefit i.e., one which comes within an exception in subsection 13(2). The \$400 limit is only relevant on the issue of whether an acceptable gift or benefit must be disclosed. Any gift or personal benefit accepted by an MLA that does not come

within the exceptions in subsection 13(2), of whatever value, constitutes a contravention of section 13 of the Integrity Act.

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

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 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 were several complaints or requests which were received by me which did not result in the commencing of an investigation or opening of a file, for one or other of two reasons: 1) the complaint did not allege a contravention of the Integrity Act by an MLA and hence I did not have jurisdiction, or 2) the complainant did not continue with the matter after the statutory requirements were explained, e.g., the necessity for a formal complaint to be supported by a sworn affidavit.

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. This bodes well for a culture of

integrity, and public confidence, in our democratically elected 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 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 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 of any perceived or actual conflict of interest.

As mentioned in last year's Annual Report, 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.

Deputy Heads

In September 2014 the Management and Services Board of the Legislative Assembly, at the request of the Premier, authorized the Integrity Commissioner to take on an additional assignment, in particular to conduct periodic reviews and assessments of confidential disclosure statements of Deputy Ministers and other senior government officials. Previously, each Deputy Head was required to disclose, in a confidential report to the Premier, a statement of any current business activities or personal holdings that may represent a conflict of interest, as well as volunteer or community positions or businesses pursued without remuneration. It was then for the Premier to determine whether any activities or holdings were in conflict with the Deputy Head's obligations to the GN and to take action where necessary. Under this new assignment,

the Premier can request that the Integrity Commissioner review and assess these confidential disclosure statements that are submitted to the Premier by the Deputy Heads. Following such review and assessment in each case, the Integrity Commissioner is to report any matter of concern, in confidence, to the Premier.

A new and comprehensive form of Confidential Disclosure Statement (Deputy Head) was finalized by the Senior Personnel Secretariat in January 2015. In general terms these statements disclose sources of income, assets, liabilities, GN contracts, etc. of the individual and his/her family members. Subsequently, I was in receipt (via the Premier's office) of 15 of these signed disclosure statements from Deputy Ministers and other Deputy Heads. At the Premier's request, I did a review and assessment of each of these statements, in the context of any real, perceived or potential conflict of interest. When necessary, I requested additional information from some of the individual Deputy Heads in order to do my review. I received full co-operation in each of these cases. I advised the Premier in a confidential letter of the result of my review in each case.

It is my understanding that the Premier intends to seek such assistance from the Integrity Commissioner on an annual basis, and on other occasions as necessary.

Independent Officers of the Legislative Assembly

In December 2014 the Management and Services Board 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 initial 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 new MSB directive, the Clerk and the Independent Officers will now be 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. 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. Subsequently I received advice from the police (either directly or through the office of the Public Prosecution Service of Canada) with respect to 10 individuals alleged to have committed a summary conviction offence under the Elections Act, in particular, failure to file a Financial

Return respecting contributions and expenses within the required time.

The limitation period for commencing a prosecution of these summary conviction offences under the Elections Act is 12 months, hence some of these prosecutions were only initiated in December 2014, and some of these matters were only brought to the attention of the Integrity Commissioner in March 2015 – 15 months after the alleged offence date.

A Compliance Agreement was offered by my office to nine of these ten individuals. Five persons accepted the Compliance Agreement, and each of these five individuals satisfactorily completed the requirement of his/her Compliance Agreement. Accordingly, proceedings under the Elections Act against those five individuals were discontinued by the PPSC. A summary of each of these Compliance Agreements was published in the Nunavut Gazette and on the website of the Integrity Commissioner.

Other Inquiries from Public

On several occasions during the past year, I received inquiries from the media and other sources regarding the office of the Integrity Commissioner and its mandate. While respecting the principal of confidentiality referenced earlier in this Report, I provided information and assistance as appropriate.

Interaction With Provincial Colleagues

The Integrity Commissioner belongs to a national network of Commissioners with similar mandates in the other northern

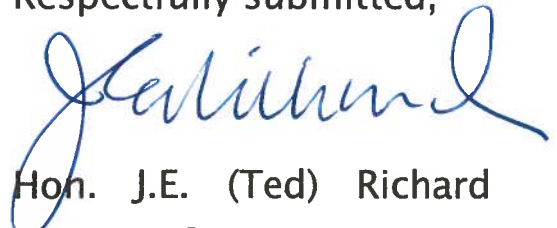
territories, the provinces, the federal House of Commons and the federal Senate. It is entitled Canadian Conflict of Interest Network, or CCOIN for short. This group of Conflict of Interest Commissioners, Ethics Commissioners and Integrity Commissioners meet annually, and keep in close contact throughout the year to share common experiences, challenges and best practices to assist each other with their duties of office. I 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.

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. 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