



Legislative Assembly of Nunavut

Report to the Speaker

Re: Mr. Fred Schell, MLA

October 18, 2011

Norman Pickell

Integrity Commissioner

RE: MR. FRED SCHELL, 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*”).

Ms. Janet Slaughter has asked me to review the conduct of Mr. Fred Schell.

Complainant and Respondent:

The Complainant, Ms. Janet Slaughter, is the Deputy Minister of Justice for the Government of Nunavut.

The Respondent, Mr. Fred Schell, is the Member of the Legislative Assembly (herein referred to as “MLA”) for South Baffin, which includes the communities of Cape Dorset and Kimmirut. At the time that the complaint was made in June 2011, Mr. Schell was a Regular Member of the Legislative Assembly. His election to Cabinet on September 28, 2011 does not play any role in this review.

The Allegations:

Ms. Slaughter alleges that Mr. Schell contravened the *Integrity Act* and specifically the following:

1. The conflict of interest provisions of the Act;
2. The influence provision of the Act; and
3. The blind trust provisions of the Act.

To be more specific, Ms. Slaughter alleges that Mr. Schell committed 4 breaches of the *Integrity Act* as follows:

1. She alleges that Mr. Schell improperly attended a meeting which included officials from the Government of Nunavut on June 22, 2009 on behalf of Polar Supplies, a company which Mr. Schell owns.
2. She alleges that Mr. Schell improperly sent an email on June 23, 2009 to an official in the Government of Nunavut regarding the meeting of June 22, 2009.
3. She alleges that Mr. Schell improperly asked a question in the Legislative Assembly on October 29, 2010 that had a connection to his own business, which he had placed in a blind trust.

4. She alleges that by doing the first 3 things, Mr. Schell breached the provisions of his own Blind Trust Agreement.

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

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

Conduct of Review under the *Integrity Act*.

Section 41(2) of the Act states that the Integrity Commissioner may conduct the review in private or in public at the Integrity Commissioner's discretion. I have decided to conduct this review in private. Accordingly, I will not be releasing copies of the affidavits, letters and other material which were provided to me for this review.

Background:

On June 9, 2011, I received three emails from Ms. Margaret Hollis, Legal Counsel with the Department of Justice, Government of Nunavut. Attached to her emails were the following:

1. A letter dated June 7, 2011 from Janet Slaughter, Deputy Minister of Justice;
2. The affidavit of Janet Slaughter which was sworn June 7, 2011;
3. Copies of Exhibits A through I to the affidavit of Janet Slaughter;
4. A copy of *Polar Supplies v. Cape Dorset (Hamlet)*, a decision of the Nunavut Court of Justice dated March 22, 2011;
5. A copy of an article dated March 24, 2011 entitled "Nunavut judge rejects bid from MLA-owned company" which appeared in the Nunatsiaq News; and
6. A copy of a news story dated March 23, 2011 entitled "Lawsuit by Nunavut MLA's firm winds through court" that appeared on the CBC.ca website.

The originals of the above items arrived in my office by regular mail on June 13, 2011.

Ms. Slaughter's letter stated in part as follows:

"I hereby request that the Integrity Commissioner review the facts and give a written report on the following apparent contravention of the *Integrity Act* ... that has come to my attention. The Member of the Legislature concerned is Fred Schell, the owner of Polar Supplies Ltd."

"... the material attached to my affidavit shows that Mr. Schell has used his office to attempt to influence a decision in contravention of section 10 of the *Integrity Act*, ...; it also shows that Mr. Schell has remained actively involved in the business of Polar Supplies Ltd., which may well be a contravention of his [blind] trust under the *Integrity Act* In a community as small as Nunavut, where his status as an MLA is well known, his presence at certain meetings may be, in itself, an attempt to use his office to influence a decision."

Ms. Slaughter's 15-paragraph Affidavit set out certain allegations in support of her request for the review.

After reading the material I received from Ms. Slaughter, I concluded that there were sufficient grounds to warrant commencing a review in accordance with section 40 of the Act.

On June 12, 2011, I sent Mr. Schell copies of:

1. The letter dated June 7, 2011 from Janet Slaughter;
2. The affidavit of Janet Slaughter which was sworn June 7, 2011; and
3. Copies of Exhibits A through I to the affidavit of Janet Slaughter;

I asked Mr. Schell for his response to what I sent him.

I did not send Mr. Schell copies of the following:

1. A copy of *Polar Supplies v. Cape Dorset (Hamlet)*, a decision of the Nunavut Court of Justice dated March 22, 2011; and
2. Copies of the news articles from Nunatsiaq News and CBC.ca.

My reason for not sending copies of those three items was because I was concerned about giving Mr. Schell too much information about his company, Polar Supplies Ltd., which Mr. Schell has placed in a blind trust.

Later I received further material from the Complainant, copies of which were provided to Mr. Schell.

Initially Mr. Schell was going to prepare his response himself. But at the beginning of August, Mr. Schell advised me that he had hired a lawyer to represent him. By the end of August, I received word that another lawyer, Mr. Patrick Smith, was acting for Mr. Schell.

Both Mr. Schell and Mr. Smith provided me with material in response to the allegations made against Mr. Schell. Mr. Smith's Submissions on behalf of his client were the final piece, which I received on October 11, 2011.

Mr. Schell's Blind Trust Agreement:

At the time that he was elected to the Legislative Assembly of Nunavut, Mr. Schell owned all of the shares of Polar Supplies Ltd.

Polar Supplies Ltd. has carried on business in the Hamlet of Cape Dorset for a number of years. The company owns and operates facilities and assets which do quarrying, gravel work, construction and demolition. Polar Supplies Ltd. also provides transportation, storage and accommodation in Cape Dorset.

Pursuant to section 16 of the *Integrity Act*, Cabinet Ministers are not allowed to manage or carry on a business through a corporation. There is no similar restriction on Regular MLAs. (Mr. Schell was a Regular MLA at the time relevant to this review).

However, a Regular Member is able to place his business interests in a blind trust if he chooses to do so. That is what Mr. Schell did.

Here is a list of dates as they relate to Mr. Schell's Blind Trust:

- | | | |
|-------------------|---|--|
| October 27, 2008 | - | Mr. Schell was elected to the Legislative Assembly |
| November 7, 2008 | - | the Integrity Commissioner conducted an orientation session with all MLAs (including discussing blind trusts) |
| September 8, 2009 | - | the first communication the Integrity Commissioner received from anyone on behalf of Mr. Schell regarding setting up his blind trust |
| January 1, 2010 | - | the effective date of the Blind Trust Agreement pursuant to which Mr. Schell put all of his shares in Polar Supplies Ltd. into a Blind Trust |

January 1, 2010 - the date on which Mr. Schell's Trustee, Mr. Garth Wallbridge, effectively took control of Polar Supplies Ltd. in place of Mr. Schell

Generally once an MLA puts his assets into a Blind Trust, the MLA:

1. gives up the right to information about those assets; and
2. cannot participate in any decision-making regarding those assets.

There are some exceptions to this rule. But none of them are relevant in this review of Mr. Schell.

Issue:

This review is to determine if any or all of the allegations made by the Complainant against Mr. Schell are true. If any of them are, Mr. Schell has contravened the *Integrity Act*.

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.

Allegation # 1 - Improperly Attending the June 22, 2009 Meeting:

This allegation is that Mr. Schell improperly attended a meeting which included officials from the Government of Nunavut on June 22, 2009 on behalf of Polar Supplies Ltd., a company which Mr. Schell owns.

Most of the facts concerning this allegation are agreed upon as follows:

1. A meeting took place on June 22, 2009 between Polar Supplies Ltd. (herein referred to as "Polar Supplies") and representatives of the Government of Nunavut's Department of Community and Government Services (herein referred to as "the Department").
2. Mr. Schell attended the meeting.
3. Ms. Cheryl Constantineau, the Operational Manager of Polar Supplies, also attended the meeting.
4. The Department was represented at the meeting by Mr. Timoon Toonoo and Mr. Mathew Price.

5. The purpose of the meeting was to discuss the Contribution Agreement between the Department and the Hamlet of Cape Dorset (herein referred to as “the Hamlet”) for the Access Road contract.
6. Ms. Constantineau, on behalf of Polar Supplies, was inquiring about:
 - a) an unpaid invoice from Polar Supplies that had been sent to the Hamlet;
 - b) the status of the Access Road contract for road construction in the Hamlet;and
 - c) the “carryover” of government funds.
7. The Department representatives at the meeting said that non-payment of the invoice was between the Hamlet and Polar Supplies.
8. The Department said that it was the Hamlet’s decision as to what to do about the road contract.
9. At the time of the meeting, there was no signed contract with the Hamlet for the road project.
10. The “carryover” had to do with money that had been advanced by the Government of Nunavut to the Hamlet for capital expenditures for the building of the road. This money had been returned by the Hamlet to the Government.
11. Mr. Toonoo and Mr. Price said that once the carryover was approved, the money would be given back to the Hamlet to administer.
12. Ms. Constantineau, on behalf of Polar Supplies, raised other issues at the meeting, including lease documents and issues with the Hamlet office and garage.
13. The Department’s response to these other issues was that, since they were unrelated to the invoice and the road contract, they would have to be discussed at a different time.
14. Following the meeting, Mr. Toonoo sent an email to Mr. Schell which accurately summarized what was said at the meeting.
15. In his email to Mr. Schell, Mr. Toonoo said that he did not have Ms. Constantineau’s email address and asked Mr. Schell to share the email with her.
16. Mr. Schell says that he had to attend the meeting for a number of reasons:

- a) very little of the agreement that Polar Supplies alleged existed was in writing;
- b) the proposed agreement was part of an ongoing agreement between the Hamlet and Polar Supplies;
- c) Mr. Schell was the only one from Polar Supplies who had a good understanding of the oral aspects of the agreement;
- d) Ms. Constantineau did not have adequate understanding of or information concerning the details of the agreement; and
- e) Mr. Schell believed that he had to act as an information source and to answer any questions that others at the meeting had regarding the terms of the agreement and previous discussions.

17. In the end, the contract for the road construction was not awarded to Polar Supplies. The Hamlet decided to complete the project with its own resources.

The question for determination is “Did Mr. Schell improperly attend that meeting on June 22, 2009 ?”

Section 2(b) of the *Integrity Act* states (in part):

2. This Act is founded on the following principles:

- (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,....

Section 4(a) of the *Integrity 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;

Section 8 of the *Integrity Act* – the “conflict of interest” section – states:

- 8. A member shall not make a decision or participate in making a decision in the performance of his or her duties of office or otherwise exercise an official power or perform an official duty in the exercise of his or her office if the member knows or reasonably should know that in doing so there is an opportunity to further the member’s private interest or improperly to further another person’s private interest.

Section 10 of the *Integrity Act* – the “influence” section – 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.

Under the *Integrity Act*, Cabinet Ministers are subject to stricter rules than Regular MLAs. There are several reasons for this. One reason is that Ministers have authority to sign and enter into contracts, while Regular MLAs do not.

If Mr. Schell had been a Cabinet Minister at the time of the meeting, he would not have been able to attend the meeting for the following reasons:

1. Cabinet Ministers are not permitted to have a business or be involved in the management of a business carried on by a corporation; and
2. Cabinet Ministers always wear of the cloak of ministerial responsibility. There is no way that their actions, whether verbal or written, can be considered by the recipient as other than actions by a Cabinet Minister.

But Mr. Schell was not a Cabinet Minister at the time of the meeting. He was permitted to have a business and be involved in the management of a business carried on by a corporation. At the time of the meeting, his business, Polar Supplies Ltd., was not yet in a Blind Trust.

As I consider all of the evidence, and especially the email that Mr. Toonoo wrote to Mr. Schell after the meeting, I do not detect any attempt by Mr. Schell to use his position as an MLA to try to influence a decision to be made by anyone. Therefore, I find that Mr. Schell did not breach section 10 of the *Integrity Act* (which is the “influence” section) when he attended the meeting with Government of Nunavut officials held on June 22, 2009.

By attending the meeting, Mr. Schell did have an opportunity to further his private interests. But when I consider all of the evidence, I find that Mr. Schell’s attendance at the meeting did not violate section 8 of the *Integrity Act* (which is the “conflict of interest” section) for a number of reasons:

1. He did not make any decision at the meeting;
2. He did not participate in the making of a decision;
3. He was not performing any duties of office as an MLA;
4. Any decisions that were made at the meeting were made by the representatives of the Department of Community and Government Services; and

5. Any decisions that were made at the meeting were not beneficial to Mr. Schell or to his business, Polar Supplies Ltd.

While Mr. Schell may have skated close to the line, I am also not prepared to find that he violated sections 2(b) or 4(a) of the *Integrity Act* by attending the June 22nd meeting.

Accordingly, for all of the reasons given, I find that Allegation # 1 has not been proven. Therefore, it is dismissed.

In the future, if Mr. Schell ever goes back to being a Regular MLA instead of a Cabinet Minister, I would suggest he not attend any meetings with officials of either the Government of Nunavut or any Hamlet where his business interests are being discussed. He should brief his Operational Manager and let her attend in his place.

Allegation # 2 - Sending an Email on June 23, 2009:

The second allegation is that Mr. Schell improperly sent an email on June 23, 2009 to an official in the Government of Nunavut regarding the meeting of June 22, 2009.

Mr. Schell attended the meeting on June 22, 2009, the details of which are listed above under Allegation # 1. Mr. Timoon Toonoo sent Mr. Schell an email later that day, which email is also referred to under Allegation # 1. That is where it should have stopped.

Unfortunately Mr. Schell chose to send a responding email to Mr. Toonoo on June 23, 2009. (He also sent a copy of the email to Mr. Shawn Maley and Mr. Roy Green.)

Instead of attaching the entire email (since it contains confidential information), I will only quote the following relevant passages from the email:

“This is a large invoice and I am taking this issue very seriously. I have provided proof from the surveyor that they did complete the initial surveys, and John himself ... admits that we did the stock piling.... We are saying it was for the access road, and I fully expect CGS [Department of Community and Government Services] to accept that declaration.”

“Our lawyer is ready to take this to the next level, but I thought I would at least give CGS the chance to correct the error you made”

“The Hamlet saying we did not do the work, and you agreeing with them is not only insulting, it is very disappointing”

“We intend on completing this project in the next coming months, and we are looking for your support in making sure that the Hamlet starts to treat us fairly and keeps to their agreements.”

Mr. Schell says he sent this email, instead of having Ms. Cheryl Constantineau send it, because:

1. she had no understanding of previous discussions or agreements between Polar Supplies Ltd. and the Hamlet of Cape Dorset;
2. it concerned a contract which was awarded to Polar Supplies Ltd. long before June 23, 2009; and
3. many of the terms of the contract were agreed to on an oral basis.

While it may have been helpful for Mr. Schell to attend the June 22nd meeting “to act as an information source and to answer questions” because “Ms. Constantineau did not have adequate understanding of or information concerning the details of the agreement,” I do not accept Mr. Schell’s position that he had to send the June 23rd email. He could have told Ms. Constantineau what to put in the email, and let her send it as if it was her email.

I find the tone of Mr. Schell’s email of June 23rd to be intimidating. His email was not simply to provide clarification and obtain information, as Mr. Schell submits. It contained demands and threats. The recipient of the email, Mr. Toonoo, knew that Mr. Schell was an MLA.

I find that the email was intended by Mr. Schell, an MLA, to seek to influence a decision to be made by Mr. Toonoo (an employee of the Government of Nunavut) so as to further Mr. Schell’s private interests. Accordingly, I find that Mr. Schell contravened section 10 of the *Integrity Act* [the “influence” section] by sending the email to Mr. Toonoo.

As I said earlier, the Hamlet of Cape Dorset is one of the communities that Mr. Schell represents in the Legislative Assembly.

One of the principles upon which the *Integrity Act* is founded is the one contained in section 2(a) which states that integrity is the first and highest duty of elected office.

I find that by sending the email to Mr. Toonoo, Mr. Schell violated both sections 2(b) and 4(a) of the *Integrity Act*.

By sending the email, Mr. Schell:

1. did not arrange his private affairs in a manner that promotes public confidence in his integrity (as required by section 2(b)); and
2. did not arrange his private affairs in such a manner as to maintain public confidence and trust in the integrity, objectivity and impartiality of an MLA (as required by section 4(a)).

Allegation # 3 - Asking Question in Legislative Assembly:

The third allegation is that Mr. Schell improperly asked a question in the Legislative Assembly on October 29, 2010 that had a connection to his own business, which he had placed in a blind trust.

On October 29, 2010, while the Legislative Assembly was sitting in Committee of the Whole, Mr. Schell asked the following question of an employee of Nunavut Housing Corporation – and I am quoting from the Nunavut Hansard:

“Earlier ... you had mentioned that part of the extra cost ... is you have to bring southern employees down and they have to stay in hotels. Now, half of the projects were completed by LHOs [Local Housing Authorities] and, as far as I can see in most of the communities, the LHOs or the Housing Corporation put southern employees in houses. They did not stay at a hotel. I would like to know how many actually stayed at the hotels from LHOs and how many were actually in houses because my understanding is that most of them were in houses.”

The Nunavut Hansard is a public written record of what is said in the Legislative Assembly. Polar Supplies Ltd., which is Mr. Schell’s company, owns a hotel in Cape Dorset.

As part of her evidence, the Complainant, Ms. Janet Slaughter, provided me with copies of the following letters – all of which were sent after Mr. Schell asked his question in the Legislative Assembly;

1. a letter from Ms. Cheryl Constantineau, the Operational Manager of Polar Supplies Ltd. to Ms. Slaughter;
2. a letter from Mr. Garth Wallbridge, Mr. Schell’s Trustee pursuant to the Blind Trust, to the Hamlet of Cape Dorset;
3. a letter from Mr. Wallbridge to Mr. John Corkett, the District Director of Nunavut Housing Corporation;
4. a letter from Mr. Corkett to Mr. Wallbridge;
5. an exchange of emails between Ms. Constantineau and a manager/advisor with the Department of Economic Development;
6. a letter from Mr. Steven Cooper, the lawyer for Polar Supplies Ltd., to the same manager/advisor with the Department of Economic Development with whom Ms. Constantineau was exchanging emails; and
7. a letter from Ms. Margaret Hollis, Legal Counsel for the Government of Nunavut to Mr. Cooper.

All of those letters and emails dealt with an issue involving a competitor of Polar Supplies' hotel in Cape Dorset and whether the municipal bylaws and Government of Nunavut requirements were being followed.

Based on all of the evidence presented to me, I find the following facts to be true:

1. Mr. Schell did ask the question on October 29, 2010 in Committee of the Whole which is attributed to him.
2. Polar Supplies Ltd. wrote letters, or caused letters to be written, alleging that Government of Nunavut staff and construction workers were staying in non-commercial residences which did not comply with the municipal bylaws in Cape Dorset and which was contrary to the policy of the Government of Nunavut.
3. Mr. Schell did not see any of those letters and emails which were attached as exhibits to Ms. Slaughter's affidavit and was not aware that they existed until I provided them to him as part of the complaint for him to respond to.
4. In any event, all of those letters were sent after Mr. Schell asked his question on October 29, 2010.
5. There is no evidence before me to indicate that Mr. Schell took any active role in the managing of Polar Supplies Ltd. after he placed it in his Blind Trust.
6. Since January 1, 2010, Mr. Schell has not received any information from anyone about Polar Supplies Ltd. or any aspect of his business, other than what I provided to him from Ms. Slaughter's affidavit and attached exhibits.
7. At the time that Mr. Schell asked his question, the Committee of the Whole was considering issues involving the Nunavut Housing Corporation.
8. Several MLAs were asking questions of the Honourable Tagak Curley, the Minister responsible for the Nunavut Housing Corporation, Mr. Alain Barriault, the President of the Nunavut Housing Corporation and Ms. Lori Kimball, the Chief Financial Officer for the Nunavut Housing Corporation.
9. The question about which Ms. Slaughter has complained was not the only question that Mr. Schell asked of the Nunavut Housing Corporation officials that day.
10. As I read the Nunavut Hansard for October 29, 2010, I note that Mr. Schell also asked questions about:
 - a) why was it so expensive for the Nunavut Housing Corporation to build housing units;

- b) who designed the Structural Insulated Panels – SIP panels – that are used in the construction of some of the housing units;
 - c) were the SIP panels approved by the Canadian Standards Association – CSA;
 - d) the audit that was done on the Nunavut Housing Trust Project;
 - e) why certain housing units were not built in Arviat (which is not part of Mr. Schell’s constituency);
 - f) the different methods of building housing units;
 - g) the awarding of a contract to a company in Ontario;
 - h) a possible conflict of interest within the Nunavut Housing Corporation; and
 - i) the criteria for paying bonuses for using more Inuit workers in the construction of the housing units than what the minimum in the contract required.
11. Mr. Schell says that he asked the question about the hotel/commercial establishment issue because people in other constituencies, including Igloolik, had expressed their concern about it to him.
12. Mr. Schell says that he knew the question was connected to his own business when he asked it because the issue has persisted in Nunavut since before he became an MLA.
13. I note that Mr. Schell did not refer to his own company, his hotel or even to Cape Dorset when he asked his question on October 29, 2010.
14. Mr. Schell says that his question on October 29, 2010 was not the first time that the issue of government staff and construction workers staying in non-hotels was raised in the Legislative Assembly.
15. On December 7, 2009, Mr. Eruk Pauloosie, who was then the MLA for Nattilik (which includes Gjoa Haven and Taloyoak) asked a question regarding contractors using public housing units, instead of hotels, for accommodation.
16. Quoting from the Nunavut Hansard of December 7, 2009, Mr. Pauloosie asked:
- “My question is for the Minister of the Nunavut Housing Corporation. It is my understanding that when the Nunavut Housing Corporation awards contracts to companies to do work in the communities, one of the requirements ... is for the contractors to use local businesses such as hotels for accommodations for the contractor’s workers as a means of supporting local businesses. Mr.

Speaker, it has come to my attention that in my constituency contractors and construction workers are using public housing units for accommodations while they do work in the community. Can the minister confirm what the Nunavut Housing Corporation's practices are in this area and commit to reviewing the situation in my constituency ? Thank you, Mr. Speaker.”

17. As part of his answer in the Legislative Assembly to Mr. Pauloosie's question, the Minister responsible for the Nunavut Housing Corporation at the time, the Honourable Hunter Tootoo, said:

“Mr. Speaker, for the most part, if contractors are bringing in employees to work on these contracts from outside the community, they're required to stay in commercial accommodations. Having said that ..., there have been incidents where commercial accommodations have not been available.”

18. While Mr. Pauloosie's question is not exactly the same as Mr. Schell's question, the two questions have a common theme in them – are contractors staying in houses, whether public or private, instead of in commercial establishments such as hotels.

I find that Mr. Schell did not contravene the *Integrity Act* when he asked his question in the Legislative Assembly. My reasons for saying this are as follows:

1. He did not contravene either section 8 or section 10 of the *Integrity Act*.
2. Section 8 talks about an MLA making a decision or participating in making a decision or otherwise exercising an official power or performing an official duty.
3. Section 10 says that an MLA shall not use his office to seek to influence a decision made or to be made.
4. In Mr. Schell's case, he was simply asking a question in the Committee of the Whole of the Legislative Assembly. No decision was made. He did not participate in making a decision. He did not exercise an official power or perform an official duty. He did not use his office to seek to influence a decision that had been made or was to be made.
5. He never mentioned his own business when he asked the question.
6. While his business was effectively in a blind trust at the time he asked the question, I find that he was asking the question primarily on behalf of another resident of Nunavut.
7. Sections 8 and 10 of the *Integrity Act* refer to an MLA's “private interest.”

8. Section 3 of the *Integrity Act* states that a “private interest” does not include an interest in a decision that “affects a person as one of a broad class of persons.”
9. It is apparent from the evidence that the issue that Mr. Schell raised in his question also applies to other businesses in Nunavut, in addition to his own company. Therefore, for the purposes of this review, I find that Polar Supplies Ltd. fits into the category of “a broad class of persons.”
10. Without a “private interest,” Mr. Schell’s question does not violate either section 8 or section 10.
11. In addition, by asking the question in the Legislative Assembly, Mr Schell asked the question in the most public way that he could. Other MLAs and government officials were present. The proceedings of the Legislative Assembly are broadcast throughout Nunavut. A public written record was made in Hansard. Hence, Mr. Schell was being as open and transparent as he could.

Allegation # 4 – Breaching His Blind Trust Agreement:

The final allegation against Mr. Schell is that, if he was guilty of any of the first 3 violations, he breached the provisions of his own Blind Trust Agreement.

I have found Mr. Schell guilty of Allegation # 2, that he improperly sent an email on June 23, 2009 to an official in the Government of Nunavut.

I have not found him guilty of the other allegations.

As I have already said, Mr. Schell’s Blind Trust Agreement was being discussed in 2009. However, it did not become effective until January 1, 2010.

Therefore, when Mr. Schell sent the offending email to the Government official on June 23, 2009, his Blind Trust Agreement was not yet in effect. Accordingly, Mr. Schell cannot be found guilty of breaching the provisions of his Blind Trust Agreement.

Summary of Conclusions:

For the reasons given above, I find that Mr. Schell **did** contravene the *Integrity Act* by sending his email on June 23, 2009 to an official in the Government of Nunavut regarding the meeting of June 22, 2009.

However, I find that Mr. Schell **did not** contravene the *Integrity Act* by:

- a. attending a meeting which included officials from the Government of Nunavut on June 22, 2009 on behalf of Polar Supplies Ltd., a company which Mr. Schell owns; or by

- b. asking a question in the Legislative Assembly on October 29, 2010 that had a connection to his own business, which he had placed in a blind trust.

I also find that none of Mr. Schell's actions which are the subject of this review have violated the terms of his Blind Trust Agreement.

Sanctions - Generally:

Section 46(1) of the *Integrity Act* directs me to recommend sanctions where I find that an MLA 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:

Considering all of my above comments, I recommend that the Legislative Assembly impose the following sanctions on Fred Schell:

1. Fred Schell shall be reprimanded by the Legislative Assembly.
2. Fred Schell 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. Fred Schell shall send a written letter of apology to Mr. Timoon Toonoo and to the other recipients of his June 23, 2009 email, being Shawn Maley and Roy Green.

4. Fred Schell shall provide a copy of his written apology referred to in sanction 3 to the Integrity Commissioner after it has been sent.
5. Fred Schell shall meet with his Elders to discuss his conduct as a Member of the Legislative Assembly and have such further meetings with them as the Elders decide.
6. Fred Schell shall pay a fine of Five Hundred Dollars (\$ 500.00).
7. Fred Schell shall read the October 2011 version of the “Integrity Act Orientation Manual for Members of the Legislative Assembly of Nunavut” that has been prepared by the Integrity Commissioner.
8. Fred Schell’s right to sit and vote in the Legislative Assembly shall be suspended without indemnity or allowance until such requirements have been fulfilled if he fails to fulfill the requirements of the sanctions within the following timeframes:
 - a. he shall comply with sanctions 2, 3 and 4 within five sitting days after the Legislative Assembly’s acceptance of these recommendations;
 - b. he shall have his first meeting with his Elders within fifty calendar days after the Legislative Assembly’s acceptance of these recommendations;
 - c. he shall comply with sanctions 6 and 7 within fifty calendar days after the Legislative Assembly’s acceptance of these recommendations.

Length of Time to Conduct this Review:

As a result of an amendment to the *Integrity Act* in 2010, a review must be completed within 90 days after commencing the review, unless an extension is granted by the Management and Services Board.

After reading the material I received from the Complainant, I concluded on June 12, 2011 that there were sufficient grounds to warrant commencing a review. Hence that is the date from whence the 90 days commences. September 10, 2011 was the original date by which my Report was to be submitted to the Speaker.

Mr. Schell made a formal request to me for a 45 day extension. In turn, I requested an extension from the Management and Services Board. My request was granted to permit me to file my Report by October 25, 2011.

When I sent the Complainant’s allegations to Mr. Schell on June 12, 2011, I indicated to Mr. Schell that he could consult with a lawyer before providing a response.

Over the next few weeks, I had phone conversations and email exchanges with Mr. Schell.

On July 6, 2011, Mr. Schell advised me that he was leaving on vacation. He would not be back in Cape Dorset until the middle of August.

On August 2, 2011, Mr. Schell advised me for the first time that he had hired a lawyer to help him.

I sent several emails to the lawyer who Mr. Schell had hired. While I never heard directly from that lawyer, I did receive an email saying that the lawyer would be on vacation from August 8th until August 22nd. I conveyed this information to Mr. Schell.

Up until this point in time, I had placed several deadlines on both Mr. Schell and his first lawyer to have responding material to me.

On August 11th, I received the formal request from Mr. Schell for a 45 day extension.

On August 18th, I received a letter from Mr. Patrick Smith, a second lawyer, to say that he had been contacted to assist Mr. Schell. It was not until August 31st that Mr. Smith confirmed that he was now acting for Mr. Schell, in place of the first lawyer.

Mr. Smith asked for an extension to file responding material on behalf of Mr. Schell. While I granted Mr. Smith an extension to file responding material, it was a shorter time than what he had requested.

In mid-September, Mr. Smith said that he was considering examining the Complainant on her affidavit. I discussed his request with him on September 23rd. On September 29th, Mr. Smith advised me that he would not be examining the Complainant. (If the examination had gone ahead, it would have meant a request to the Management and Services Board for a further extension.)

Mr. Smith indicated that he would have his Submissions to me by Friday October 7th. However, as everyone will recall, a satellite malfunction high above Nunavut on October 6th caused disruption to a number of services, including air travel. As a result, Mr. Smith was unable to reach his office until the Friday, which – because it was Thanksgiving weekend – caused him to not be able to send his Submissions to me until Tuesday October 11th.

I mention the above to show that when a review is initiated, it takes the full cooperation of all parties involved, including their lawyers, to do it within the timeframe contemplated by the *Integrity Act*. When a complaint is made against them, MLAs need to decide quickly whether or not they are going to hire a lawyer to assist them. In this case, the summer vacations of Mr. Schell and his first lawyer – not Mr. Smith – played a big factor in prolonging the time to complete the review.

Complainant's Role in this Review and the Expansion of Accountability:

The last matter I want to comment upon is the role of the Complainant in this review and the expansion of accountability.

As I said in my opening, the Complainant, Ms. Janet Slaughter, is the Deputy Minister of Justice for the Government of Nunavut. After Mr. Schell received the Complainant's material from me, he implied that there was a personal connection between the Complainant and Polar Supplies' competition in Cape Dorset and that that was what caused her to complain about Mr. Schell's conduct.

When Ms. Slaughter was asked about her involvement with Polar Supplies' competition in Cape Dorset, and what had caused her to make the complaint, Ms. Slaughter said the following:

1. The competition in Cape Dorset to which Mr. Schell refers is the subject of at least some of the letters which were attached to Ms. Slaughter's affidavit and which are referred to under Allegation # 3;
2. That competition in Cape Dorset is one of the reasons that Mr. Schell asked the question he did in the Legislative Assembly on October 29, 2010;
3. A woman who is a part-owner of that competition in Cape Dorset does work for the Department of Justice;
4. But that woman does not report to Ms. Slaughter; she reports to a person who is 3 levels below Ms. Slaughter in the Department of Justice;
5. Ms. Slaughter does not know the woman personally;
6. The woman does not stay at Ms. Slaughter's home when she comes to Iqaluit;
7. Ms. Slaughter does not have any interest in the company which is Polar Supplies' competition in Cape Dorset and does not have any interest in the outcome of anything involving that competition or Polar Supplies;
8. The information which formed the basis of the complaint made to me was not as a result of Ms. Slaughter initiating an examination of Mr. Schell's business affairs;
9. Instead, with the exception of Mr. Schell's question in the Legislative Assembly, the information came to light as a result of a lawyer for Polar Supplies Ltd. – not Mr. Smith – making a request pursuant to the *Access to Information and Protection of Privacy Act*.

10. Because of the number of complaints and the number of requests pursuant to the *Access to Information and Protection of Privacy Act* which have been made by Polar Supplies, Ms. Margaret Hollis, a lawyer with the Department of Justice, had been assigned to handle all matters related to Polar Supplies Ltd.
11. Ms. Hollis discovered the question that Mr. Schell made in the Legislative Assembly on October 29, 2010 when she was looking into written allegations made to Nunavut Housing Corporation.

I am satisfied that when Ms. Slaughter filed her complaint with me, she had reasonable grounds to believe that Mr. Schell had contravened the *Integrity Act*. She was not making the complaint in bad faith or with a feeling of ill-will or malice toward Mr. Schell. I am further satisfied that Ms. Slaughter did not have anything to gain personally from filing the complaint with me.

Perhaps the inference that Ms. Slaughter had a personal interest in her complaint to me about Mr. Schell could have been avoided if the Legislative Assembly had followed the recommendations of my predecessor, the Honourable Robert Stanbury, regarding the accountability of Deputy Ministers.

While I have mentioned this expansion of accountability in each of my 3 Annual Reports to the Legislative Assembly, let me quote some passages from pages 7 and 8 of my 1st Annual Report which was tabled in the Legislative Assembly on June 8, 2009:

“Expansion of Accountability:

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

“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.

“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....”

If Ms. Slaughter had been required to file a “Disclosure Statement” similar to the one that MLAs file every year, Mr. Schell and those representing him would have been able to see that Ms. Slaughter does not have any financial interest in Polar Supplies’ competition in Cape Dorset. If that fact had been known before the complaint was made, it might have saved some time and money in this review.

I also note that one of Mr. Schell’s questions on October 29, 2010 in the Committee of the Whole had to do with the financial or family relationship between a past President of the Nunavut Housing Corporation and the President of a successful bidder on a contract that the Nunavut Housing Corporation had awarded.

This is another example where it would have been helpful if senior officials of Crown Corporations and Public Agencies were also required to file “Disclosure Statements” and be subject to the same legislated standards as MLAs are under the *Integrity Act*.

Respectfully submitted,

Norman Pickell
Integrity Commissioner

October 18, 2011