Integrity Commissioner of Nunavut
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Commissaire à l'intégrité du Nunavut
Immimut Agviarutiqaqtailimanirmut Kamisana

October 23, 2009

The Honourable James Arreak, MLA,
Speaker of the Legislative Assembly of Nunavut,
Iqaluit, Nunavut

Dear Mr. Speaker,

Pursuant to section 44 of the *Integrity Act*, I am submitting my Report concerning Mr. Paul Okalik, MLA.

Respectfully,

ORIGINAL SIGNED BY

Norman Pickell
Integrity Commissioner

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Legislative Assembly of Nunavut

Report to the Speaker

Re: Mr. Paul Okalik, MLA

October 23, 2009

Norman Pickell

Integrity Commissioner

RE: MR. PAUL OKALIK, MLA

Request for a Review:

This is a review pursuant to section 36 of the *Integrity Act* of Nunavut (herein referred to as the "*Integrity Act*").

Mr. Hunter Tootoo has asked me to review the conduct of Mr. Paul Okalik during the 2008 territorial election campaign.

Complainant and Respondent:

The Complainant, Mr. Hunter Tootoo, was the Member of the Legislative Assembly (herein referred to as "MLA") for Iqaluit Centre and a regular member of the Second Legislative Assembly of Nunavut. This means he was not part of the Executive Council of Nunavut in that Assembly.

The Respondent, Mr. Paul Okalik, was the MLA for Iqaluit West and the Premier of Nunavut during the Second Legislative Assembly.

Both Mr. Tootoo and Mr. Okalik were re-elected in the Third General Election held on October 27, 2008.

The Allegations:

Mr. Tootoo alleges that Mr. Okalik contravened sections 4(a) and (b) and section 10 of the *Integrity Act*.

Sections 4(a) and (b) of the Act state:

> 4. Each member shall
>
> (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;

Section 10 of the Act states:

10. A member shall not use his or her office to seek to influence a decision made or to be made by another person so as to further the member's private interest or improperly to further another person's private interest.

The basis for Mr. Tootoo's allegations are fundraising letters which were sent to Deputy Ministers in the Nunavut Government by campaign officials for Mr. Okalik during the election campaign for the Third General Election.

The Procedure to Initiate a Review under the *Integrity Act*:

Section 36 of the Act allows any person, including an MLA, to ask the Integrity Commissioner to review the conduct of another MLA.

There are certain requirements in the Act that must be met before the Integrity Commissioner can conduct such a review. If the request is coming from someone other than the Premier or the Legislative Assembly,

1. The person requesting the review must have reasonable grounds for believing that there has been a contravention of the Act;

2. The request to the Integrity Commissioner must be in writing; and

3. The facts to support the allegations must be in an affidavit.

Background:

On October 30, 2008, Mr. Hunter Tootoo sent me a letter by fax. Accompanying his letter was an Affidavit that Mr. Tootoo swore on October 30, 2008.

Mr. Tootoo's letter requested me to review "the conduct of the Premier, the Honourable Paul Okalik." The letter also said:

> "I believe Mr. Okalik contravened s. 4(a) & (b) and s. 10 of the [Integrity] Act by attempting to use his position as Premier and his authority over Deputy Ministers to solicit campaign contributions from Deputy Ministers."

Mr. Tootoo's 11-paragraph Affidavit set out certain allegations in support of his request for the review.

On November 3, 2008, I sent a letter to Mr. Okalik with a copy of Mr. Tootoo's Affidavit. I asked Mr. Okalik to provide me with a written response to the allegations made by Mr. Tootoo.

Mr. Okalik sent me his initial written response on November 11, 2008. The final evidence on behalf of Mr. Okalik was received by me on October 15, 2009. His lawyer's Submissions were sent to me on October 17, 2009.

During the course of my Review, I received information – some of it oral, some of it written - from:

Mr. Hunter Tootoo	-	the complainant
Mr. Paul Okalik	-	the subject of this review
Mr. Bill Clay	-	the Principal Secretary to Mr. Okalik when he was Premier
Mr. Patrick Orr	-	the lawyer for Elections Nunavut
Ms. Nadine Ciccone	-	the Financial Agent for Paul Okalik during the election campaign
Ms. Anne Crawford	-	the lawyer for Mr. Okalik

My Jurisdiction During the Election Campaign:

The conduct of Paul Okalik that I am being asked to review occurred after September 23, 2008 and before October 27, 2008. In other words, it took place during the election campaign leading up to the October 27, 2008 territorial election.

In his response to Mr. Tootoo's allegations, Mr. Okalik urges me to find that the *Integrity Act* did not apply to him during the election campaign, and hence I do not have jurisdiction to conduct a review.

The *Integrity Act* only applies to MLAs. It does not apply to a person who is not an MLA.

Furthermore, my jurisdiction as Integrity Commissioner under the *Integrity Act* authorizes me to deal only with MLAs. I do not have any power to review the conduct of a person who is not an MLA.

On September 18, 2008, the Fourth Session of the Second Legislative Assembly ended. But the writ of election was not issued until September 22, 2008. That means that all those who held office as an MLA on September 18, 2008 remained an MLA until September 22, 2008.

However, all of the regular MLAs ceased to be MLAs on September 23, 2008. In fact, there were no regular MLAs in Nunavut from September 23, 2008 until after the territorial election on October 27, 2008.

Therefore, if Mr. Okalik had been a regular MLA in the Second Legislative Assembly, I would have no jurisdiction to review his conduct during the election campaign.

But Mr. Okalik was the Premier of Nunavut during the Second Legislative Assembly. The Legislative Assembly and Executive Council Act, S.Nu. 2002, c.5, states in part:

section 60(1) "There shall be an Executive Council of Nunavut composed of

(a) a Premier chosen by the Legislative Assembly from among its members; ..."

section 63(2) "The person who holds the office of Premier at the time of expiration or dissolution of the Legislative Assembly continues to hold the office of Premier until the next Premier is chosen at the first session of the next Legislative Assembly."

Therefore, I find that the Premier remains an MLA and Premier until the next Premier is chosen after the election. Accordingly, I find that the *Integrity Act*, including the review provisions, applies to the Premier during an election campaign.

Another requirement is that the person who is subject to my review must be an MLA during the time that I conduct my review. Since Mr. Okalik was re-elected in the Third General Election held on October 27, 2008, I have jurisdiction to review his conduct during the election campaign. Such would not have been the case if Mr. Okalik had been defeated on October 27, 2008.

Issue:

This review is to determine if Mr. Okalik contravened the *Integrity Act* by the Re-Elect Paul Okalik Campaign soliciting campaign contributions from Deputy Ministers in the Nunavut Government.

Burden and Standard of Proof:

Generally a person who alleges that an MLA has contravened the Act must establish the allegations by clear and convincing evidence. The standard of proof is high.

Undisputed Facts:

Most of the facts are agreed upon. These are:

1. Mr. Okalik has been the MLA for the constituency of Iqaluit West since April 1, 1999.

2. Mr. Okalik was the Premier of Nunavut for two terms, from April 1, 1999 until November 19, 2008.

3. Mr. Okalik was a candidate in the constituency of Iqaluit West in the general election which was held on October 27, 2008.

4. The Premier holds his position from the time that the Legislative Assembly is dissolved until a Premier is chosen by the next Legislative Assembly.

5. During the election campaign Mr. Okalik announced his intention to seek a third term as Premier should he be re-elected.

6. The Government of Nunavut is divided into various departments, each of which is headed by a non-elected Deputy Minister.

7. Deputy Ministers are appointed to their positions by the Premier and hold the position at the pleasure of the Premier.

8. Deputy Ministers receive annual performance reviews at which time a determination is made whether a Deputy Minister should receive a performance bonus.

9. The Senior Personnel Secretariat makes recommendations to the Premier with respect to performance bonuses.

10. The Premier is the sole person to decide whether to follow the recommendation of the Senior Personnel Secretariat or vary from it.

11. During the election campaign, letters requesting financial contributions to the Re-Elect Paul Okalik Campaign were sent to many individuals and companies.

12. Each fundraising letter was addressed to a specifically named person.

13. Each fundraising letter was signed by Nadia Ciccone, in her capacity as Financial Agent for Paul Okalik (even though the letters incorrectly described her as the "Official Agent for Paul Okalik").

14. Some of the individuals who were solicited for a financial donation to Paul Okalik's re-election campaign were Deputy Ministers within the Government of Nunavut.

15. Mr. Okalik knew that solicitation letters were being sent by his Campaign Team to Deputy Ministers, even though he did not send them himself.

16. Paragraphs 1 and 2 of the letter which was sent to the Deputy Ministers read as follows:

> "I am writing to you today on behalf of the *Re-Elect Paul Okalik Campaign*. As you know Paul is once again seeking the support of the constituents of Iqaluit West and all Nunavummiut to continue the important work of building our territory."
>
> "As a fellow leader in the development and implementation of sound public policy the *Re-Elect Paul Okalik Campaign* is asking for your financial support to help Paul continue the job you have both worked so hard to complete."

17. Mr. Okalik was not re-elected Premier for a third term.

Fact In Dispute:

There really is only one material fact that is not agreed upon by the parties.

Mr. Tootoo alleges in paragraph 9 of his Affidavit that each of the letters sent to Deputy Ministers was slightly different so that if a letter made its way into the public domain, the sender of the letter would know who "leaked" the letter. That was the only issue that paragraph 9 dealt with.

Mr. Okalik told me that he was not aware of the contents of the letters.

Ms. Nadia Ciccone was provided with a copy of Mr. Tootoo's Affidavit. She had 3 opportunities to refute Mr. Tootoo's allegation in paragraph 9. The first two opportunities were when she provided me with information on September 16 and 29, 2009. Then Mr. Okalik's recently retained lawyer prepared a Statutory Declaration which Ms. Ciccone swore on October 15, 2009. The Statutory Declaration, which contains 15 paragraphs, is very detailed. In her Statutory Declaration, Ms. Ciccone states in part:

> "The letter attached as Exhibit "A" to Mr. Tootoo's complaint was signed by me, but it is indistinguishable from other letters sent. I cannot say if that particular letter went to a Deputy Minister or not. I signed or sent all of the solicitations for the campaign but I did not prepare and print all of them. There were similar letters on the same letterhead and similar solicitations sent to others, including to named individuals in corporations and to other individuals without a company name, as was the case with this letter."

But Ms. Ciccone never specifically denied Mr. Tootoo's allegation, even though I would have thought it would have been easy for her to deny the allegation in paragraph 9 if it was not true.

I believe what Mr. Tootoo says in paragraph 9 of his Affidavit. Accordingly, I accept as a fact that the letters that were sent to the Deputy Ministers were tailored so that if any of the Deputy Ministers went public with the letter, at least Ms. Ciccone would know who it was.

Deputy Ministers:

The Government of Nunavut, like other territorial and provincial governments in Canada, is a complex organization which operates through various departments. The government departments in Nunavut include the Department of Community and Government Services, the Department of Culture, Language, Elders and Youth, the Department of Education, the Department of Executive and Intergovernmental Affairs, the Department of Finance, the Department of Health and Social Services, the Department of Justice, the Department of Environment and the Department of Economic Development and Transportation.

Each government department has a Deputy Minister. The Deputy Minister is the senior public servant who oversees the department under the direction of a Cabinet Minister. One of the roles of the Deputy Minister is to make sure that the department fulfils its mandate.

In Nunavut, Deputy Ministers are effectively appointed by the Premier of Nunavut. (The technical terminology is that they are appointed by the Commissioner in Executive Council on the recommendation of the Premier.)

The compensation, terms of work and termination of Deputy Ministers are also the prerogative of the Premier.

While Deputy Ministers serve at the pleasure of the Premier, Deputy Ministers should not be purely political appointments. Under their terms of employment, they are expected to be highly qualified individuals who are recognized as the most senior and responsible managers in the public service.

Nunavut Elections Act:

The Re-Elect Paul Okalik Campaign abided by all of the rules laid out in the *Nunavut Elections Act* (herein referred to as the "*Elections Act*").

I am advised by Mr. Patrick Orr, the lawyer for Elections Nunavut, that the letters sent to Deputy Ministers by the Re-Elect Paul Okalik Campaign did **not** contravene the *Elections Act*. In other words, soliciting funds from individuals such as Deputy Ministers is not an offence under the *Elections Act*.

The Campaign Financial Return of Paul Okalik is posted, along with the Campaign Financial Returns of several of the other election candidates, on the Elections Nunavut web site. The English version of Mr. Okalik's Return can be found at:

http://www.elections.nu.ca/i18n/docs/returns/pokalik-web.pdf
A list of those companies and individuals who contributed to Mr. Okalik's re-election campaign appears on pages 4 and 5 of that Return.

Political Interest v. Private Interest:

Mr. Okalik urges me to find that the *Integrity Act* is not applicable to the solicitation of election campaign funds because, in his words, "re-election is a 'political' interest rather than a 'private' interest." He states that the solicitation and use of campaign funds is strictly regulated by election law and specifically the *Elections Act*.

I agree that financial and other contributions to election campaigns are governed in great detail by the *Elections Act*.

I also agree that fundraising for elections is generally a "political interest" rather than a "private interest."

Open and transparent elections are a hallmark of a democratic system of government. Elections cost money. If candidates were prohibited from soliciting funds to help pay for an election campaign, only wealthy people could afford to run for public office.

The legislative assemblies of all jurisdictions, including Nunavut, are best served when its elected members come from a spectrum of occupations and backgrounds. Therefore, it is necessary for candidates to be able to raise money from individuals, corporations and other organizations. In fact, I encourage people and corporations to give financial support to the candidate or candidates of their choice.

The distinction between "political interest" and "private interest" is significant. If something is purely a "political interest," the provisions of the *Integrity Act* likely do not apply.

In the 1997 decision involving Alberta's Premier Ralph Klein, the Alberta Ethics Commissioner, Robert C. Clark, made the following comments:

> "Is the seeking of public office by election a 'private interest' under [Alberta's *Conflict of Interest*] Act? ... It all boils down to whether seeking to be elected as an MLA is furthering a 'private interest'.
>
> "I share Commissioner Parker's grave doubts [expressed in the 1993 Sinclair Stevens case] as to whether the furtherance of political interests is the furtherance of a private interest. If political interests, especially the interest in winning an election, is a 'private interest', practically everything a Member does could be a breach of the Act because almost every activity undertaken by an elected official contains an element of seeking popular support and the possibility of receiving that support in a re-election bid."

> "I do not believe that the [Alberta] Legislature intended the *Conflicts of Interest Act* and the Ethics Commissioner to prevent Members from doing those things which they believe will maximize their public acceptance and hence their chances of being re-elected."
>
> "I am therefore of the opinion that 'private interests', as that term is used in the [Alberta] *Conflicts of Interest Act* does not include a desire for election to political office."

In 2000, New Brunswick's Conflict of Interest Commissioner, the Honourable Stuart G. Stratton, made the following statement in the case of the Honourable Margaret-Ann Blaney, Minister of Transportation:

> "... I agree ... that the term 'private interest' as used in the [New Brunswick] *Members' Conflict of Interest Act* does not, **in this case**, include a political interest or, more specifically, financial support for the desire for election or re-election to political office.... It is my opinion that in order to constitute a breach of the *Members' Conflict of Interest Act*, a 'private interest', rather than a 'political interest', must be involved. The raising of election funds is, in my view, a 'political interest' rather than a 'private interest'."

In 2001, the same Commissioner Stratton of New Brunswick made the following statements in the case of the Honourable Jeanot Volpé, Minister of Natural Resources and Energy:

> "Since writing [the Blaney decision – referred to above], I have come across the thoughtful and well reasoned [1993] decision of [Commissioner Hughes involving the Honourable Robin Blencoe – referred to below] ..."
>
> "... I agree with the proposition that fundraising is an important and legitimate part of the political process and that the raising of funds for political purposes does **not generally** constitute a breach of the *Members' Conflict of Interest Act* as there is **usually not** a furtherance of a private interest."
>
> "I have been persuaded that there may be special circumstances which could bring the [New Brunswick *Members' Conflict of Interest*] Act into play. As one example of special circumstances, there is a serious question in my mind as to the propriety of a Minister's riding association targeting a particular industry or specific individuals for political donations when that industry or those individuals do substantial business with the Minister's department. To target a particular industry or specific individuals in this manner may, in my opinion, amount to a furtherance of a Minister's private interest because it could put the Minister in a position to confer an advantage or a benefit on the persons who made the contributions."

> "... such issues are complex and, in my opinion, can only be resolved on a case by case basis."

The same Commissioner Stratton of New Brunswick made the following statements in the 2003 case of Mr. Michael Malley, a New Brunswick MLA:

> "... Appropriate fundraising is an important and legitimate part of the political process and ... the raising of funds for political purposes does **not generally** constitute a breach of the Act as there is **not usually** a furtherance of a private interest. What is involved is a 'political interest'."

It was Commissioner E.N. (Ted) Hughes, the Commissioner of Conflict of Interest of British Columbia who said in his 1993 decision involving the Honourable Robin Blencoe, Minister of Municipal Affairs, Recreation and Housing that:

> "Campaign contributions ... can, ... in some circumstances, be a 'private interest'."

> "Each case will have to be looked at [and] all the circumstances taken into account."

In the Blencoe case, Commissioner Hughes considered several factors in order to determine if the otherwise "political interest" is also a "private interest." These factors (which he noted were neither definitive nor exhaustive) were:

1. The timing of the contribution (the closer in time, the more relevant);

2. The significance of the contribution in relation to both the candidate and the contributor;

3. The motive for the contribution if that can be discerned;

4. Whether the candidate was aware of the contribution prior to the exercise by the candidate of the impugned official power, duty or function; and

5. Whether the impugned decision involves an activity which a candidate normally engages in on behalf of constituents.

Looking at the specifics of the case involving Mr. Okalik and considering the factors listed above, I note the following:

1. The letters sent to the Deputy Ministers soliciting campaign contributions were sent during the election campaign.

2. Mr. Okalik was Premier at the time that the letters were sent.

3. If he had wanted to, Mr. Okalik could have terminated any of the Deputy Ministers at any time during the election campaign.

4. Mr. Okalik had made his intention known that he was going to seek a third term as Premier if he was re-elected as an MLA.

5. Since Mr. Okalik had been elected Premier for the First and Second Legislative Assemblies of Nunavut, the perception could exist that he would be elected Premier for the Third Legislative Assembly.

6. No other candidate in the territorial election had the power during the election campaign to terminate the employment of any Deputy Minister.

7. Only one MLA – whomever was elected Premier – would have the power to terminate or otherwise affect the Deputy Ministers after the election. Therefore, this was not something that a regular MLA, or even a Cabinet Minister – other than the Premier – could engage in on behalf of his or her constituents.

8. Because Mr. Okalik was required to sign his Campaign Financial Return, he would know the names of every individual who made a financial contribution to his re-election campaign, including the amount.

9. All of the Deputy Ministers would know what I have just noted above.

Accordingly, I find that the sending of letters to Deputy Ministers by the Re-Elect Paul Okalik Campaign soliciting campaign contributions goes beyond the realm of just a "political interest" and also becomes a "private interest." As such, I am now required to see if the sending of those letters contravened the *Integrity Act*.

Having said that, I am not suggesting for a moment that there is any evidence that Mr. Okalik did use or would have used his power as Premier to terminate or otherwise discipline any Deputy Minister at any time who did not contribute to his re-election campaign.

The *Integrity Act*:

As I have already stated on page 1 of this Report, Mr. Tootoo alleges that Mr. Okalik contravened sections 4(a) and (b) and section 10 of the *Integrity Act*. (The wording of those sections is set out on pages 1 and 2 of this Report.)

In her submissions on behalf of Mr. Okalik, Ms. Anne Crawford correctly points out the following:

1. The *Elections Act* provides a regime and context under which MLAs can receive money, spend money and report in detail both the gifts and the spending. The

MLA does not report funds received as part of an election campaign on the Gift Disclosure Form provided for in section 13(3) of the *Integrity Act*, regardless of the amount.

2. Any money received by an MLA during an election campaign must be disclosed by donor and amount on the Candidate's Campaign Financial Return.

But the purpose of the *Integrity Act* is to affirm in law the commitment of each elected member of the Legislative Assembly to serve always the common good in keeping with traditional Nunavummiut values and democratic ideals.

Fundamental to the *Integrity Act* are the principles which state in part that:

1. integrity is the first and highest duty of elected office;

2. the elected members are to perform their public duties and arrange their private affairs in a way that promotes public confidence in each member's integrity; and

3. the elected members are to reconcile their public duties and private interests with openness, objectivity and impartiality.

In other words, the *Integrity Act* wants to enhance public confidence in the integrity of government and its elected members.

In paragraph 8 of her Statutory Declaration, Nadia Ciccone says that:

> "Solicitations for campaign funds were initially made by letter and email, some were made by phone. The campaign made approximately 100 solicitations for support, including letters, emails, and requests for materials or funds."

Thus it would appear that the letters which were sent to Deputy Ministers represented approximately 10% of the total solicitations. (Mr. Tootoo has specifically used the term "Deputy Minister," and not "Deputy Head," in his Affidavit. Since he was an MLA in the Second Legislative Assembly of Nunavut, he will be aware of what each of those terms mean. Therefore, I am not taking into account other Deputy Heads, such as the heads of Nunavut's Crown Corporations.)

I am aware that Commissioner Stratton in the Volpé decision (referred to above) looked at the number of solicitation letters that went out to forestry related groups and individuals and compared that to the total number of solicitation letters which were sent out. Because the forestry related parties represented only 23% of the total solicitations, Commissioner Stratton concluded that the forestry related parties did not constitute a target group. Commissioner Stratton went on to say:

> "... I have **reluctantly** concluded that the solicitation of funds by members of Minister Volpé's riding association from forestry related enterprises and individuals did not, in this case, breach ... [New Brunswick's *Members' Conflict of Interest*] Act. The evidence presented to me does not, in my opinion, sufficiently establish the special circumstances I believe necessary to conclude that the numerous forestry related enterprises and individuals in the province were the target of the invitations sent out by the riding association."

However, in Mr. Okalik's case, we are not talking about some vague persons in the territory. We are specifically dealing with the most senior managers in government.

Ms. Ciccone states in her Statutory Declaration:

> "I knew that Deputy Ministers were higher income residents of Nunavut."
>
> "I most certainly did not know any of the rules and procedures for the hiring or pay for Deputy Ministers."
>
> "Paul Okalik did participate in some discussions around fund raising during the campaign, and he ... did suggest some names where we might find support.... He did not ... suggest to me the names of any Deputy Minister."
>
> "Paul Okalik did not ask me for information on or participate in any discussions about any solicitations which were made to a person who was a Deputy Minister...."

If everything that Nadia Ciccone says is true, why were the letters that went to the Deputy Ministers tailored so that if any Deputy Minister went public with the letter, at least Ms. Ciccone would know who it was?

I find that the Deputy Ministers clearly were the target of the solicitation letters sent to them. I also find that the Re-Elect Paul Okalik Campaign must have suspected that sending such letters to Deputy Ministers might not be appropriate; otherwise, no one on the Re-Elect Paul Okalik Campaign Team would have been worried about a Deputy Minister going public with the letter.

In the Blaney decision, Commissioner Stratton said:

> "I do express the opinion that the solicitation of political donations by the Minister of Transportation from members ... of the Road Builders Association, a specific and important group doing major work for the Department, is conduct that ought not to be repeated."

As was already mentioned in the quote from Commissioner Stratton in the Volpé case:

> "... There is a serious question in my mind as to the propriety of a Minister's riding association targeting ... specific individuals for political donations when ... those individuals do substantial business with the Minister's department. To target ... specific individuals in this manner may, in my opinion, amount to a furtherance of a Minister's private interest because it could put the Minister in a position to confer an advantage or a benefit on the persons who made the contributions."

In the Blencoe decision, Commissioner Hughes said:

> "It is to be emphasized ... that a Member who has received a campaign contribution ... must not, at least in some circumstances, ... thereafter put him or herself in a position to confer an advantage or a benefit on the person who made that contribution.... The Legislature has provided a simple and sensible solution ... for the Member in those circumstances to step aside and allow the business of government to proceed unimpeded by having another Member exercise the official power, function or duty."

Thus, it is clear that if Mr. Okalik had been re-elected Premier, he probably would have had to assign the power, function and duty of dealing with Deputy Ministers to someone else. But is that what the Legislative Assembly would want? And who would assume those responsibilities?

In her Submissions, Ms. Crawford asks why the same restrictions do not apply to other candidates in the election, particularly since any elected MLA can become Premier (which is exactly what happened in November 2008). But the difference between Mr. Okalik and any of the other candidates in the last territorial general election is that he was the Premier at the time and, accordingly, had the power over the Deputy Ministers at the time that the solicitation letters were sent to them.

Ms. Crawford says that Mr. Tootoo's complaint is premature. In her Submissions, she says:

> "The complaint made is that Mr. Okalik will provide or be perceived to provide or withhold a future benefit to some Deputy Ministers based on the solicitation of campaign contributions."
>
> "If it actually materialized and if favour appeared to be delivered on that basis, then an Integrity complaint would have substance. Prior to that point, there are so many variables which could (and did) intervene and no actual or potential ability to favour any contributor. Even the ability to exercise the authority complained of did not subsequently materialize. The complaint made is premature."

Section 10 of the *Integrity Act* states that "A member shall not use his ... office to seek to influence a decision ... to be made by another person so as to further the member's private interest...."

I agree with both Mr. Okalik and Ms. Crawford that Mr. Okalik did not contravene section 10.

As I have already said, there is no suggestion by anyone that Mr. Okalik did use or would have used his power as Premier to terminate or otherwise discipline any Deputy Minister at any time who did not contribute to his re-election campaign. And as events evolved, Mr. Okalik is not now in a position to hire, fire or otherwise oversee Deputy Ministers.

But I disagree that Mr. Tootoo's complaint was premature.

Section 4(b) of the Act requires that each MLA is to "**act in a manner that will bear the closest public scrutiny**."

I realize that the alleged infraction occurred during a territorial election campaign. But for the reasons already given, I find that by allowing the sending of fundraising letters to Deputy Ministers, Mr. Okalik crossed the line from "political interest" to "private interest."

The sending of those fundraising letters gave Mr. Okalik the potential opportunity to further his own private interest. It put him in a position that he could have, if he wanted to and if he had been re-elected Premier, conferred an advantage or a benefit to any of the Deputy Ministers who had contributed to his election campaign. Conversely it also put him in a position where he could have, if he wanted to and if he had been re-elected Premier, penalized a Deputy Minister for not contributing to his election campaign.

I do not believe that the public would tolerate one candidate in an election being able to solicit money from individuals over whom that candidate has the final say as to whether those individuals have a job and how much they earn. Mr. Okalik was the only candidate in the last territorial general election who was in that privileged position.

Political Activity of Deputy Ministers:

Ms. Crawford also asks in her Submissions why there should be special solicitation rules for Deputy Ministers distinct from other territorially appointed office holders or ordinary citizens. As has been stated by other Commissioners in earlier decisions referred to in this Report, all elected officials have to be careful that they do not advance their own personal private interests or confer an advantage or a benefit on the persons who made the contributions.

Section 34 of the Public Service Act, R.S.N.W.T. 1988, c.P-16, as amended by Nunavut Statutes, places some limitations on the political activity of all Government of Nunavut employees. Section 34(2) places additional limitations on "restricted employees." By virtue of section 49 of the Public Service Act Regulations, Deputy Ministers are "restricted employees."

Section 34(5) of the Public Service Act does allow a Deputy Minister to attend political meetings and to contribute money to political candidates.

But Ms. Crawford's Submission does raise the issue of whether there should be any further restrictions on the political involvement of Deputy Ministers, in addition to what already exists.

I will leave it to the Legislative Assembly to decide if further amendments are needed to either the *Public Service Act* or to the *Elections Act*.

If a change was desired, an alternative to a formal amendment to the legislation might be for the Premier to work with the Senior Personnel Secretariat on the employment terms for Deputy Ministers (and perhaps other Deputy Heads).

A sitting Premier should not solicit election campaign money from any Deputy Minister.

Because of the consensus system of government in Nunavut, perhaps none of the candidates should ask Deputy Ministers for financial assistance in an election campaign. As was seen in November 2008, no one knows for sure during a territorial election campaign who the next Premier will be.

Conclusion:

For the reasons given above, I find that Mr. Paul Okalik, Member of the Legislative Assembly for Iqaluit West, contravened the *Integrity Act*.

As I have already stated in this Report, Mr. Okalik did not contravene section 10 of the Act.

But by allowing his Re-Election Campaign Team to send fundraising letters to Deputy Ministers in the Government of Nunavut:

1. Mr. Okalik did not arrange his private affairs in such a manner as to maintain public confidence in his integrity and impartiality, and thereby contravened section 4(a) of the Act.

2. Mr. Okalik did not refrain from accepting a benefit which **might** erode public confidence in his integrity and impartiality, and thereby contravened section 4(b) of the Act.

3. Mr. Okalik did not act in a manner that bears the closest public scrutiny, and thereby contravened section 4(b) of the Act.

Sanctions - Generally:

Section 46(1) of the *Integrity Act* directs me to recommend sanctions where I find that a member has contravened the Act. The sanctions that I can choose are one or more of the following:

a) no sanction;

b) the member be reprimanded;

c) the member publicly acknowledge his conduct;

d) the member undertake such remedial action as may be directed, including paying compensation;

e) the member pay a fine not exceeding $ 10,000.00;

f) the member's right to sit and vote in the Legislative Assembly be suspended for a period of time;

g) the member's seat be declared vacant;

h) any other sanction that I consider appropriate.

Recommended Sanctions:

As I have already said more than once in this Report, there is no suggestion by anyone that Mr. Okalik did use or would have used his power as Premier to terminate or otherwise discipline any Deputy Minister at any time who did not contribute to his re-election campaign. And as events evolved, Mr. Okalik is not now in a position to hire, fire or otherwise oversee Deputy Ministers.

I am also mindful of the fact that the whole area of "political interest" versus "private interest" during an election campaign can be a difficult one to navigate. The proof of that is in reading the cases which I have referred to in this Report.

Both Mr. Okalik and Ms. Ciccone told me that they did not see anything improper in soliciting campaign funds from Deputy Ministers. However, there must have been at least a little doubt in their minds. Otherwise the letters would not have been tailored in such a way that if a particular Deputy Minister went public with the letter, that Deputy Minister could be identified.

I am mindful of the fact that Mr. Okalik has already suffered public embarrassment through the media during the election campaign when this story first became public. I am sure that once this Report is made public, Mr. Okalik will again suffer some public embarrassment.

Considering all of the above, I recommend that the Legislative Assembly impose on Paul Okalik the following sanctions:

1. Mr. Okalik shall be reprimanded by the Legislative Assembly.

2. Mr. Okalik shall make a statement in the Legislative Assembly acknowledging his wrongful conduct; apologizing to his peers, his constituents and all of Nunavummiut, and promising to fulfil faithfully in the future his commitments under the *Integrity Act*.

3. If Mr. Okalik fails to fulfill the requirements of sanction 2 within five sitting days after the Legislative Assembly's acceptance of these recommendations, his right to sit and vote in the Legislative Assembly shall be suspended without indemnity or allowance until such requirement has been fulfilled.

Length of Time to Conduct this Review:

In closing, I want to comment on the length of time it took me to conduct this Review.

The *Integrity Act* does not stipulate a time frame within which a Review is to be completed, nor should it. Sometimes factors can intervene which cause some Reviews to take longer than others. But when a Review is undertaken by the Integrity Commissioner, it should be completed in as expeditious a manner as is reasonably possible.

This Review took longer than it should have.

I received the formal Complaint from Hunter Tootoo on October 30, 2008. Paul Okalik sent me his initial response on November 11, 2008. I worked on this file until November 14, 2008. Unfortunately I did very little work on this file after November 14, 2008 until April 22, 2009.

I am solely to blame for the lack of work on this file during that five-month period. While a lot of my time during those five months was taken up by other Integrity Commissioner of Nunavut work and by personal vacation time during the Christmas and March School Breaks, that is no excuse for me not doing more work on this file during that time.

I apologize to the Honourable James Arreak, Speaker of the Legislative Assembly of Nunavut, to Mr. Tootoo, to Mr. Okalik and to all Nunavummiut for the lack of action by me on this file between November 14, 2008 and April 22, 2009. I truly regret that five month delay.

Then we have the six months from April 25th until now.

On April 25, 2009, I sent an email to Mr. Okalik requesting more information. Mr. Okalik responded on May 6, 2009. After considering Mr. Okalik's response and an email exchange

with Mr. Tootoo, I asked Mr. Okalik on May 19, 2009 for an affidavit from Nadia Ciccone in response to Mr. Tootoo's allegations. Mr. Okalik did not respond to me until June 4, 2009 at which time he told me that he would consider my request when time permitted.

On June 21, 2009, when I did not have a further response from Mr. Okalik, I emailed him, telling him again that I wanted an affidavit from Ms. Ciccone. I said that if he did not want to obtain it, I would ask her for it provided he gave me her contact information. As a result of getting only her regular mail address (and not her email address or her phone number) from Mr. Okalik on June 22, 2009, I sent a letter by regular mail to Ms. Ciccone on July 8, 2009 with a copy of Mr. Tootoo's Affidavit enclosed.

Since I had not heard anything further from either Mr. Okalik or Ms. Ciccone, on July 24, 2009 I emailed Mr. Okalik again. In my email, I enclosed a copy of my July 8th letter to Ms. Ciccone and asked him to contact her. I also asked him to provide me with her email address and her phone number (which he never did).

I finally was able to obtain Ms. Ciccone's phone number from Mr. Tootoo. On July 28, 2009, I phoned Ms. Ciccone and left a message on her home answering machine. One month later, on August 28, 2009, I left a message on Ms. Ciccone's work answering machine. I also advised Mr. Okalik by email that day that I had not yet heard from Ms. Ciccone.

Ms. Ciccone emailed me on August 31, 2009, saying that she had been away for five weeks but that she had received my letters and voice messages. She said that she would have her response to me by September 17, 2009.

On September 16, 2009, Ms. Ciccone did email me some of her answers to Mr. Tootoo's allegations. As a result of those answers, I prepared some specific questions for her to answer. She provided her further answers to me on September 29, 2009.

On October 5, 2009, the Speaker of the Legislative Assembly sent me a letter expressing - quite properly - concern about the length of time this Review was taking. He asked me to indicate when I anticipated being able to submit this Report. His letter was copied to all members of the Management and Services Board, of which both Mr. Okalik and Mr. Tootoo are members.

My reply letter to the Speaker was sent by fax on October 6, 2009 at approximately 9:30 am. At approximately 10:30 that same morning, I retrieved a message from the Integrity Commissioner's answering machine (which was likely left on the machine sometime between 9 am and 10:30 am that morning). The message was from a lawyer, Ms. Anne Crawford. I returned her call shortly after I received her message and learned for the first time that she had recently been retained to act as the lawyer for Mr. Okalik in this Review.

I faxed and emailed the information to Ms. Crawford that she requested. I also had further communication with Mr. Tootoo.

On October 7, 2009, Ms. Crawford advised me that she was going to provide me with further evidence from Nadia Ciccone. She was also going to prepare some Submissions on behalf of Mr. Okalik.

On October 15, 2009, Ms. Crawford faxed me Ms. Ciccone's Statutory Declaration, which I immediately sent to Mr. Tootoo for his response. Ms. Crawford emailed her Submissions to me on October 17, 2009. By October 20, 2009, I had received Mr. Tootoo's response to both Ms. Ciccone's Statutory Declaration and Ms. Crawford's Submissions.

Hopefully this gives everyone some insight into why this Review unfortunately took approximately one year to complete. I want to assure everyone that any future reviews that I conduct will be done in a more timely manner.

Respectfully submitted,

Norman Pickell
Integrity Commissioner

October 23, 2009