Legislative Assembly of Nunavut

Report to the Speaker

Re: The Honourable Fred Schell, MLA

October 29, 2012

Norman Pickell

Integrity Commissioner

Integrity Commissioner of Nunavut
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Commissaire à l'intégrité du Nunavut
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October 29, 2012

The Honourable Hunter Tootoo, 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 the Honourable Fred Schell, MLA.

Respectfully,

Norman Pickell

Norman Pickell
Integrity Commissioner

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Re: The Honourable Fred Schell, MLA

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Attachments:

Re: The Honourable 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*").

Mr. Daniel Vandermeulen has asked me to review the conduct of the Honourable Fred Schell.

Complainant and Respondent:

The Complainant, Mr. Daniel Vandermeulen, is the Deputy Minister of Executive and Secretary to Cabinet for the Government of Nunavut.

The Respondent, the Honourable 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. Mr. Schell was elected to the Legislative Assembly on November 3, 2008. He was elected to Cabinet on September 28, 2011.

The Allegations in Brief:

After receiving the letter, affidavit and exhibits from Mr. Vandermeulen, I prepared what I perceived to be the "Summary of Allegations." (The reasons for preparing that Summary are detailed in Appendix 1, being my Ruling on the 1st Request to have me withdraw from conducting this review.) My "Summary of Allegations" contained 21 allegations.

At the conclusion of the Hearing, I invited the lawyers to provide a more appropriate list of the Allegations, based on the evidence that was heard. They came up with a list of 9 Allegations.

As a result, it is alleged that Mr. Schell contravened the *Integrity Act* (herein the "Act") as follows:

1. It is alleged that Mr. Schell violated the terms of his Blind Trust Agreement, and thereby breached sections 14 (the "contracts" and "interest in trust" section) and 16 (the "outside activities" and "business in trust" section) of the Act.

2. It is alleged that Mr. Schell breached section 8 (the "conflict of interest" section) and section 10 (the "influence" section) of the Act. As Minister responsible for Nunavut Housing Corporation, it is alleged that Mr. Schell met with the President of Nunavut Housing Corporation and discussed issues that impacted directly on his (Mr. Schell's) own private interest.

3. It is alleged that Mr. Schell misled the Secretary to Cabinet, Daniel Vandermeulen, and the Integrity Commissioner with respect to the circumstances surrounding the

appointment of Michael Constantineau as Mr. Schell's Executive Assistant, thereby breaching sections 2(b) (the "principles" section), and 4(a), 4(b) and 4(c) (the "general obligations" sections) of the Act.

4. It is alleged that, after Mr. Schell was elected a Minister on September 28, 2011, he carried on a business by renting a house in Cape Dorset to Nunavut Housing Corporation and did not stop within 60 days after becoming a Minister. By leasing the house to Nunavut Housing Corporation, it is alleged that he was also a party to a contract with the Government of Nunavut (which includes Nunavut Housing Corporation) under which he received a benefit. By doing these things, it is alleged that he breached sections 16(c) (the "carry on business" section) and 14(1) (the "government contracts with members" section) of the Act.

5. It is alleged that while Mr. Schell was Minister responsible for Nunavut Housing Corporation, he telephoned the Manager of Staff Housing for Nunavut Housing Corporation and inquired about an overdue rent payment on a house that he (Mr. Schell) owned and leased to Nunavut Housing Corporation. By doing this, it is alleged that he breached sections 8 (the "conflict of interest" section) and 10 (the "influence" section) of the Act.

6. It is alleged that Mr. Schell made inappropriate inquiries about a Government of Nunavut employee, Arthur Stewart, with whom Mr. Schell has had previous problems. In so doing, it is alleged that he abused his ministerial authority to further his own private interest, thereby breaching sections 2(b) (the "principles" section), 4(a), 4(b), (the "general obligations" sections), 8 (the "conflict of interest" section), 9 (the "insider information" section) and 10 (the "influence" section) of the Act.

7. It is alleged that Mr. Schell raised issues inappropriately about a Government of Nunavut employee, Shawn Maley, with whom Mr. Schell's company, Polar Supplies Ltd., has had some prior problems. In so doing, it is alleged that he abused his ministerial authority to further his own private interest, thereby breaching sections 2(b) (the "principles" section), 4(a), 4(b), (the "general obligations" sections), 8 (the "conflict of interest" section), 9 (the "insider information" section) and 10 (the "influence" section) of the Act.

8. It is alleged that the effect of the above allegations also constitute a breach of the following general provisions of the Act:

    a) Section 1(a) of the Act, in that Mr. Schell has not always served the common good in keeping with traditional Nunavummiut values and democratic ideals;

b) Section 2(b) of the Act, in that he did not perform his public duties and arrange his private affairs in a way that promotes public confidence in his integrity;

c) Section 2(c) of the Act, in that he did not reconcile his public duties and private interests with the openness, objectivity and impartiality required by the Act;

d) Section 4(a) of the Act, in that he did not perform his duties of office and arrange his affairs in a way that promotes public confidence and trust in his integrity, objectivity and impartiality;

e) Section 4(b) of the Act, in that he did not act in a manner which bore the closest public scrutiny; and

f) Section 4(c) of the Act, in that he did not act generally to prevent any conflict of interest arising.

There is a 9th allegation which arose out of this Hearing. It is alleged that Mr. Schell misled the Integrity Commissioner in the evidence that he (Mr. Schell) gave at the very Hearing that was being held to consider evidence concerning his conduct. By doing this, it is alleged that Mr. Schell breached sections 1(a), 2(a), 4(a) and 4(c) of the Act.

Purpose of this Review:

This review is to determine if any of the allegations against Mr. Schell are true. If they are, Mr. Schell has contravened the *Integrity Act*.

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. Where there is a request such as this one,

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 40(2) of the *Integrity Act* requires me, as Integrity Commissioner, to examine all requests for a review made pursuant to section 36, regardless of who makes the request. Even though the person making the request in this case was the Deputy Minister of Executive and Secretary to Cabinet for the Government of Nunavut, I still needed to make sure that his request for a review:

a) was not frivolous or vexatious;

b) appeared to be made in good faith; and

c) showed that there were sufficient grounds to warrant commencing a review.

Once I concluded that there appeared to be a prima facie case against Mr. Schell, I forwarded certain material, including Mr. Vandermeulen's letter and affidavit, to both Mr. Schell and his lawyer.

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. Both the Complainant and the Respondent requested that I conduct this review in private. I did not see any reason why I should not agree with their requests. During this review, several personnel issues were mentioned having to do with other Government of Nunavut employees that need not be made public.

As Integrity Commissioner, I have conducted three reviews prior to this one. All of them were done through affidavits, emails and, in the case of the first one, a one-on-one questioning between myself and the Member whose conduct was being reviewed.

In every review I have done, I have told the Member that he is entitled to consult with a lawyer and to have a lawyer assist in the Member's response to the allegations, including being present during any questioning by myself.

What I received from the Complainant in this case – as in any other review – were merely allegations. They were not proven facts.

In this review, I concluded that it would be best to hold a hearing in Iqaluit for the purpose of receiving the evidence and submissions. My reasons were as follows:

1. the nature of the allegations;

2. the number of witnesses that needed to give evidence;

3. the facts appeared to be in dispute; and

4. the need, therefore, for the witnesses to be both examined and cross-examined.

The review process must be fair and transparent to Mr. Schell – just as it must be to any other MLA whose conduct is being reviewed. As part of that fairness, I kept – and must keep – an open mind until all of the evidence was presented and submissions made at the conclusion of the evidence.

I am trained as a lawyer and know how to examine and cross-examine witnesses. But I decided to retain a lawyer – Commissioner's Counsel – to examine and cross-examine the witnesses on my behalf. Part of my reasoning for this decision were the reasons I listed above as to why I decided to hold a hearing. In addition, I believed that having Commissioner's Counsel would be fairer and more transparent to Mr. Schell. Commissioner's Counsel could ask probing questions of all of the witnesses, including the MLA under review, without the MLA thinking that I was taking sides. I could listen to each witness, take notes and decide what the true facts were.

The Hearing commenced in Iqaluit on October 10, 2012. During the 5-day Hearing, 9 witnesses testified.

The lawyers that attended the Hearing were as follows:

Commissioner's Counsel	-	Ms. Sheila MacPherson
	-	Ms. Sandra MacKenzie
Counsel for the Hon. Fred Schell	-	Mr. Michael Penner
Counsel for the Government of Nunavut	-	Ms. Adrienne Silk
Counsel for Polar Supplies Ltd.	-	Mr. Steven Cooper

Ms. Silk applied for and was granted limited standing. As part of the terms of the Order granting her standing:

1. her role was to be available to provide legal advice to any employees of the Government of Nunavut who were witnesses at the Hearing;

2. she had the right to object to any questions that she felt infringed on Cabinet Privilege;

3. she did not have a general right to examine witnesses;

4. while she could see the exhibits in the hearing room, she was not permitted to make copies of any exhibits or remove any copies from the hearing room that she did not already have in her possession; and

5. she was not present in the hearing room while Cheryl Constantineau gave her evidence so that she would not learn anything about Polar Supplies Ltd. (herein "Polar Supplies") that might affect any litigation between Polar Supplies and the Government of Nunavut. (In fact, Fred Schell was also not present in the hearing room while Cheryl Constantineau gave her evidence so that he would not violate the terms of his Blind Trust Agreement by hearing information about Polar Supplies that he was not to have.)

Mr. Cooper was granted limited standing as well. He was only present during the testimony of Cheryl Constantineau, the Manager of Polar Supplies. His presence was by telephone and was for the sole purpose of being able to object to any questions asked of Ms. Constantineau that might adversely impact on Polar Supplies.

Burden and Standard of Proof:

It is well established that when there is an allegation that an MLA has contravened the Act, the allegation must be proven by clear and convincing evidence.

However, the Complainant does not have the burden of proving the facts. The Complainant must only meet the requirements of the Act, which are having reasonable grounds, putting the request in writing, and signing an affidavit. Mr. Vandermeulen's request met those requirements.

Likewise, the MLA does not have to prove that he is innocent of the allegations.

The evidence comes out through the fact-finding process, being in this case the 5-day Hearing. When there is a discrepancy in the evidence, I must weigh the evidence, including assessing the credibility of the witnesses. I must be satisfied that there is clear and convincing evidence of a wrongdoing.

The standard of proof is high.

The Allegations in Detail:

Let me now deal with each allegation in detail.

Allegation # 1 – Breach of Blind Trust Agreement:

I am starting with this allegation because Mr. Schell's Blind Trust Agreement is crucial to understanding some of the other allegations.

It is alleged that Mr. Schell violated the terms of his Blind Trust Agreement, and thereby breached sections 14 (the "contracts" and "interest in trust" section) and 16 (the "outside activities" and "business in trust" section) of the Act:

a. by receiving information involving his company, Polar Supplies, that he was not permitted to receive under the terms of his Blind Trust Agreement; and

b. by failing to disclose to the Integrity Commissioner information that he was required to disclose pursuant to the terms of his 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.

Polar Supplies 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 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.

However, a Regular MLA is able to place his business interests in a blind trust if he chooses to do so. That is what Mr. Schell did. January 1, 2010 is the effective date of the Blind Trust Agreement pursuant to which Mr. Schell put all of his shares in Polar Supplies into a blind trust. Mr. Garth Wallbridge was appointed the Trustee. Ms. Cheryl Constantineau is the General Manager of Polar Supplies.

Therefore, on September 28, 2011, when he was elected to Cabinet, Mr. Schell already had his blind trust in place.

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.

Several witnesses testified about Mr. Schell's Bind Trust Agreement.

Mr. Vandermeulen's evidence about this allegation can be summarized as follows:

1. He knew that Mr. Schell had a Blind Trust Agreement.

2. He did not know the terms of the Blind Trust Agreement.

3. He first became concerned about a possible breach of the Blind Trust Agreement when he discovered the connection between Mr. Schell's Executive Assistant and the General Manager of Polar Supplies.

4. Michael Constantineau was Mr. Schell's Executive Assistant; his wife, Cheryl Constantineau, was the General Manager of Polar Supplies.

5. By appointing Mr. Constantineau as his Executive Assistant, he believed that Mr. Schell had opened up a means by which information could flow between Mr. Schell's business and the confidential information with which Cabinet deals.

6. He said that there was an apprehension of a conflict of interest.

7. He made the assumption that as manager of his business interests, Cheryl Constantineau was taking instructions from Mr. Schell as owner of the business.

8. He did not have any discussions with Mr. Schell or with Michael Constantineau about whom Cheryl Constantineau was taking her instructions from regarding Polar Supplies.

Mr. Alain Barriault, the President and CEO of Nunavut Housing Corporation, testified about a conversation he had on one occasion with Mr. Schell involving Polar Supplies' competition in Cape Dorset. I will be commenting more about that conversation under Allegation # 2. Regardless of how that conversation is characterized, I do not believe that it constituted a breach of Mr. Schell's Blind Trust Agreement.

Ms. Cheryl Constantineau's evidence can be summarized as follows:

1. She is married to Michael Constantineau, Mr. Schell's Executive Assistant.

2. She has been the General Manager of Polar Supplies since May 2009.

3. Prior to the blind trust taking effect on January 1, 2010, she took her instructions from Fred Schell.

4. Once the blind trust became effective, she has been taking her instructions from Mr. Garth Wallbridge, the Trustee under the Blind Trust Agreement.

5. Since January 1, 2010,

    a) she has not communicated anything about the operation of Polar Supplies to Mr. Schell;

    b) she has not taken any instructions from Mr. Schell regarding the running of Polar Supplies.

6. She has not disclosed any details of Polar Supplies to her husband since he was appointed Mr. Schell's Executive Assistant.

7. Mr. Constantineau has not disclosed to her any details about his work as the Minister's Executive Assistant.

Mr. Michael Constantineau was a witness. For reasons which will be stated later when I deal with Allegation # 6, I did not find some of his evidence to be very believable. However, I do accept the following evidence from him that relates to this allegation. It can be summarized as follows:

1. He has lived in Cape Dorset, the same community in which Mr. Schell lives, for a long time.

2. He has been a very good friend of Fred Schell for a long time.

3. He never worked for Polar Supplies.

4. When Mr. Schell offered him the position of Executive Assistant, he discussed the offer with his wife, Cheryl Constantineau.

5. He lives in one unit of a 4-plex in Iqaluit; Mr. Schell lives in another separate unit.

6. Cheryl Constantineau has been to her husband's unit on 3 occasions. Other than perhaps saying "hello" to Mr. Schell, there were never any interactions between Mr. Schell and Ms. Constantineau.

7. He never discussed Polar Supplies with his wife during any of those 3 visits.

8. While Mr. Constantineau has been Executive Assistant:

    a) He has never asked his wife anything about Polar Supplies;

    b) He has never communicated to Mr. Schell anything about Polar Supplies;

    c) Mr. Schell has never asked him anything about Polar Supplies; and

    d) He is not aware of Mr. Schell ever asking Ms. Constantineau anything about Polar Supplies.

9. He and his wife do not talk about Polar Supplies.

10. He does not talk to his wife about what he does with and for Mr. Schell.

The last witness to testify about this allegation was Fred Schell. His evidence about this allegation can be summarized as follows:

1. He put Polar Supplies in a blind trust effective January 1, 2010 while he was still a Regular MLA.

2. Since Polar Supplies was placed in the blind trust, he has not had any part to play regarding:

    a) any issues between Polar Supplies and the vending machines at the Cape Dorset Airport;

    b) any issues between Polar Supplies and anyone at the Cape Dorset Airport;

    c) any lease disputes between Polar Supplies and the Hamlet of Cape Dorset;

    d) any lawsuits by Polar Supplies against the Hamlet of Cape Dorset;

    e) any lawsuits by Polar Supplies against Huit-Huit Tours Ltd.

3. He remembers a conversation that took place in the presence of his Executive Assistant, Michael Constantineau, and Deputy Minister Joe Kunuk in February 2012 in which the topic of Polar Supplies' bank came up. Mr. Schell talked about Polar Supplies switching banks. But Mr. Schell was talking about a time before he became an MLA.

4. He said "I don't have a clue where [Polar Supplies] is banking now."

5. When Cheryl Constantineau came to her husband's living unit in Iqaluit, he would say "Hi" to her. But other than that, there were never any interactions between Mr. Schell and Ms. Constantineau in Iqaluit.

6. He does not have any recollection of the conversation which Mr. Barriault says took place on one occasion involving Polar Supplies' competition in Cape Dorset. But he does not deny that it may have taken place. As I have already said, I will be commenting more about that conversation under Allegation # 2.

There is no evidence that Mr. Schell actually breached his Blind Trust Agreement. In fact, with the exception of the evidence of Mr. Vandermeulen and Mr. Barriault, all of the evidence clearly indicates that Mr. Schell did not breach his Blind Trust Agreement.

As I have already said, I do not believe that the conversation which Mr. Schell had with Mr. Barriault constituted a breach of Mr. Schell's Blind Trust Agreement.

That just leaves the evidence of Mr. Vandermeulen. His evidence on this issue involves assumptions and speculation. That is not sufficient to prove that Mr. Schell violated his Blind Trust Agreement.

After considering all of the evidence related to this allegation, I find that Mr. Schell did not receive any information about Polar Supplies that he was not permitted to receive. Therefore, he had no information that he was required to disclose to the Integrity Commissioner. Hence, Mr. Schell did not breach his Blind Trust Agreement. Accordingly, he did not contravene the *Integrity Act* regarding this allegation.

Allegation # 2 – Conversation with the President of Nunavut Housing Corporation:

It is alleged that Mr. Schell breached section 8 (the "conflict of interest" section) and section 10 (the "influence" section) of the Act. As Minister responsible for Nunavut Housing Corporation (herein "NHC"), it is alleged that Mr. Schell met with the President of Nunavut Housing Corporation and discussed issues that impacted directly on his (Mr. Schell's) own private interest.

Mr. Schell was elected to Cabinet on September 28, 2011. He was appointed Minister of Human Resources. Near the end of November 2011, he also became Minister responsible for NHC.

Mr. Alain Barriault, the President and CEO of NHC, testified about a conversation he had on one occasion with Mr. Schell involving Polar Supplies and its competition in Cape Dorset. His evidence was:

1. He met at least weekly with his Minister, Mr. Schell, to discuss various issues having to do with NHC.

2. He told us about a conversation that took place during one of his very first meetings with Minister Schell.

3. He and Mr. Schell had been discussing a number of topics.

4. They then took a break to stretch and have a coffee before continuing with their discussion.

5. During this break from their regular meeting, Minister Schell brought to Mr. Barriault's attention the dispute between Mr. Schell's company, Polar Supplies, and Huit-Huit Tours.

6. Mr. Barriault knew that Huit-Huit Tours operated a hotel business in Cape Dorset which is in competition with a hotel owned by Polar Supplies.

7. Mr. Schell asked Mr. Barriault about NHC allowing contractors to use Huit-Huit Tours as commercial accommodations.

8. Mr. Schell felt that Huit-Huit Tours was unfair competition.

9. Mr. Schell was of the opinion that Huit-Huit Tours should not have been licensed.

10. Mr. Barriault said it was not within the mandate of NHC to question whether Huit-Huit Tours should have been licensed.

11. The licensing was done by the municipality.

12. He told Mr. Schell that as long as they were licensed, they met the requirements of NHC's contractors.

13. There was something in the media about this issue just before the time that he and Mr. Schell were having this conversation.

14. Mr. Schell never asked Mr. Barriault – that day or at any time since – to interfere in the process or to take any action about this issue.

15. Mr. Barriault felt that Mr. Schell was merely expressing his frustration with the situation.

16. In fact, in cross-examination, Mr. Barriault said that Mr. Schell was "venting his frustration" about the issue.

17. This was the only time that Minister Schell brought up the subject to Mr. Barriault.

18. It was never mentioned again to Mr. Barriault by Mr. Schell.

19. Mr. Barriault's thoughts at the time were that he and Mr. Schell should probably not be discussing this any further.

20. Mr. Barriault's understanding was that Ministers' businesses, such as Mr. Schell's, were supposed to be kept at arm's length.

21. Because Mr. Schell was a new Cabinet Minister, Mr. Barriault attributed Mr. Schell bringing up the topic to inexperience.

22. Mr. Barriault never thought that Mr. Schell had a bad intention when he started talking about the issue.

23. As a result, it did not raise any alarms with Mr. Barriault and he did not report the conversation to anyone at the time.

24. He said that if the conversation had gone in a different direction, he would have reported what Mr. Schell said to someone.

Fred Schell does not have any recollection of the conversation which Mr. Barriault says took place on that one occasion involving Polar Supplies' competition in Cape Dorset. But he does not deny that it may have taken place.

I accept Mr. Barriault's evidence without reservation.

Section 8 of the 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....

Section 10 of the 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....

Section 4(a) of the Act states:

> 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;

Mr. Schell was the subject of a review which I conducted in 2011. At that time I found that Mr. Schell had contravened the *Integrity Act* by having inappropriate contact with an employee of the Government of Nunavut concerning Polar Supplies. As part of my Report, I made the following comment:

> "... 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...."

In his evidence at the Hearing, Mr. Schell acknowledged my 2011 Report, which he confirmed was released shortly after he became a Cabinet Minister. He agreed that, as a result of that Report, he developed some sensitivity and awareness of conflict issues.

Notwithstanding this purported awareness, the conversation between Mr. Schell and Mr. Barriault which I have detailed above took place very shortly after my 2011 Report was released.

I find that by raising the subject with Alain Barriault, Mr. Schell contravened sections 8 and 10 of the *Integrity Act*.

However, Section 47(1) of the Act states that "the Integrity Commissioner shall recommend that no sanction be imposed if … there has been a contravention of this Act but:

b) the contravention was trivial, committed through inadvertence or an error of judgment made in good faith; …"

I have considered what Mr. Barriault has said about:

a) The conversation taking place on a break, and not as part of the formal discussions the two of them were having;

b) Mr. Schell "venting";

c) Mr. Schell not asking Mr. Barriault to interfere or to take any action; and

d) Mr. Schell never mentioning the subject again.

I am of the opinion that section 47(1)(b) of the Act should be applied here. Accordingly, I recommend that no sanction be imposed for this breach of the *Integrity Act*.

Allegation # 3 – Misleading the Secretary to Cabinet and the Integrity Commissioner:

It is alleged that Mr. Schell misled the Secretary to Cabinet, Daniel Vandermeulen, and the Integrity Commissioner with respect to the circumstances surrounding the appointment of Michael Constantineau as Mr. Schell's Executive Assistant, thereby breaching sections 2(b) (the "principles" section), and 4(a), 4(b) and 4(c) (the "general obligations" sections) of the Act.

Shortly after becoming a Cabinet Minister, Mr. Schell hired Michael Constantineau as his Executive Assistant. As has already been stated, Mr. Constantineau is the husband of Cheryl Constantineau, the General Manager of Polar Supplies (which Mr. Schell has placed in a blind trust).

Mr. Schell testified that he had several reasons for hiring Mr. Constantineau:

1. He had known Mr. Constantineau for a long time;

2. He had a great deal of trust in Mr. Constantineau;

3. Mr. Constantineau had considerable experience with government, although he had never been an Executive Assistant to a Cabinet Minister before; and

4. There wasn't a lot of time left before the next Territorial election.

Mr. Chris Scullion's evidence was as follows:

1. He was Fred Schell's temporary Executive Assistant for the first two and one-half weeks that Mr. Schell was a Cabinet Minister.

2. He became aware that Michael Constantineau was going to become Mr. Schell's permanent Executive Assistant.

3. He read the Integrity Commissioner's Report of the review of Mr. Schell's conduct dated October 18, 2011.

4. He saw the name "Cheryl Constantineau" in the Report and saw that she was the manager of Mr. Schell's business, Polar Supplies.

5. He thought he should ask Mr. Schell if there was a connection between Michael Constantineau and Cheryl Constantineau.

6. Mr. Schell told him that Michael and Cheryl Constantineau were married.

7. Mr. Scullion then suggested to Mr. Schell that he (Mr. Schell) contact the Integrity Commissioner to see if it was acceptable for Mr. Constantineau to be the Executive Assistant.

8. Mr. Schell told Mr. Scullion that he would contact the Integrity Commissioner.

9. Mr. Scullion never did any follow-up with Mr. Schell to see if he did contact the Integrity Commissioner.

10. About one week later, Mr. Scullion had a conversation with the Deputy Minister of Human Resources, Joe Kunuk. During that conversation, he mentioned Mr. Constantineau's relationship with Cheryl Constantineau.

Mr. Schell said he does not recall Chris Scullion speaking to him about the appropriateness of hiring Mr. Constantineau. He said that Mr. Scullion never mentioned the potential conflict situation to him.

I accept Mr. Scullion's evidence that he did try to warn Mr. Schell about the appropriateness of Mr. Constantineau being his Executive Assistant.

Deputy Minister Joe Adla Kunuk's testimony about the issue of the hiring of Michael Constantineau is as follows:

1. Chris Scullion was loaned to Fred Schell to be his temporary Executive Assistant.

2. Mr. Scullion spoke to Mr. Kunuk about Mr. Constantineau around November 1, 2011.

3. Mr. Scullion explained that Polar Supplies was Mr. Schell's business which was placed in a blind trust.

4. Mr. Scullion said that because Mr. Constantineau was related to the Manager of Polar Supplies, people might question the hiring of Mr. Constantineau.

5. Mr. Scullion said that Mr. Schell was going to talk to the Integrity Commissioner about having Mr. Constantineau as his Executive Assistant.

6. Mr. Kunuk immediately contacted Daniel Vandermeulen, the Deputy Minister of Executive, and passed on the information that Mr. Scullion had told him.

7. Mr. Kunuk told Mr. Vandermeulen that the hiring might raise some questions in the House [Legislative Assembly].

Deputy Minister Daniel Vandermeulen's testimony about the issue of the hiring of Michael Constantineau is as follows:

1. Cabinet Ministers choose their own Executive Assistants.

2. He eventually learned that Mr. Schell had hired Michael Constantineau.

3. Mr. Constantineau already worked for one of the Departments of the Government of Nunavut.

4. Hence, it was necessary to prepare and sign an "Interdepartmental Transfer Agreement."

5. The Interdepartmental Transfer Agreement was signed by three Deputy Ministers, including Mr. Vandermeulen; it was also signed by Mr. Constantineau.

6. Mr. Vandemeulen said that his signature on the Interdepartmental Transfer Agreement did not mean that he was approving on the merits the hiring of Mr. Constantineau as Executive Assistant.

7. He was signing the Interdepartmental Transfer Agreement as a matter of policy only. He said that he does not have any other role when a Minister hires an Executive Assistant.

8. Mr. Vandermeulen said that a Minister does not need his approval to hire someone as an Executive Assistant.

9. When he signed the Interdepartmental Transfer Agreement, he did not know who Michael Constantineau was.

10. He was subsequently told by Deputy Minister Kunuk who Mr. Constantineau was and what his relationship was with the manager of Polar Supplies.

11. At that point he had concerns about Mr. Constantineau being Mr. Schell's Executive Assistant. (I have listed some of those concerns under my analysis of "Allegation # 1 – Breach of Blind Trust Agreement.")

12. He went to Mr. Schell and shared his concerns with him.

13. He said that Mr. Schell had told him that he had discussed the issue with the Integrity Commissioner and was waiting for a letter of approval to come from the Integrity Commissioner.

14. He asked Mr. Schell to provide him with a copy of the Integrity Commissioner's letter when he received it so that he could put it in the file.

15. At a later date, Mr. Vandermeulen was having a conversation with the Integrity Commissioner about a different matter. He asked the Integrity Commissioner about the letter of approval that Mr. Schell had previously mentioned.

16. He said that the Integrity Commissioner told him it was not a letter of approval, but was an Agreement among the Minister, his Executive Assistant and Cheryl Constantineau that none of them would discuss the Minister's business with the others.

17. The Integrity Commissioner further told Mr. Vandermeulen that he was still waiting for the signed Agreement to come from Mr. Schell.

18. In a subsequent conversation between the Integrity Commissioner and Mr. Vandermeulen, the Integrity Commissioner said something to the effect of "I don't know why you are concerned since you approved the hiring of Michael Constantineau."

19. Mr. Vandermeulen told the Integrity Commissioner that he had not approved the hiring of Mr. Constantineau and that Mr. Schell was wrong about that.

20. Mr. Vandermeulen testified that Mr. Schell followed all of the procedures for the hiring of an Executive Assistant set out in the Ministerial Administrative Procedures Manual.

Mr. Schell's evidence was:

1. He sent the necessary letter to the Deputy Minister of the Department with which Mr. Constantineau was employed.

2. When that Deputy Minister responded, she highly recommended Mr. Constantineau because of his government experience.

3. He followed the procedure set out in the Ministerial Administrative Procedures Manual.

4. He received a signed copy of the Interdepartmental Transfer Agreement.

5. No one approached him at the beginning and said that Mr. Constantineau was not a good choice for Executive Assistant.

6. In late November 2011, Mr. Vandermeulen came to him and suggested that he (Mr. Schell) contact the Integrity Commissioner to see what the Integrity Commissioner thought of the hiring of Mr. Constantineau as his Executive Assistant.

7. A teleconference was set up among Mr. Schell, Mr. Constantineau and the Integrity Commissioner.

8. Mr. Schell told the Integrity Commissioner that Mr. Constantineau had been approved to be his Executive Assistant.

9. The Integrity Commissioner made it clear that he did not like the optics of hiring the husband of the General Manager of Polar Supplies to be the Executive Assistant, but he said it wasn't illegal.

10. The Integrity Commissioner suggested that an Agreement be signed by Fred Schell and Michael and Cheryl Constantineau.

11. The Agreement made it clear that there was to be absolutely no communication about Polar Supplies between:

    a) Fred Schell and Michael Constantineau; or

    b) Michael Constantineau and Cheryl Constantineau.

12. The Agreement contained the following paragraphs:

    11) The Minister confirms that the Integrity Commissioner was reluctant to approve of [Mr. Constantineau] becoming [Mr. Schell's] Executive Assistant for the following reasons:

a) Because Polar Supplies is in the Minister's Blind Trust, the Minister must not receive any information about Polar Supplies, including its operations.

b) The Executive Assistant is the spouse of the top executive of Polar Supplies.

c) The Integrity Commissioner does not like the optics of the arrangement.

d) The Integrity Commissioner is concerned about what the public's perception is or will be about the very close connection between the Executive Assistant and the Manager.

12) The Minister confirms that the Integrity Commissioner told him that he (the Minister) employs the Executive Assistant at his own risk.

14) Pursuant to section 53(a) of the *Integrity Act*, the Minister consents to the Integrity Commissioner releasing this Agreement to any member of the public at any time in the sole discretion of the Integrity Commissioner.

13. Both Mr. Schell and Michael Constantineau were prepared to sign the Agreement.

14. Cheryl Constantineau wanted some legal advice before deciding what to do.

15. Mr. Schell said that Mr. Vandermeulen asked him a few times about what the Integrity Commissioner was sending to him.

16. He did assure Mr. Vandermeulen that something was coming from the Integrity Commissioner.

17. He admitted that he told Mr. Vandermeulen that a letter was coming from the Integrity Commissioner.

18. He said that he used the wrong word. What he meant was an agreement between the three of them.

19. Before the Agreement was signed, Mr. Schell had all of his Cabinet portfolios taken away from him.

A reading of the Interdepartmental Transfer Agreement makes it clear that everyone signing it agreed that Mr. Constantineau would become the Executive Assistant to Mr. Schell, Minister of Human Resources. It is obvious that Mr. Vandermeulen and Mr. Schell had a different understanding of what would constitute the "approval" of Mr. Constantineau's hiring.

Therefore, while Mr. Vandermeulen said that he did not approve the hiring on the merits, Mr. Schell was interpreting Mr. Vandermeulen's signature on the Interdepartmental Transfer Agreement as his approval. In addition, everyone agrees that Mr. Schell followed all of the procedures for the hiring of an Executive Assistant set out in the Ministerial Administrative Procedures Manual.

Mr. Schell was correct in telling Mr. Vandermeulen that something was coming from the Integrity Commissioner. He admits using the word "letter" when he should have said "agreement."

I have been asked to investigate and make a decision as to whether Mr. Schell misled both Mr. Vandermeulen and the Integrity Commissioner about whether he had approval for the hiring of Mr. Constantineau as his Executive Assistant.

I am treating this as a case of miscommunication and misunderstanding. I am not satisfied that Mr. Schell deliberately misled anyone with respect to the circumstances surrounding the appointment of Mr. Constantineau as his Executive Assistant.

Accordingly, Mr. Schell did not contravene the *Integrity Act* with respect to this allegation.

Mr. Schell did not contravene the *Integrity Act* when he hired Michael Constantineau to be his Executive Assistant. Having said that, and referring to the wording of the Agreement that the Integrity Commissioner prepared at the time, the optics of hiring Mr. Constantineau did not look good.

In addition, one of the roles of an Executive Assistant is to give the Minister sound, objective advice. For reasons which will be stated under Allegation # 6 regarding Arthur Stewart, it appears that Mr. Schell's Executive Assistant did not do that.

In fact, in her submissions as Commissioner's Counsel, Ms. MacPherson suggested that if Minister Schell had received some sound advice from someone experienced in the role of Executive Assistant and from someone who was familiar with the boundaries around the office of the Minister and the office of the Executive Assistant, we may not have had to have a 5-day hearing to look into the conduct of Mr. Schell.

Allegation # 4 – Carrying on a Business and Contracting with the Government:

It is alleged that, after Mr. Schell was elected a Minister on September 28, 2011, he carried on a business by renting a house in Cape Dorset to Nunavut Housing Corporation (herein "NHC") and did not stop within 60 days after becoming a Minister. By leasing the house to NHC, it is alleged that he was also a party to a contract with the Government of Nunavut (which includes NHC) under which he received a benefit. By doing these things, it is alleged that he breached sections 16(c) (the "carry on business" section) and 14(1) (the "government contracts with members" section) of the Act.

The following facts are not in dispute:

1. Mr. Schell purchased a house in Cape Dorset in 2005 which was already leased to NHC.

2. There is a written lease between the previous owner of the house and NHC.

3. There is a written assignment of the lease from the previous owner to Mr. Schell, dated April 14, 2005.

4. The lease to NHC was to end on April 30, 2006.

5. However, the lease is still in effect today on a month-to-month basis.

6. Mr. Schell does not have any responsibilities regarding the house, other than having it available to NHC.

7. NHC looks after everything else to do with the house, including finding and dealing with the people who will live in the house.

8. NHC pays the monthly rent directly to Mr. Schell personally.

9. Under the *Integrity Act*, "Nunavut Housing Corporation" is deemed to be the same as the "Government of Nunavut."

10. Pursuant to the *Integrity Act*, each MLA is required to complete and file an Annual Public Disclosure Statement (herein a "Disclosure Statement").

11. On the Disclosure Statement that he completed and filed in March 2011 (which was before he became a Cabinet Minister),

    a) Mr. Schell listed the house in question as one of his assets;

    b) Mr. Schell showed receiving income for "house rental" from NHC;

    c) Mr. Schell did not disclose that he had any contracts with the Government of Nunavut.

12. Mr. Schell had his annual meeting with the Integrity Commissioner in June 2011.

13. Mr. Schell was elected to Cabinet on September 28, 2011.

14. On the Disclosure Statement that he completed and filed in January 2012 (which was after he became a Cabinet Minister),

a) Mr. Schell again listed the house in question as one of his assets;

b) Mr. Schell again showed receiving income for "house rental" from NHC;

c) Mr. Schell did not disclose that he had any contracts with the Government of Nunavut.

15. Mr. Schell could have contacted the Integrity Commissioner at any time to ask for advice about his financial and business circumstances.

16. Other than the telephone conference call in December 2011 regarding the hiring of his Executive Assistant,

a) Mr. Schell has not had any meeting with the Integrity Commissioner since June 2011; and

b) he has not asked the Integrity Commissioner for any advice since June 2011.

17. When he files his Income Tax Return with Canada Revenue Agency, Mr. Schell shows the income that he receives from NHC as "income from property" and not "income from a business."

18. Canada Revenue Agency has published a Guide in which it distinguishes between "income from property" and "income from a business."

19. According to Canada Revenue Agency's Guide, Mr. Schell's rental income from NHC is not "business income."

Regular MLAs are permitted to carry on a business in addition to being an MLA. However, section 16(1)(c) of the Act prohibits a Cabinet Minister from carrying on a business in any manner. There are two exceptions to this section which could apply to Mr. Schell.

The first exception is to place the business in a blind trust, which Mr. Schell did with Polar Supplies.

The second exception is to obtain the authorization from the Integrity Commissioner pursuant to section 19 of the Act.

Section 20 of the Act says that an MLA must, within 60 days of becoming a Minister, comply with section 16 or obtain permission from the Integrity Commissioner to carry on doing what he is doing.

Section 56 gives the Integrity Commissioner the authority to extend the time for compliance, even after the time has expired.

Under section 19, the Minister may carry on doing what he is doing if:

a) the Minister has disclosed all material facts to the Integrity Commissioner;

b) the Integrity Commissioner is satisfied that the activity will not create a conflict between the Minister's private interest and public duty;

c) the Integrity Commissioner has authorized the Minister to carry on doing what he is doing;

d) the Integrity Commissioner has specified the manner in which the activity may be carried out; and

e) the Minister carries the activity out in the specified manner.

If Mr. Schell had come to me shortly after he became a Cabinet Minister and requested permission to continue renting the house in Cape Dorset to NHC, I would have granted him permission to do so provided:

a) he had NHC make a direct deposit of the monthly rent into his personal bank account;

b) he did not have any personal contact with anyone at NHC regarding the collecting of the rent or any other matter; and

c) if there was any need for contact between the landlord and NHC, he would arrange for someone else to handle that.

If Canada Revenue Agency says that Mr. Schell's rental income for renting the house to NHC is not "business income," can I still find that Mr. Schell is carrying on a business by renting a house to NHC?

For the purposes of this Report I am not prepared to find that Mr. Schell was in violation of section 16(1)(c) of the Act by renting the house to Nunavut Housing Corporation.

Even if Mr. Schell is "carrying on a business" by renting the house, I authorize him to do so on the terms set out above. This authorization is retroactive to October 1, 2011.

Section 14(1) of the Act states that, with some exceptions, an MLA – and not just a Cabinet Minister – shall not be a party to a contract with the Government of Nunavut.

Mr. Schell admitted that he has a lease with NHC. But he said he did not consider the lease to be a contract. He thought that it was only company contracts that had to be listed on

his Disclosure Statement. He knew his company was in a blind trust. So therefore, he did not list anything under "Contracts with the Government of Nunavut."

The lease that Mr. Schell has with Nunavut Housing Corporation would normally fall within the prohibition set out in section 14(1).

Mr. Schell should have disclosed the lease under "Contracts with the Government" even when he was a Regular MLA. One of two things could have then happened so that he would not have to terminate the lease. He could have added it to his Blind Trust Agreement. Alternatively, pursuant to section 14(5) of the Act, he could have asked the Integrity Commissioner to permit him to continue to be a party to the lease.

Section 14(5) allows the Integrity Commissioner to give permission to any MLA – including a Cabinet Minister – to continue with a contract provided that the Integrity Commissioner is satisfied that the contract is unlikely to affect the MLA's performance of his duties of office.

If Mr. Schell had asked my permission to continue to have the contract (lease) with NHC, I would have given him permission. Accordingly, I authorize Mr. Schell to have a lease with NHC on the same terms as I would have allowed him to continue renting the house in Cape Dorset to NHC. This authorization is retroactive to when he was first elected as an MLA in November 2008.

For the purposes of this Report, I am not prepared to find that Mr. Schell was in violation of section 14(1) of the Act by having a contract with Nunavut Housing Corporation and failing to list it under "Contracts with the Government" on his Disclosure Statement.

Premier Eva Aariak announced on March 11, 2012 that she had asked the Secretary of Cabinet to request the Integrity Commissioner to review the conduct of Mr. Schell. Because I did not know what the nature of the allegations were, I did not believe that it was appropriate for me to contact Mr. Schell and have my annual meeting with him this year until this review has been completed. (Appendix 1 to this Report, being my Ruling on the First Application for me to withdraw, confirms my belief that I did the right thing in not engaging Mr. Schell in a discussion before this Report is finished.)

At the time that Mr. Schell was elected to Cabinet in 2011, there was no requirement that new Cabinet Ministers have a meeting with the Integrity Commissioner to discuss their obligations under the *Integrity Act*. Commencing in 2012, the Premier has directed that all new Cabinet Ministers must meet with the Integrity Commissioner soon after their election to Cabinet. That is an excellent directive.

As Integrity Commissioner, I will also become more vigilant in the questions that I ask each MLA when I meet with them.

Allegation # 5 – Phoning Middle Management of Nunavut Housing Corporation:

It is alleged that while Mr. Schell was Minister responsible for Nunavut Housing Corporation (herein "NHC"), he telephoned the Manager of Staff Housing for NHC and inquired about an overdue rent payment on a house that he (Mr. Schell) owned and leased to NHC. By doing this, it is alleged that he breached sections 8 (the "conflict of interest" section) and 10 (the "influence" section) of the Act.

The following facts are not in dispute:

1. As has already been indicated, Nunavut Housing Corporation leases a house in Cape Dorset from Mr. Schell personally.

2. The rent for that house is to be paid monthly.

3. During the time that Fred Schell was Minister responsible for NHC, he phoned the Manager of Staff Housing for NHC three times and inquired about an overdue rent payment on the house that he (Mr. Schell) owned and leased to NHC.

4. On the first two calls, Mr. Schell spoke with the Manager of Staff Housing, who assured Mr. Schell that the rent payments would be made very soon.

5. The third call was in March 2012, just before Mr. Schell had his portfolios taken away.

6. On this third call, Mr. Schell left a message on the Manager of Staff Housing's voice mail which said:

> "Hi. It's Fred Schell. I am not calling as your Minister but calling to see when the payment will be placed in the bank for our property in Cape Dorset."

7. The Manager of Staff Housing returned that third call and assured Mr. Schell that the payment would be made very soon.

8. While the Manager of Staff Housing wondered whether it was appropriate for his own Minister to be phoning him about this type of matter, the Manager never told Minister Schell that he preferred that the Minister contact someone else about the late rent payments.

9. Mr. Schell was not the only landlord phoning the Manager of Staff Housing about late rental payments. But he was the only Cabinet Minister phoning.

10. At the Hearing, Mr. Schell acknowledged that he was the ultimate boss of the Manager of Staff Housing.

11. He thought the calls were appropriate since they concerned him personally, and not in his capacity as Minister of Housing.

12. In hindsight, Mr. Schell said he "might have done it different."

When I dealt with "Allegation # 4 – Carrying on a Business and Contracting with the Government," I said that I would give retroactive permission to continue leasing the house to Nunavut Housing Corporation with conditions attached. Two of those conditions were:

a) Mr. Schell was not to have any personal contact with anyone at NHC regarding the collecting of the rent or any other matter; and

b) if there was any need for contact between the landlord and NHC, Mr. Schell would arrange for someone else to handle that.

Cabinet Ministers always wear 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.

As I have already said, in a review which I conducted in 2011, I found that Mr. Schell had contravened the *Integrity Act* by having inappropriate contact with an employee of the Government of Nunavut. As part of my Report, I made the following comment:

> "... 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...."

The phone calls by Mr. Schell to a subordinate employee in the Government of Nunavut were clearly inappropriate. I note from his evidence at the Hearing that he said in hindsight, he "**might** have done it different."

I want Mr. Schell to clearly understand that in the future he **should** do it differently. He should not contact any employee of the Government of Nunavut and discuss anything to do with his personal affairs. He should arrange for someone else to do it on his behalf.

By phoning the Manager of Staff Housing for Nunavut Housing Corporation while he was Minister responsible for Nunavut Housing Corporation, he clearly violated both sections 8 and 10 of the *Integrity Act*.

Allegation # 6 – Arthur Stewart:

It is alleged that Mr. Schell made inappropriate inquiries about a Government of Nunavut employee, Arthur Stewart, with whom Mr. Schell has had previous problems. In so doing, it is alleged that he was abusing his ministerial authority to further his own private interest, thereby breaching sections 2(b) (the "principles" section), 4(a), 4(b), (the "general obligations"

sections), 8 (the "conflict of interest" section), 9 (the "insider information" section) and 10 (the "influence" section) of the Act.

The following background is necessary to understand this allegation:

1. Fred Schell was the Mayor of Cape Dorset for approximately 3 years before he was elected an MLA.

2. Arthur Stewart was the Senior Administrative Officer for the Hamlet of Cape Dorset during part of the time that Mr. Schell was Mayor.

3. Mr. Stewart was terminated as Senior Administrative Officer while Mr. Schell was Mayor.

4. After his termination as Cape Dorset's Senior Administrative Officer, Mr. Stewart obtained employment with the Government of Nunavut.

5. Mr. Stewart's position with the Government of Nunavut initially placed him in Cape Dorset.

6. While in the employ of the Government of Nunavut and after Mr. Schell was no longer on council because he had been elected an MLA, Mr. Stewart ran for municipal council in Cape Dorset.

7. After Mr. Schell was elected to Cabinet in September 2011, he became Minister of Human Resources.

8. The Government of Nunavut has over 4,100 employees.

9. Joe Adla Kunuk is the Deputy Minister of Human Resources.

10. Mr. Kunuk testified that Mr. Schell, as Minister of Human Resources, seemed to take a special interest in Mr. Stewart and made inappropriate inquiries about him.

11. Mr. Schell denied taking any special interest in Mr. Stewart and further denied abusing his ministerial authority.

12. Mr. Schell gave his evidence under oath at the Hearing on Saturday, October 14, 2012. He was the last witness to testify. Everyone thought that we had heard all of the evidence.

13. Several times during Mr. Schell's evidence on October 14th, he said that he did not have any personal grudge against Mr. Stewart.

14. As a result of new evidence that was discovered on Sunday, October 15, 2012, Mr. Penner, the lawyer for Mr. Schell, had Mr. Schell go back into the witness box on Monday, October 16th and give some more evidence under oath.

Here are some excerpts from the transcript of Mr. Schell's evidence on Monday, October 16th:

Question of Fred Schell by his own lawyer (herein "Question"):

> "... yesterday when you were asked about whether or not there was any animus [animosity or grudge] between the two of you at the time of [Arthur Stewart's] firing, you stated that there wasn't. This letter [filed as new evidence today] appears that there may have been some animus. Is that your testimony now?"

Answer by Fred Schell (herein "Answer"): "... yes."

Question: "... with respect to that animus, did that carry over to when you were minister?"

Answer: "It obviously did."

Question: "Now the difficulty we have is that yesterday you testified that there was no animus. How do you reconcile that?"

Answer: "I, like human nature I guess I didn't want to admit that there was anything personal between myself and Mr. Stewart. But in hindsight obviously there was and ... I should have I guess admitted to it.... Obviously there was some personal interest in it.... If I misled anybody in my previous testimony I definitely sincerely apologize."

Question: "So it's your admission today that your testimony was misleading yesterday?"

Answer: "That is correct."

Question: "... did you mislead the Commissioner on any other issues in this hearing?"

Answer: "No."

Question of Fred Schell by Commissioner's Counsel (herein "Question"):

> "... on Saturday, October 13th ... would you agree with me that you indicated very clearly on more than one occasion that you had no personal issues with Art Stewart?"

Answer: "That is correct."

Question: "And is it your evidence today that your evidence on Saturday in this regard was wrong?"

Answer: "That is correct."

Question: "And that your evidence on Saturday with respect to the nature of your relationship with Art Stewart was in fact misleading?"

Answer: "I don't know, I suppose it could be misleading, yes."

Question: "... would you agree with me, that you misled the Commissioner on Saturday on this very important issue?"

Answer: "Yes, I do have to admit that I did, ... like I said it is human nature to do that.... I do sincerely apologize."

Deputy Minister Kunuk gave his evidence on the Arthur Stewart issue in a fair, open and honest manner. But it varied greatly from what Mr. Schell said in his evidence on the Saturday. When Mr. Schell gave his evidence on the Saturday about Arthur Stewart, I was skeptical about it. For example, Mr. Schell testified that he made inquiries about Mr. Stewart on behalf of a constituent. Yet Mr. Schell admitted that he never gave the constituent any of the answers that he obtained as a result of his questions.

Now having heard Mr. Schell's confession on the following Monday, I am ignoring his evidence whenever it differs from the evidence of Mr. Kunuk.

It is very troubling that anyone, and particularly an MLA, would lie under oath. I will have more to say about that under Allegation # 9.

As I listened to the evidence of Michael Constantineau, Mr. Schell's Executive Assistant, it became evident that he was very closely attached to his Minister. He and Mr. Schell have been good friends for a long time. They have lived in the same community. They seem to have similar views.

Because of their closeness, Mr. Constantineau appears to have lost the ability to be able to stand back, analyze a situation and be objective with his advice to Mr. Schell. That is unfortunate because one of the roles of an Executive Assistant is to give the Minister sound,

objective advice. I believe that was lacking, at least when it came to several of the issues examined in this review, including the Arthur Stewart issue.

When Mr. Constantineau testified about the Arthur Stewart issue, I often found his evidence to be questionable. At times he was evasive in his answers. Sometimes he avoided answering the question altogether. There were occasions when what he said in his emails did not match with what he was saying in his testimony at the Hearing.

Mr. Constantineau's evidence on the issue of Arthur Stewart was very similar to the misleading evidence of Mr. Schell on October 14th. Mr. Constantineau did not have any way of knowing that Mr. Schell was going to admit on October 16th that he had lied in his evidence 2 days earlier. I am placing very little, if any, weight on Mr. Constantineau's evidence as it relates to the Arthur Stewart issue.

Mr. Kunuk's evidence was:

1. He was the Deputy Minister of Human Resources during the entire time that Mr. Schell was Minister of Human Resources.

2. He had his first meeting with Mr. Schell in October 2011.

3. Starting with this first meeting and for most of the meetings he had with Mr. Schell thereafter, Mr. Schell brought up the name of Arthur Stewart.

4. Mr. Schell, either directly or through his Executive Assistant, Michael Constantineau, made inquiries and threats about Mr. Stewart in emails.

5. The questions about Arthur Stewart generally had to do with:

    a) How did he get hired by the Government of Nunavut ?

    b) Was he paid some money inappropriately by the Government of Nunavut ?

    c) Did he obtain the proper approval before he ran for hamlet council ?

    d) How did he obtain the various positions he had with the Government of Nunavut ?

6. Some of the questions that Mr. Schell was asking had to do with things that happened 4 years earlier.

7. There were some other employees about whom Mr. Schell asked questions. But he wasn't as personal in his line of questioning about those other employees as he was about Mr. Stewart.

8. The way that the questions were asked about Mr. Stewart could not be characterized as "follow-up" questions.

9. Even after Mr. Kunuk provided Mr. Schell with the answers to his questions, Mr. Schell continued to ask questions and be concerned about Mr. Stewart.

10. Mr. Kunuk found Mr. Schell's questions about Mr. Stewart to be unusual.

11. During the time that Mr. Kunuk has been Deputy Minister of Human Resources, Mr. Schell was only his second minister.

12. The first Minister of Human Resources with whom Mr. Kunuk worked did not ask questions about individual employees the way that Mr. Schell did.

13. Some of the questions about Mr. Stewart that Mr. Schell asked after he became Minister of Human Resources were the same or similar to ones that he had asked about Mr. Stewart while he was a Regular MLA.

14. Mr. Schell, either directly or through his Executive Assistant who was acting at the request of Mr. Schell, told Mr. Kunuk that:

    a) Mr. Stewart had lied when he first applied for the job with the Government of Nunavut; and

    b) Mr. Stewart had received money improperly from the Government of Nunavut and should have to repay it.

15. They also implied that Mr. Stewart's employment with the Government of Nunavut should be terminated.

16. Mr. Kunuk did not see any basis for doing any of the things to Mr. Stewart that Mr. Schell wanted done.

17. Mr. Kunuk finally sent a request to the Deputy Minister of Justice for a legal opinion about some of the matters that Mr. Schell was asking about.

18. Mr. Kunuk had concerns that Mr. Schell was exceeding the scope of his ministerial authority.

19. Mr. Kunuk never discussed his concerns about exceeding ministerial authority directly with Mr. Schell.

It is not clear from the evidence why Mr. Schell had such a grudge against Mr. Stewart. But the "why" is not important. What is important is the fact that Mr. Schell allowed his personal feelings about an individual to interfere with his work as a Cabinet Minister.

At the very minimum, Mr. Schell had a conflict of interest when it came to anything to do with Mr. Stewart. Section 8 of the Act states (in part):

> "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 ... that in doing so there is an opportunity to further the member's private interest ...."

He did not take any steps to avoid that conflict of interest.

As Minister of Human Resources, Mr. Schell had access to what can be described as "insider information." Section 9 of the Act states (in part):

> "A member shall not use information that is obtained in the course of carrying out his or her duties of office and that is not available to the general public to further or seek to further the member's private interest ...."

Section 10 of the Act states (in part):

> 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 ....

Section 2(b) of the 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,....

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

> 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) .... act in a manner that will bear the closest public scrutiny.

From the evidence, it is clear that Mr. Schell abused his ministerial authority because of his relationship with Mr. Stewart. In so doing, he breached sections 2(b), 4(a), 4(b), 8, 9 and 10 of the *Integrity Act*.

Allegation # 7 – Shawn Maley:

It is alleged that Mr. Schell raised issues inappropriately about a Government of Nunavut employee, Shawn Maley, with whom Mr. Schell's company, Polar Supplies, has had some prior problems. In so doing, it is alleged that he abused his ministerial authority to further his own private interest, thereby breaching sections 2(b) (the "principles" section), 4(a), 4(b), (the "general obligations" sections), 8 (the "conflict of interest" section), 9 (the "insider information" section) and 10 (the "influence" section) of the Act.

This allegation is very similar in substance to the one involving Arthur Stewart. The only difference is that the focus of Mr. Schell's concerns about Mr. Malley seemed to be restricted to Mr. Malley running for municipal council in Rankin Inlet.

For the reasons that I gave concerning the Arthur Stewart allegation, I am relying on the evidence of Deputy Minister Kunuk and not on the evidence of Mr. Schell and Mr. Constantineau regarding the issue of Mr. Maley where there are differences in their evidence.

Mr. Kunuk's evidence regarding Shawn Maley is as follows:

1. At all relevant times, Shawn Maley was an employee of the Government of Nunavut.

2. He ran for hamlet council in Rankin Inlet.

3. Mr. Schell and his Executive Assistant, Michael Constantineau, asked Deputy Minister Kunuk if Mr. Maley had obtained the proper permission to run for hamlet council.

4. Mr. Kunuk told Mr. Schell and Mr. Constantineau that he would ask the appropriate Deputy Minister.

5. Mr. Kunuk found out that 13 employees of the Government of Nunavut had been elected to council in their respective hamlets. This information was communicated to Mr. Schell and to his Executive Assistant.

6. The only employees that Mr. Schell asked about running for council were Mr. Maley and Arthur Stewart.

7. Mr. Kunuk found out from Mr. Maley's Deputy Minister that the Deputy Minister did approve of Mr. Maley running for hamlet council. Mr. Kunuk communicated that information to Mr. Schell and to Mr. Constantineau.

8. Then Mr. Schell, through his Executive Assistant, questioned Mr. Kunuk if Deputy Ministers could give such approval.

9. Mr. Schell, through his Executive Assistant, indicated that he, as Minister, reserved the right to make the final decision as to whether an employee could run for elected office.

10. Mr. Kunuk then sought a legal opinion from the Department of Justice on this issue.

11. He had concerns that Mr. Schell was abusing his ministerial authority.

12. Mr. Kunuk never discussed his concerns about exceeding ministerial authority directly with Mr. Schell.

Again it is not clear from the evidence why Mr. Schell was so interested in Mr. Maley.

In my Report to the Speaker dated October 18, 2011 concerning Mr. Schell's conduct, one of the findings that I did make was that Mr. Schell sent an inappropriate email on June 23, 2009 to several officials of the Government of Nunavut. One of the recipients of that email was the same Shawn Maley.

One of the sanctions that I recommended in my October 18, 2011 Report was that Mr. Schell send a written letter of apology to Shawn Maley. Mr. Schell said at the Hearing that he did not apologize because the Legislative Assembly rejected my Report. He also said at the Hearing that he did not feel he had a moral obligation to apologize to Mr. Maley.

Mr. Schell admitted at the Hearing that it was after receiving my Report of October 18, 2011 that he started making inquiries about Shawn Maley.

This is another example of Mr. Schell allowing his personal feelings about an individual to interfere with his work as a Cabinet Minister.

For the same reasons that I indicated in relation to Arthur Stewart, I find:

1. Mr. Schell abused his ministerial authority when it came to dealing with Mr. Maley.

2. He had a conflict of interest regarding Mr. Maley.

3. He did not take any steps to avoid that conflict of interest.

4. As a Cabinet Minister, he used information that was not available to the general public to further his private interest.

5. He was trying to use his office to influence a decision made by another person to further his private interest.

6. He did not perform his public duties and arrange his private affairs in a way that promoted public confidence in his integrity.

7. He did not act in a manner that would bear the closest public scrutiny.

Therefore, I find that Mr. Schell breached sections 2(b), 4(a), 4(b), 8, 9 and 10 of the *Integrity Act* because of his conduct toward Shawn Maley.

Allegation # 8 – General Provisions of the *Integrity Act*:

It is alleged that the effect of the above allegations also constitute a breach of the following general provisions of the Act:

a) Section 1(a) of the Act, in that Mr. Schell has not always served the common good in keeping with traditional Nunavummiut values and democratic ideals;

b) Section 2(b) of the Act, in that he did not perform his public duties and arrange his private affairs in a way that promotes public confidence in his integrity;

c) Section 2(c) of the Act, in that he did not reconcile his public duties and private interests with the openness, objectivity and impartiality required by the Act;

d) Section 4(a) of the Act, in that he did not perform his duties of office and arrange his affairs in a way that promotes public confidence and trust in his integrity, objectivity and impartiality;

e) Section 4(b) of the Act, in that he did not act in a manner which bore the closest public scrutiny; and

f) Section 4(c) of the Act, in that he did not act generally to prevent any conflict of interest arising.

When all of the evidence heard and received at the 5-day Hearing is considered, I find that Mr. Schell breached sections 1(a), 2(b), 2(c), 4(a), 4(b) and 4(c) of the *Integrity Act*.

By his actions, Mr. Schell:

1. did not always serve the common good in keeping with traditional Nunavummiut values and democratic ideals;

2. did not perform his public duties and arrange his private affairs in a way that promotes public confidence in his integrity;

3. did not reconcile his public duties and private interests with the openness, objectivity and impartiality required by the Act;

4. did not perform his duties of office and arrange his affairs in a way that promotes public confidence and trust in his integrity, objectivity and impartiality;

5. did not act generally to prevent any conflict of interest arising; and

6. did not act in a manner which bore the closest public scrutiny.

Allegation # 9 – Giving False Evidence at the Hearing:

There is a 9th allegation which arose out of this Hearing. It is alleged that Mr. Schell misled the Integrity Commissioner in the evidence that he (Mr. Schell) gave at the very Hearing that was being held to consider evidence concerning his conduct. By doing this, it is alleged that Mr. Schell breached sections 1(a), 2(a), 4(a) and 4(c) of the Act.

Actually, this is not just an allegation. It is a fact by Mr. Schell's own admission.

In her submissions at the conclusion of the evidence, Ms. MacPherson, as Commissioner's Counsel, suggested that this issue is the most serious of all of the allegations in this review of Mr. Schell's conduct.

I am only going to repeat here some of the excerpts from the transcript of Mr. Schell's evidence that I quoted earlier in this Report under "Allegation # 6 – Arthur Stewart":

Question: "So it's your admission today that your testimony was misleading yesterday?"

Answer: "That is correct."

Question: "... on Saturday, October 13th ... would you agree with me that you indicated very clearly on more than one occasion that you had no personal issues with Art Stewart?"

Answer: "That is correct."

Question: "And is it your evidence today that your evidence on Saturday in this regard was wrong?"

Answer: "That is correct."

Question: "... would you agree with me, that you misled the Commissioner on Saturday on this very important issue?"

Answer: "Yes, I do have to admit that I did, ... like I said it is human nature to do that...."

It is not, or should not be, human nature for anyone to lie under oath.

But Mr. Schell is not just "anyone." He is a Member of the Legislative Assembly of Nunavut. As such, he would know that one of the principles of the legislature is that members are to be taken at their word. In fact, it is unparliamentary to suggest that another member is lying.

Therefore, even if Mr. Schell was not under oath, he should still have been telling the truth. The review of his actions was being conducted pursuant to the *Integrity Act* inside the Legislative Assembly building in front of an officer of the Legislative Assembly.

By intentionally providing false evidence, Mr. Schell committed the following breaches of the *Integrity Act*:

1. he violated traditional Nunavummiut values – section 1(a);

2. he did not act with integrity – section 2(a);

3. he did not arrange his private affairs in such a manner as to maintain public confidence and trust in the integrity, objectivity and impartiality of himself – section 4(a); and

4. he did not act in a manner that bears the closest public scrutiny – section 4(c).

Summary of Conclusions:

For the reasons given above, I find that Mr. Schell did contravene the *Integrity Act* as follows:

1. Allegation # 2 – By having a conversation about his own business with the President and CEO of Nunavut Housing Corporation, Mr. Schell contravened sections 8 (the "conflict of interest" section) and 10 (the "influence" section) of the Act.

2. Allegation # 5 – While Minister responsible for Nunavut Housing Corporation, Mr. Schell telephoned the Manager of Nunavut Housing Corporation about his (Mr. Schell's) own personal affairs. He violated sections 8 (the "conflict of interest" section) and 10 (the "influence" section) of the Act.

3. Allegation # 6 – Mr. Schell abused his ministerial authority to further his own private interest by making inappropriate inquiries about a Government of Nunavut employee, Arthur Stewart. He breached sections 2(b) (the "principles" section), 4(a), 4(b), (the "general obligations" sections), 8 (the "conflict of interest" section), 9 (the "insider information" section) and 10 (the "influence" section) of the Act.

4. Allegation # 7 – Mr. Schell abused his ministerial authority to further his own private interest by making inappropriate inquiries about a Government of Nunavut employee, Shawn Maley. He breached sections 2(b) (the "principles" section), 4(a), 4(b), (the "general obligations" sections), 8 (the "conflict of interest" section), 9 (the "insider information" section) and 10 (the "influence" section) of the Act.

5. Allegation # 8 – Mr. Schell breached sections 1(a), 2(b), 2(c), 4(a), 4(b) and 4(c) of the *Integrity Act*. These are some of the sections that deal with the purpose of the Act, the principles of the Act, and the general obligations and commitments of the Act.

6. Allegation # 9 – Mr. Schell gave false evidence at the Hearing examining his conduct as an MLA. By doing this, he breached sections 1(a), 2(a), 4(a) and 4(c) of the Act.

I find that Mr. Schell did not:

1. Violate the terms of his Blind Trust Agreement – Allegation # 1.

2. Mislead the Secretary to Cabinet and the Integrity Commissioner with respect to the circumstances surrounding the appointment of his Executive Assistant – Allegation # 3.

3. Carry on a business or contract with the Government of Nunavut without the authorization of the Integrity Commissioner – Allegation # 4.

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.

Section 47(1) of the Act states that "the Integrity Commissioner shall recommend that no sanction be imposed if … there has been a contravention of this Act but:

b) the contravention was trivial, committed through inadvertence or an error of judgment made in good faith; …"

Recommended Sanctions:

The *Integrity Act* is meant to enhance public confidence in the integrity of government and its elected members. Integrity is the first and highest duty of elected office.

Regarding "Allegation # 2 – Conversation with the President of Nunavut Housing Corporation," and for the reasons stated under that allegation, I am of the opinion that Mr. Schell's contravention meets the criteria of section 47(1)(b) of the Act. Accordingly, I recommend that no sanction be imposed for this breach of the *Integrity Act*.

For the remaining breaches which I found have been proven by clear and convincing evidence, I am recommending that sanctions be imposed in a global way. In other words, I am looking at the totality of the breaches, instead of recommending separate sanctions for each breach.

As far as the breaches are concerned that I have found under "Allegation # 5 – Phoning Middle Management of Nunavut Housing Corporation," "Allegation # 6 – Abuse of Ministerial Authority in relation to Arthur Stewart," "Allegation # 7 – Abuse of Ministerial Authority in relation to Shawn Maley," "Allegation # 8 – General Provisions of the *Integrity Act*," and "Allegation # 9 – Giving False Evidence at the Hearing," I have considered the following:

a) the number of proven breaches of the *Integrity Act*;

b) the seriousness of the breaches;

c) my findings and comments under each of the Allegations;

d) the prolonged and deliberate targeting of an employee of the Government of Nunavut;

e) the fact that this is the second Report from the Integrity Commissioner of Mr. Schell's conduct made to the Speaker in just over 12 months;

f) the single incident for which I had found in my October 2011 Report that he had breached the *Integrity Act* was much less serious than what has been proven during this review;

g) the fact that Mr. Schell admitted at the Hearing that the Legislative Assembly imposed a financial sanction on him after my October 2011 Report;

h) the fact that he did not learn from that earlier experience, as evidenced by his actions so soon thereafter;

and most important of all,

i) the fact that he intentionally provided false evidence at the Hearing. It is hard to imagine anything more serious than lying under oath.

Mr. Penner asked me to consider the fact that Mr. Schell had his cabinet portfolios taken away in March 2012 – some 7 months ago. But I am not taking that into account in the sanctions I am recommending. My reasons for this are:

1. Prior to the cabinet portfolios being removed, the Premier had in her possession a letter containing a legal opinion from the Department of Justice. While all of the contents of the letter were never disclosed at the Hearing, we heard that it referred to "abuse of ministerial authority" and "conflict of interest." Both of those allegations against Mr. Schell have been proven. Therefore, the Premier had valid reasons to be concerned about the conduct of one of her Ministers.

2. But even without such a letter, the assignment and removal of portfolios are within the sole prerogative of the Premier. She does not need to give any reason for her decision.

Ms. MacPherson asked me to consider recommending either:

a) the maximum fine of $ 10,000.00 permitted under the *Integrity Act*; or

b) suspending Mr. Schell's right to sit and vote in the Legislative Assembly without indemnity for a period of time.

Mr. Penner indicated that a suspension would be more appropriate than a fine. He said that a suspension is rehabilitative while a fine is punitive.

I am not recommending a suspension. Instead I am recommending a fine. My reasons for this are as follows:

a) Mr. Schell needs to be punished (for the reasons I have stated above);

b) a suspension from sitting in the legislature would punish his constituents, since they would not have the benefit of representation in the Legislative Assembly during the time of his suspension;

c) his constituents should not be punished; they did not do anything wrong;

d) a fine in the maximum amount should send a strong message of condemnation to Mr. Schell;

e) such a fine will also let all of Nunavummiut know that serious breaches of the *Integrity Act* are taken seriously.

Accordingly, 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 be ordered to pay a fine of Ten Thousand Dollars ($ 10,000.00).

3. 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*.

4. Fred Schell shall send written letters of apology to Mr. Arthur Stewart and to Mr. Shawn Maley.

5. Fred Schell shall provide copies of the written apologies referred to in sanction 4 to the Integrity Commissioner after they have been sent.

6. 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 are appropriate.

7. If Fred Schell fails to fulfill the requirements of sanctions 2, 3, 4, 5, and 6 within the following timeframes, his right to sit and vote in the Legislative Assembly shall be suspended without indemnity or allowance until such requirements have been fulfilled:

    a. he shall comply with sanction 2 within eight months after the Legislative Assembly's acceptance of these recommendations;

    b. he shall comply with sanctions 3, 4 and 5 within three sitting days after the Legislative Assembly's acceptance of these recommendations; and

c. he shall have his first meeting with his Elders within three months after the Legislative Assembly's acceptance of these recommendations.

Length of Time to Conduct this Review:

Section 40(3) of the *Integrity Act* requires that a review must be completed within 90 days after commencing the review, unless an extension is granted by the Management and Services Board pursuant to section 40(4).

Premier Eva Aariak announced to the media on March 11, 2012 that she had asked the Secretary of Cabinet, Daniel Vandermeulen, to ask the Integrity Commissioner to review the conduct of the Honourable Fred Schell.

The Secretary of Cabinet spoke to me by phone on the weekend of March 11, 2012.

It was not until April 23, 2012 that I received the following by courier:

1. a 14-page letter from Mr. Vandermeulen asking me to review the conduct of Mr. Schell;

2. a 12-page affidavit from Mr. Vandermeulen in support of his request for me to review Mr. Schell's conduct; and

3. the exhibits which formed part of Mr. Vandermeulen's affidavit.

Mr. Vandermeulen had asked the Deputy Minister of Justice to have witnesses interviewed and an affidavit prepared that he (Mr. Vandermeulen) could sign. That is the reason for the gap in time between March 11 and April 23, 2012.

I read the material submitted by Mr. Vandermeulen. On April 25, 2012, I asked Mr. Vandermeulen for confirmation of some things. He responded on May 1, 2012.

After reading the material I received from Mr. Vandermeulen, I concluded on May 4, 2012 that there were sufficient grounds to warrant commencing a review pursuant to section 36 of the *Integrity Act*. Hence that is the date from whence the 90 days commenced. August 2, 2012 was the original date by which my Report was to be submitted to the Speaker.

I made a request to the Management and Services Board for an extension. My request was granted on July 16, 2012 to permit me to file my Report by October 31, 2012.

My reasons for making the request for an extension were as follows:

1. By May 4, 2012, I had sent most of the material that I had to Mr. Schell and to his original lawyer.

2. I wrote to Mr. Schell's original lawyer from time to time asking for his client's response to the allegations.

3. Mr. Schell's original lawyer intimated to me that Mr. Schell would be defending himself vigorously.

4. I indicated to Mr. Schell's original lawyer that the best way to proceed with this Review would be to hold a hearing in Iqaluit at which time the witnesses could be examined and cross-examined.

5. I also indicated to Mr. Schell's original lawyer that in order to be fair to Mr. Schell, I thought it was best if I retained a lawyer to examine and cross-examine the witnesses (as opposed to doing it myself).

6. On May 29, 2012, I received further allegations from Mr. Vandermeulen.

7. On June 1, 2012, I sent these further allegations, as well as the rest of the material that I had, to Mr. Schell's original lawyer.

8. After I retained Ms. Sheila MacPherson, of Yellowknife, to be the Commissioner's Counsel in this Review, I advised Mr. Schell's original lawyer of this fact on May 31, 2012.

9. On June 5, 2012, I received a formal request from Mr. Schell's original lawyer that I recuse myself – or withdraw or remove myself – from conducting this Review.

10. On June 26, 2012, I sent my Ruling on the recusal request to Mr. Schell's original lawyer. In my Ruling, which is attached as Appendix 1, I declined to withdraw or remove myself from conducting this Review and gave detailed reasons.

11. On July 6, 2012, Ms. MacPherson indicated to me that the earliest possible dates for a hearing were going to be in September – considering the number of witnesses and the preparation that had to be done in advance of the hearing.

12. Since September took us past the original 90-day date of August 2, 2012, I immediately wrote to the Chairperson of the Management and Services Board, requesting an extension.

The Application which I had received on June 5th to have me withdraw from conducting the review delayed the review for 3 weeks, while I considered the Application and wrote my decision.

But that 3 week delay may not have had any impact on the total length of time it took to conduct the review. On July 16, 2012 – the same day that I received confirmation of the extension from the Chairperson of the Management and Services Board, I received notification

that Mr. Schell's first lawyer was withdrawing from the file for personal reasons. I was told the reasons and it was not because of anything that Mr. Schell had said or done.

By July 19, 2012, Mr. Schell had retained Mr. Michael Penner to be his new lawyer.

I indicated that I wanted to have the Hearing held at the earliest possible time. Everyone involved knew that the Hearing was going to take several days. I also said that once the hearing of evidence started, I wanted to continue until all of the witnesses had testified. In other words, I did not want to hear part of the evidence, adjourn, and then come back at a later date to hear the rest of the evidence.

When the schedules of everyone, including the witnesses and lawyers, were looked at, it appeared that the best date to start the Hearing was October 10th. Accordingly, on August 3, 2012, I sent out a Notice of Hearing indicating that the Hearing would commence on Wednesday, October 10, 2012 in Iqaluit. That would give everyone a chance to enjoy Thanksgiving with their families.

The Hearing lasted 5 days, starting with Wednesday, October 10th and continuing on Thursday, Friday and Saturday of that week and resuming and finishing on Monday, October 15, 2012.

I returned to Goderich, Ontario on October 16th and commenced writing this Report on October 17, 2012.

Rulings on Requests that I Recuse – or Withdraw or Remove - Myself:

During the course of these proceedings, Mr. Schell's lawyers brought two Applications that I recuse – or withdraw or remove – myself from conducting this Review. The basis for these applications was that Mr. Schell (through his lawyers) was alleging that there was a reasonable apprehension of bias on my part toward Mr. Schell.

As I have already indicated, the first Application was received on June 5, 2012. My Ruling dated June 26, 2012 is attached as Appendix 1.

A second Application was received on September 10, 2012 (one month prior to the scheduled start of the Hearing). My Ruling dated September 23, 2012 on the second Application is attached as Appendix 2.

Subpoena:

When I conduct a review, I have the powers of a Board under the *Public Inquiries Act*. That includes the power to summon or subpoena any person as a witness and require any person to produce documents that I consider necessary for a full and proper inquiry.

We heard from 9 witnesses during the course of the Hearing. All except one are in the employ of the Government of Nunavut. By that I mean that those 8 witnesses (including Mr. Schell) receive a pay cheque from the Government of Nunavut.

I was asked by Commissioner's Counsel to issue a total of 3 subpoenas. I was not told why the subpoenas were necessary.

One subpoena was directed to the only non-Government witness, Cheryl Constantineau.

Another subpoena was directed to Mr. Paul Crowley, Principal Secretary to the Premier.

The rest of the witnesses came to the Hearing without the necessity of a subpoena. These included Daniel Vandermeulen, the Deputy Minister of Executive and Secretary to Cabinet, Joe Adla Kunuk, the Deputy Minister of Human Resources, and Alain Barriault, the President and CEO of Nunavut Housing Corporation.

The third subpoena was directed to the Government of Nunavut to produce copies of certain emails.

During the course of the Hearing, I was told that both Mr. Schell and Mr. Constantineau had access to their Government email accounts blocked as soon as Mr. Schell had his portfolios removed. As a result, neither one of these men could access old emails.

Part of the evidence at the Hearing were emails from the time that Mr. Schell became a Cabinet Minister until he was relieved of his portfolios. Those emails were extremely important, both for the review and to allow Mr. Schell to fully respond to the allegations.

It was not until the first week of October 2012 that Mr. Schell and Mr. Constantineau were given complete copies of their old emails. (They had earlier been provided with partial copies of some of them.)

I had to issue a subpoena on October 3, 2012 directed to the Government of Nunavut to provide copies of Mr. Schell's and Mr. Constantineau's emails to them. I understand that the emails were provided at about the same time that I was issuing the subpoena, so perhaps the threat of the subpoena was sufficient. But the subpoena should not have been necessary in the first place.

Those emails should have been provided to Mr. Schell and to Mr. Constantineau as soon as Mr. Penner requested them. In fact, if Mr. Schell had asked for an adjournment of the Hearing because he did not yet have those emails, I probably would have granted it. That would have delayed this review even more.

When a review of an MLA is being done, that MLA needs to be able to access all documents as quickly as possible in order to fully respond to the allegations.

Appreciation:

I want to thank the lawyers who were involved in the Hearing, being Ms. MacPherson, Ms. MacKenzie, Mr. Penner, Ms. Silk and Mr. Cooper, for the way in which each of them conducted themselves. Everyone was very respectful of the witnesses and of each other. They provided case law when appropriate. They were able to resolve some of the procedural issues without my intervention. None of them prolonged the proceedings. In fact, they were able to focus on the evidence that mattered. In the end, that shortened the length of the Hearing. The final submissions from Mr. Penner and Ms. MacPherson were very helpful.

I also want to thank Ms. Lois Hewitt, the court reporter, who transcribed the evidence and provided copies of the transcript to Ms. MacPherson, Mr. Penner and myself in a very timely fashion. That allowed me to be able to complete this Report much quicker than would have been possible otherwise.

The Hearing was held in the Tuktu Room in the Legislative Assembly building. Office space was provided to the lawyers. Photocopying was needed. There had to be access to the building at unusual hours, including on the weekend. I want to thank John Quirke, Nancy Tupik, Alex Baldwin, Erie Leighfield and Peter Markwell for all of their assistance, both in the days leading up to the commencement of the Hearing and during the several days that the Hearing took place. Things ran smoothly as a result of their assistance.

Ministerial Administrative Procedures Manual:

During the Hearing, reference was made to the Ministerial Administrative Procedures Manual. Earlier this year, I was asked by the Premier to recommend possible revisions to this Manual in the context of the *Integrity Act*. I am in the process of doing that – but this review had to take priority. I will be making recommendations to the Premier for her consideration.

Further Recommendations:

When I submitted my first Report to the Speaker in September 2008 regarding Mr. David Simailak, I made the following recommendation:

> "I recommend that all senior public servants and Ministerial political staff be briefed by the Integrity Commissioner on the provisions of the *Integrity Act*."

That recommendation was acted upon in January 2009. I met with all of the Deputy Ministers and Heads of Crown Corporations one day, and all of the Executive Assistants and Executive Secretaries to the Cabinet Ministers the next day.

There have been no further briefings by myself of either senior public servants or Ministerial political staff since January 2009. I know that several of the present Deputy Ministers and Heads of Crown Corporations are not the same ones that I met with almost 4 years ago. There have also been some changes in Ministerial political staff.

As I conducted this review, it became obvious to me that there were several missed opportunities where senior public servants and Ministerial staff could have and should have questioned Mr. Schell about the propriety of what he was doing. Alternatively, reports should have been made sooner than they were to either the Cabinet Secretary or directly to the Premier.

I am aware that some did suggest to Mr. Schell that he contact the Integrity Commissioner about certain issues. I am also aware that some did speak to other senior officials about certain aspects of Mr. Schell's conduct. I commend those who did. But I think more could have been done.

I recommend that it is time for all senior public servants and Ministerial political staff to be briefed again by the Integrity Commissioner on the provisions of the *Integrity Act*.

As I noted earlier in this Report, the Premier has directed that all new Cabinet Ministers have a one-on-one meeting with the Integrity Commissioner shortly after their election to cabinet. I would recommend that the same be done with new Deputy Ministers, Heads of Crown Corporations and Executive Assistants to Cabinet Ministers shortly after their appointment.

All civil servants should know that they can contact their Deputy Minister at any time they think that a Cabinet Minister has overstepped his or her authority.

Respectfully submitted,

Norman Pickell
Integrity Commissioner

October 29, 2012

Integrity Commissioner of Nunavut
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Commissaire à l’intégrité du Nunavut
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APPENDIX 1 to REPORT to the SPEAKER

IN THE MATTER OF THE *INTEGRITY ACT*, S.NU. 2001, C.7 (AS AMENDED)

IN THE MATTER OF A REQUEST FOR A REVIEW OF THE CONDUCT OF

THE HONOURABLE FRED SCHELL

RULING ON REQUEST THAT THE INTEGRITY COMMISSIONER RECUSE HIMSELF

JUNE 26, 2012

Summary:

On April 23, 2012, I, as Integrity Commissioner of Nunavut, received a request from Daniel Vandermeulen, Deputy Minister of Executive and Secretary to Cabinet for the Government of Nunavut, to review the conduct of the Honourable Fred Schell, MLA for South Baffin.

By May 4, 2012, I had read the material submitted by Mr. Vandermeulen and concluded that there were sufficient grounds to warrant commencing a review under the *Integrity Act*. I so notified Mr. Schell and his lawyer, Mr. Patrick Smith, on that date.

Mr. Smith made an Application to me on June 5, 2012 on behalf of Mr. Schell that I recuse myself – or withdraw or remove myself – from this review.

After careful consideration of the facts and the law, and for the reasons which appear below, I now dismiss Mr. Smith’s Application and decline to recuse myself.

Application to Recuse:

Here is the essence of Mr. Smith’s Application requesting me to recuse myself – or withdraw or remove myself – from these proceedings:

> “It is our [Mr. Schell’s and Mr. Smith’s] position that we must respectfully request that you recuse yourself from this investigation. The source of this request arises from

58 South Street, ᒎᑐᓂᒃ, ᐊᓐᑎᐅᕆᔪ, ᑲᓇᑕ N7A 3L5 ᐅᖄᓚᐅᑖ: 888-398-2785 or (519) 524 2954 ᓱᒃᑲᔪᒃᑯᑦ: (519) 524-5107
58 South Street, Goderich, Ontario, Canada N7A 3L5 Tel: 888-398-2785 or (519) 524 2954 Fax: (519) 524-5107
npickell@integritycom.nu.ca
www.integritycom.nu.ca

your email dated May 4th 2012 addressed to both Mr. Schell and myself. In that email you indicate:

> "1. I prepared a draft of what the Allegations against Mr. Schell appeared to be from my reading of Mr. Vandermeulen's material."

"It is our belief that your preparation of these draft allegations has placed you in a conflict of interest and thereby raising a reasonable apprehension of bias in this matter. Unfortunately by drafting the allegations, you validated the complaint by using your own words and format. This in essence means that you, and not the complainant, created the burden that my client must meet. We would suggest this would be similar to a Judge in the Nunavut Court of Justice drafting a Statement of Claim from written representations made by a potential plaintiff.

"Given our past dealings with you, we concede that no malice was intended and your actions were inadvertent and in all likelihood an attempt to expeditiously move this matter along. As you are aware section 36(2) of the *Integrity Act* … requires that the complainant must set out the alleged contravention in writing and the grounds for his allegations. The wording from your email suggests that this was not the case and that you prepared the allegations from your reading of his materials. The implication being that Mr. Vandermeulen's material were vague and lacking the proper form to convey a contravention. By inference, your preparation of the allegations gave clarity and form to his materials and thereby enhanced his complaint. This may not have been your intention, but your actions have given the appearance of taking a partisan position in favour of the complainant.

"It is our position that the appropriate course of action, given the implications from above, was to send the materials back to Mr. Vandermeulen and advise him to seek independent legal advice on the preparation and framing of his complaint against Mr. Schell. By your actions, you were acting as counsel for Mr. Vandermeulen and not as an independent arbitrator in this matter. In *King-Yonge Properties Ltd. v. Great-West Life Assurance Co.* (Ont. C.A.) [1989] O.J. No. 1097, in which an arbitral award under the *Arbitration Act* was vacated because the arbitrator had had pre-hearing discussions with one party *ex parte* about the merits of the case. Once again we would suggest that your preparation of the allegations was in fact *ex parte* discussions about the merits of the complaint – in the manner as described herein.

"Of course we are not suggesting you actually discussed the merits of the allegations with Mr. Vandermeulen, but your actions do implicitly address the merits of the case to be brought against Mr. Schell. While we acknowledge that you were acting in good faith, your actions must ultimately be guided by the principles of natural justice; specifically, the test for reasonable apprehension of bias (i.e. What would an informed person, viewing the matter realistically and practically – having thought the matter

through – conclude ?) It is on this basis that the conflict exists and as such we believe you cannot disabuse yourself from it.

"In a jurisdiction like Nunavut, the aphorism – "Justice must not only be done, it must be seen to be done" – is crucial to the intimate functioning of both government and our judicial system....

"It is for these reasons that we are bringing this formal request to recuse yourself from these proceedings."

What Happened Here:

Premier Eva Aariak announced to the media on March 11, 2012 that she had asked the Secretary of Cabinet, Daniel Vandermeulen, to request the Integrity Commissioner to review the conduct of the Honourable Fred Schell.

The Secretary of Cabinet spoke to me by phone on the weekend of March 11, 2012.

On March 29, 2012, I sent an email to Fred Schell which read in part as follows:

"I want to give you an update on the [Request for Review]:

1. I had a phone call from the Secretary of Cabinet a little over 2.5 weeks ago about conducting a review of your conduct pursuant to the Integrity Act.

2. I told him that they need to follow the procedure set out in section 36 of the Integrity Act – request in writing, affidavit, etc.

3. I still have not received the request in writing or the affidavit.

4. I told the Cabinet Secretary that once I receive the request in writing and the affidavit, I will follow the process set out in section 40 (1) and (2).

5. In other words, before I commence a review, I will need to be satisfied that there is prima facie case. Section 40 (2) allows me to refuse to commence a review if I feel there are insufficient grounds to warrant commencing one.

6. Once I review the written request and the affidavit, and assuming that I feel there is a prima facie case made out, I will provide you with a copy of the material I receive. I will then ask you for your response – likely by way of an affidavit.

7. Section 40 (2) allows me to refuse to continue conducting a review if I do not feel a review is warranted.

"Are you going to hire a lawyer to help you in this matter ? If so, can you please give me the lawyer's name (and contact information if I don't have it already) so that I can provide him/her with the same material that I will be providing you when I receive it."

On April 23, 2012, I received the following by courier:

1. A 14-page letter from Mr. Vandermeulen asking me to conduct a review of the conduct of Mr. Fred Schell, MLA for South Baffin.

2. A 12-page affidavit from Mr. Vandermeulen in support of his request for me to review Mr. Schell's conduct.

3. The exhibits which formed part of Mr. Vandermeulen's affidavit.

I read the material submitted by Mr. Vandermeulen. Upon reviewing the alleged facts in Mr. Vandermeulen's material and having knowledge of the *Integrity Act*, I prepared a list of what the allegations appeared to be with reference to the sections of the *Integrity Act*. I felt this was the fair thing to do for Mr. Schell.

On April 25, 2012, I sent an email to Mr. Vandermeulen and to Mr. Norman Tarnow (who was the Acting Deputy Minister of Justice at the time and who is now the Deputy Minister of Justice) which read in part as follows:

"I have read the letter, affidavit and some of the exhibits that arrived in my office by courier on Monday April 23, 2012.

"I am attaching a list that I have prepared of what appear to be the allegations made against Mr. Schell.

"Will you please look at the list and let me know:

1. Are those the allegations ?

2. Are there any other allegations ?

Mr. Tarnow did not comment on the draft allegations. But Mr. Vandermeulen sent me an email on May 1, 2012 in which he made some comments about the draft allegations which I had sent to him.

Based on the comments of Mr. Vandermeulen, I revised the Summary of Allegations.

On May 4, 2012, I sent an email to Mr. Smith and to Mr. Schell which read in part as follows:

> "I confirm that I faxed to you last Friday, April 27, 2012, the following:
>
> 1. The 14-page letter from Daniel Vandermeulen addressed to myself dated April 18, 2012.
>
> 2. The 12-page affidavit from Daniel Vandermeulen sworn April 18, 2012.
>
> 3. All of the Exhibits which form part of Mr. Vandermeulen's affivdavit.
>
> "After I received Mr. Vandermeulen's material, I did the following:
>
> 1. I prepared a draft of what the Allegations against Mr. Schell appeared to be from my reading of Mr. Vandermeulen's material.
>
> 2. I sent my draft of the Allegations to both Mr. Vandermeulen and to the Acting Deputy Minister of Justice (since that is who sent me the material in the first place) to see if those were the allegations.
>
> 3. I am **now attaching** the final version of the Summary of Allegations against Mr. Schell.
>
> "Based on the material that I have read (and provided to you), there appears to be a prima facie case that requires a response from you. Accordingly, I am regarding today as the day upon which I am commencing my review pursuant to sections 40 (1) and (3) of the *Integrity Act*.
>
> "I ask that you please provide a **brief** response at this time to the Allegations and the material from Mr. Vandermeulen. The reason I am only asking for a "brief" response at this point is because I need to determine what format the review should take.
>
> "Under section 41 (2) of the *Integrity Act*, I have the discretion to conduct the review in private or in public. I am considering conducting it is private (as opposed to a public hearing).
>
> "I can conduct a review through affidavits and emails, as I have done in the past. But that does not permit cross-examination of witnesses.

"On the other hand, I can convene a hearing in Iqaluit (which, for this situation, seems to be the most logical community to hold a hearing in Nunavut). Witnesses can then be called to give their evidence, examined and cross-examined.

"Even though I am trained as a lawyer and know how to examine and cross-examine witnesses, I think that if the facts are seriously in dispute I should be retaining Inquiry Counsel to do the examining and the cross-examining of the witnesses on my behalf. (Of course, Mr. Smith, you would be performing that function for Mr. Schell.) I can then sit back, take notes and decide what the true facts are.

"Accordingly, I ask that you provide me with the following:

1. A brief response to the Allegations and the material from Mr. Vandermeulen.

2. A list of witnesses that you think should be interviewed for this review.

3. Your comments as to whether the review should be conducted in private or in public.

4. Your comments on the location of the hearing (if that is the route that is taken).

5. A rough idea of what your available times are commencing the end of this month and for June and July.

6. Names and contact information of some lawyers that you think I can retain as Inquiry Counsel (if that becomes necessary).

"In the meantime, will you **please provide me with an estimate of when you can have your brief response to me**."

Mr. Smith, the lawyer for Fred Schell, wrote to me on May 29, 2012 and asked me what was involved if the review was done in a public forum as opposed to in private.

On May 31, 2012, I sent an email to Mr. Smith which read in part as follows:

"For purposes of this email, I am assuming that a Hearing will be needed to be held (as opposed to me simply conducting the Review be way of affidavits, emails and phone calls).

"I have retained Sheila MacPherson of Yellowknife to be Commissioner's Counsel in this matter.

"To answer your question about private versus public:

"If the Hearing is held **in private**, I anticipate the following would happen:

1. We would set aside whatever number of consecutive days are required to start and finish the Hearing.

2. Witnesses would be called to give their evidence. They would 1st be questioned by Commissioner's Counsel. Then they would be cross-examined by you.

3. When it is Mr. Schell's turn to give evidence, you can examine him and then Commissioner's Counsel would cross-examine him.

4. The Hearing could be held in one of the Caucus rooms on the 2nd floor of the Legislative Assembly Building (as long as the timing of the Hearing did not interfere with other use of the room).

5. The only people present in the room would be:

    i. Fred Schell,
    ii. yourself,
    iii. Ms. MacPherson,
    iv. myself,
    v. likely an interpreter (if any witnesses needed one),
    vi. perhaps a court reporter (from Hansard) to record for the purposes of having a transcript (if necessary),
    vii. each witness as he/she is called to give his/her evidence,
    viii. if a witness needs a lawyer, that lawyer.

6. If Mr. Schell wanted his wife, for example, to sit with him throughout the Hearing, I would think that would be satisfactory. (But I would want to check with Ms. MacPherson first to see what her position would be.)

7. At this point I would not see a need for witnesses to remain in the room after they have given their evidence.

8. When all of the witnesses (including Mr. Schell) finish giving their evidence, you and Ms. MacPherson would make submissions.

9. I would then reserve my decision and return to Goderich to write my Report.

10. My Report would eventually be delivered to the Speaker and tabled in the Legislative Assembly (in the same manner as my Report was last year).

11. The general public and the media would **not** be allowed to attend the Hearing.

"If the Hearing is held **in public**, I anticipate the only differences from the above scenario would be:

1. The general public and the media could attend the Hearing.

2. Witnesses could remain in the room after they give their evidence. (I am assuming that someone will ask me to make an order to exclude witnesses until the witnesses are called to give evidence.)

3. We would likely need to hold the Hearing in a room off-site in order to accommodate the public and the mediation since the Caucus Rooms would not be large enough.

"Under section 41 (2) of the Integrity Act, I have discretion on whether the review is done in private or in public. But I would like to have your input before I make my final decision.

" Therefore, please let me know whether you and Mr. Schell prefer to have the Review done in private or in public. Please also give me your reasons for your preference."

On May 29, 2012, Mr. Vandermeulen sent me an email to which he attached two emails concerning some new allegations. I forwarded that email to Mr. Smith on June 1, 2012 along with a Revised Summary of Allegations.

By June 1, 2012 I had provided Mr. Smith with copies of all of the documentation with which I had been provided in support of the allegations against Mr. Schell and so indicated that to Mr. Smith.

As I have already stated, Mr. Smith made an Application to me on June 5, 2012 on behalf of Mr. Schell that I recuse myself – or withdraw or remove myself – from this review.

Integrity Act of Nunavut:

The sections of the *Integrity Act*, S.Nu. 2001, c.7 (as amended) that are relevant to this Application to recuse are listed below. (I have highlighted parts of some sections.)

24. (1) The Commissioner, on the recommendation of the Legislative Assembly, shall appoint an Integrity Commissioner who shall be an officer of the Legislative Assembly.

24. (2) The Integrity Commissioner shall perform the duties set out in this Act ....

26. (1) Where, for any reason, **the Integrity Commissioner determines** that he ... should not act in respect of any particular matter ..., the Commissioner, on the recommendation of the Management and Services Board may appoint a special Integrity Commissioner to act in the place of the Integrity Commissioner in respect of that matter.

27. ... the Integrity Commissioner shall take an **oath**, before either the Speaker or Clerk [of the Legislative Assembly], to **perform** faithfully and **impartially** the duties of the office ....

32. Decisions made by the Integrity Commissioner are not subject to appeal to, or review by, any court.

36. (1) **Any person**, including a member [of the Legislative Assembly], who believes on reasonable grounds that a member has contravened this Act may request that the Integrity Commissioner review the facts and give a written report on the matter.

36. (2) A request under subsection (1) must be in writing and must set out the alleged contravention and the grounds for believing that the contravention occurred.

36. (3) A request under subsection (1) must be supported by an affidavit of the person making the request attesting to the belief of the person that the contravention occurred and the grounds for that belief.

40. (1) On receiving a request under section 36, ... or on the **Integrity Commissioner's own initiative** and on giving the member whose conduct is concerned reasonable notice, the Integrity Commissioner may conduct a review.

40. (2) **If the Integrity Commissioner is of the opinion** that the request for a review made under section 36 is frivolous, vexatious or not made in good faith or that there are insufficient grounds to warrant commencing a review, ... the Integrity Commissioner may refuse to commence ... a review and, if the Integrity Commissioner does refuse, the Integrity Commissioner shall state the reasons for that refusal in his ... report.

40. (3) The Integrity Commissioner shall conduct the review as soon as practicable and shall make his ... report within 90 days after commencing the review.

40. (4) The Integrity Commissioner may, if the Integrity Commissioner is of the opinion that additional time is required to complete the review ..., request ... an

extension ... from the Management and Services Board [as constituted under the *Legislative Assembly and Executive Council Act*] ....

41. (1) In the conduct of a review, the Integrity Commissioner

(a) has the powers of a Board under the *Public Inquiries Act*, including the power to engage the services of counsel, experts and other persons referred to in section 10 of that Act; and

(b) is not subject to technical rules of evidence.

41. (2) The Integrity Commissioner may conduct the review in private or in public at his or her discretion.

44. (1) If a request for a review is made under section 37 ... or **if the review is made on the Integrity Commissioner's own initiative**, the **Integrity Commissioner shall make his ... report to the Speaker** [of the Legislative Assembly].

44. (2) The Speaker shall give a copy of the report to the member whose conduct is concerned and, if the Legislative Assembly is sitting, cause the report to be laid before the Legislative Assembly as soon as possible ....

46. (1) If, after a review, the Integrity Commissioner finds that the member has contravened this Act, the Integrity Commissioner shall, in his ... report, **recommend** one or more of the following [sanctions] ....

47. (1) The Integrity Commissioner shall **recommend** that no sanction be imposed if the Integrity Commissioner finds that there has been no contravention of this Act or that there has been a contravention of this Act but

a) the member took all reasonable measures to prevent the contravention;

b) the contravention was trivial, committed through inadvertence or an error of judgment made in good faith; or

c) the member was acting in accordance with the Integrity Commissioner's advice ....

47. (2) If the Integrity Commissioner **recommends** that no sanction be imposed, the Integrity Commissioner shall state, in his ... report, the findings that upon which that recommendation was based.

48. (1) The Legislative Assembly shall consider a report laid before the Legislative Assembly within 10 sitting days after the report is laid before the Legislative Assembly, and shall respond to the report before the end of the session in which the report is laid before it.

48. (2) The Legislative Assembly may not inquire further into the matter.

48. (3) In the Legislative Assembly's response, the Legislative Assembly shall do one of the following:

(a) accept all of the Integrity Commissioner's recommendations; or

(b) reject all of the Integrity Commissioner's recommendations.

49. The Legislative Assembly's decision to accept or reject the Integrity Commissioner's recommendations is final and conclusive.

50. (1) If the Legislative Assembly accepts the Integrity Commissioner's **recommendations**, the Legislative Assembly shall be deemed to have ordered the recommendations and the recommendations may be filed with the Nunavut Court of Justice and shall be enforceable as an order of that Court.

Comparison of Procedure with Other Canadian Jurisdictions:

In some jurisdictions in Canada, the Integrity Commissioner is referred to as the Conflict of Interest Commissioner or the Ethics Commissioner. For the purposes of this Ruling, I will refer to all of them as the Integrity Commissioner since that is the term used in Nunavut.

In several of the Canadian jurisdictions, a request for the Integrity Commissioner to look into the conduct of a member of the Legislative Assembly must come from another member of that same legislative Assembly. (For examples, please refer to the legislation for the House of Commons, the Senate, British Columbia, Ontario, Prince Edward Island, Saskatchewan and Yukon.)

Some jurisdictions do the same as Nunavut. Anyone may make a request for the Integrity Commissioner to look into the conduct of a member of the Legislative Assembly. (For examples, please refer to the legislation for Alberta, Manitoba, New Brunswick, Northwest Territories and Nova Scotia.)

In all of the Canadian jurisdictions except the Northwest Territories, the request must always be in writing. The Northwest Territories legislation allows for complaints to be made orally in certain cases.

Nunavut, Alberta and Newfoundland permit the Integrity Commissioner to initiate his or her own review of the conduct of a member of the Legislative Assembly.

Most Canadian jurisdictions, including Nunavut, have a one-step process for conducting the review. However, in the Northwest Territories, the Integrity Commissioner conducts an investigation following which the Integrity Commissioner may direct that an inquiry be held before another person called a Sole Adjudicator.

Analysis of Procedure Used in Nunavut:

The Integrity Commissioner of Nunavut is an officer of the Legislative Assembly. He or she is given the power to conduct a review of the conduct of a member of the Legislative Assembly (herein "MLA") and make a report to the Speaker of the Legislative Assembly.

Anyone can ask the Integrity Commissioner to review the conduct of an MLA.

If the Integrity Commissioner finds that an MLA has contravened the *Integrity Act*, the Integrity Commissioner shall recommend that sanctions be imposed.

The Legislative Assembly shall consider the report and respond to it. The Legislative Assembly shall either accept all of the Integrity Commissioner's recommendations or reject all of the Integrity Commissioner's recommendations. The Legislative Assembly's decision is final and conclusive.

Unlike the Northwest Territories' legislation, the Nunavut legislation expects it Integrity Commissioner to perform both investigative and adjudication roles in the same review. That is different from what is expected of a Judge of the Nunavut Court of Justice or of an arbitrator.

Where a request for a review comes from an individual, the *Integrity Act* states:

1. the request for the review must be in writing;

2. the request must set out the alleged contravention;

3. the request must set out the grounds for believing that the contravention occurred;

4. the request must be supported by an affidavit; and

5. the affidavit must attest to the belief that the contravention occurred and the grounds for that belief.

The *Integrity Act* does not specify:

1. the format for the request, other than it must be in writing and supported by an affidavit;

2. that any particular wording must be used, other than it must allege a contravention of the *Integrity Act*;

3. that the words of any particular section must be used; or

4. that section numbers of the *Integrity Act* must be used.

If the Integrity Commissioner decides on his own initiative to conduct a review of the conduct of an MLA, there is no need for a written request from anyone nor an affidavit.

What if I had taken it upon myself to initiate a review of Mr. Schell's conduct ? Would he say that I was biased against him and therefore unable to conduct the review ? The Legislative Assembly has given me the authority to both initiate and conduct the review.

Upon receiving a request to conduct a review or when the Integrity Commissioner's decides on his or her own initiative to conduct a review, the Integrity Commissioner is required to give the MLA reasonable notice before actually conducting the review.

The process should be the same regardless of whether the person requesting the review is a senior member of the Government of Nunavut living in Iqaluit or a hunter living in Kugluktuk.

After I received the letter and affidavit from Mr. Vandermeulen and decided that there was a prima facie case, I had 4 options:

1. Send the material back to Mr. Vandermeulen:

In his Application asking me to recuse – or remove – myself, Mr. Smith (on behalf of Mr. Schell) says that this is what I should have done. He says I should have told Mr. Vandermeulen to seek legal advice on the preparation and framing of his complaint.

Mr. Smith says that I prepared the Summary of Allegations because Mr. Vandermeulen's material was vague and lacked the proper form to convey a contravention of the *Integrity Act*.

With all due respect, I disagree. As I have already said, the *Integrity Act* does not specify a particular format or the words that must be used when making a request for a review. In addition, Mr. Vandermeulen's material was not vague. It was actually very specific and detailed.

2. **Send the material to Mr. Schell and to his lawyer as it was without also sending a Summary of the Allegations:**

   Perhaps this is what I should have done. However, when I say why I prepared the Summary, hopefully Mr. Schell and his lawyer will understand why I did it.

3. **Prepare a Summary of the Allegations and keep it for my own use only:**

   Section 40(2) of the *Integrity Act* requires me to examine all requests for a review made pursuant to section 36, regardless of who makes the request. Even though the person making the request in this case is the Deputy Minister of Executive and Secretary to Cabinet for the Government of Nunavut, I still need to make sure that his request for a review:

   a) is not frivolous or vexatious;

   b) appears to be made in good faith; and

   c) shows that there are sufficient grounds to warrant commencing a review.

   Even though the *Integrity Act* does not specify the precise wording that must be used or that section numbers of the Act must be used when making a request for a review, I must refer to the wording and the various section numbers of the *Integrity Act* when I am considering if there are sufficient grounds to warrant commencing a review. I also need that information when I am writing my report for consideration by the Legislative Assembly.

   I could have prepared a summary of what I thought the allegations were from my reading of Mr. Vandermeulen's material and kept it for my own use. This would give me a handy reference guide to use:

   a) when I was considering if there were sufficient grounds to warrant commencing a review;

   b) when I am receiving and considering all of the evidence; and

   c) when I am writing my Report.

4. **Prepare a Summary of Allegations and send it to Mr. Schell and to his lawyer:**

I prepared a summary of what I thought the allegations were from my reading of Mr. Vandermeulen's material to make sure that a review of Mr. Schell's conduct was warranted.

Since I had this document entitled "Summary of Allegations" (for the reasons stated above), I felt it was only fair that I give a copy of it to Mr. Schell and his lawyer. There were 2 reasons for this:

i. Mr. Schell and his lawyer would know what I had in my possession; and

ii. it would assist Mr. Schell and his lawyer in preparing their response to Mr. Vandermeulen's material.

Examples of What I Did:

Without detailing all of the alleged contraventions contained in Mr. Vandermeulen's material, it may be helpful for me to provide two examples and what I did with them. For each example I will list the topic, then indicate what Mr. Vandermeulen's letter said, then indicate what his affidavit said and then what I put in the "Summary of Allegations."

Example # 1: Re: Nunavut Housing Corporation:

Mr. Vandermeulen Letter of April 18, 2012:

iii. Conduct as Minister Responsible for the Nunavut Housing Corporation

Huit-Huit Tours Ltd. is a direct competitor of Polar Supplies Ltd.'s Kingnait Inn [in Cape Dorset]. [Polar Supplies Ltd. is a corporation owned by Mr. Schell which has been placed in a blind trust.] Polar Supplies has launched a law suit against HHTL and its owners. Cheryl Constantineau, on behalf of Polar Supplies has made numerous complaints to various GN [Government of Nunavut] officials about Kristiina Alariaq, one of the owners of [HHTL]. Notably, Polar Supplies has challenged the Nunavut Housing Corporation's use of HHTL's guest houses to house construction workers. This is clearly a private interest of Polar Supplies Ltd. When Minister Schell chose to argue against NHC's use of HHTL's guest houses in a discussion with Alain Barriault, President of NHC, Minister Schell inappropriately used his position as Minister responsible for the Nunavut Housing Corporation to further his private interests.

Mr. Vandermeulen Affidavit of April 18, 2012:

par. 66 One of the three lawsuits filed by Polar Supplies Ltd. names Huit-Huit Tours Ltd. ("HHTL") and its owners, Kristiina and Timmun Alariaq, as co-defendants. HHTL's operation includes a hotel, Dorset Suites, which operates in competition with Polar Supplies' hotel, The Kingnait Inn. HHTL also owns several licensed guest houses.

par. 70 In September 2011, Fred Schell was appointed to Cabinet as Minister of Human Resources and Minister responsible for the Nunavut Housing Corporation.

par. 71 In late November 2011, after becoming the Minister responsible for the Nunavut Housing Corporation, Minister Schell met with Alain Barriault, President of the NHC and raised the issue of NHC's use of HHTL's housing for staff and contractors in Cape Dorset, and explained why he thinks it is unfair that HHTL's guest houses should be eligible for a licence to operate for commercial purposes, while paying a lower rate for utilities than purely commercial operators.

My Summary of the Allegations:

1. He [Mr. Schell] breached section 8 (the "conflict of interest" section) of the *Integrity Act* (herein "the Act"). As Minister responsible for Nunavut Housing Corporation (herein "NHC"), he met with the President of NHC and discussed issues that impacted directly on his (Mr. Schell's) own private interest.

3. He breached section 15 (the "procedure on conflict of interest" section) of the Act. He did not follow the proper procedure when he did have a conflict of interest.

4. He breached section 10 (the "influence" section) of the Act. As Minister responsible for NHC, he met with the President of NHC and discussed issues and sought to influence decisions that impacted directly on his (Mr. Schell's) own private interest.

8. He breached section 1(a) of the Act, in that he has not always served the common good in keeping with traditional Nunavummiut values and democratic ideals.

9. He breached section 2(b) of the Act, in that he did not perform his public duties and arrange his private affairs in a way that promotes public confidence in his integrity.

10. He breached section 2(c) of the Act, in that he did not reconcile his public duties and private interests with the openness, objectivity and impartiality required by the Act.

11. He breached section 4(a) of the Act, in that he did not perform his duties of office and arrange his private affairs in a way that promotes public confidence and trust in his integrity, objectivity and impartiality.

12. He breached section 4(b) of the Act, in that he did not act in a manner which bore the closest public scrutiny.

13. He breached section 4(c) of the Act, in that he did not act generally to prevent any conflict of interest from arising.

Example # 2: **Re: GN Employee Arthur Stewart:**

Mr. Vandermeulen Letter of April 18, 2012:

[Several pages of Mr. Vandermeulen's 14-page letter were devoted to the topic of Mr. Arthur Stewart, a GN employee. Without quoting all of the relevant parts of Mr. Vandermeulen's letter, I will quote some to provide the proper context.]

"Minister Fred Schell served as Mayor of Cape Dorset prior to his election to the Territorial Legislature on October 27th, 2008. A Mr. Arthur Stewart served as Senior Administrative Officer under (then) Mayor Schell until Mr. Stewart was terminated in a vote initiated by Mr. Schell. Subsequently, Mr. Stewart [obtained employment with the GN]."

"Mr. Schell has had a long-standing enmity of Mr. Arthur Stewart…."

"… On October 13, 2011, just two weeks after becoming Minister of Human Resources, then Minister Schell met with his Deputy Minister, Joe Kunuk. During an orientation discussion, Minister Schell asked Mr. Kunuk how Art Stewart had gotten a position with the Government of Nunavut after the closing date of the competition. He also asked who had authorized the payment of relocation assistance to Mr. Stewart. Mr. Kunuk agreed to look into the matter and get back to the Minister."

"On October 21, 2011, the Minister phoned Mr. Kunuk, and asked for an update regarding Art Stewart…."

"[At a meeting on December 13, 2011 with his Deputy Minister, his Assistant Deputy Minister, and his Executive Assistant], … Minister Schell asked whether Art Stewart … had received approval to run for municipal council…."

"On December 14th, 2011 … Deputy Minister of Human Resources Joe Kunuk sent an email to Minister Schell copied to [the Minister's Executive Assistant] in response to an inquiry regarding … Arthur Stewart's candidacy in municipal elections…. Mr. Kunuk stated '… Art Stewart had written to the Deputy Minister of Economic Development and Transportation asking for approval to run for … hamlet elections.'"

"In his email, Mr. Kunuk went on the explain that neither the *Public Service Act* nor any other rule or Act prohibited a public servant from running for, and holding a position on a Hamlet Council."

"in a December 15th, 2011 email, to Deputy Minister Kunuk, copied to Minister Schell, [the Minister's Executive Assistant] on behalf of Minister Schell set out steps the Minister wished to pursue to limit this outside activity [holding a position on a Hamlet Council] …."

"On January 17th, 2012, the Minister with Deputy Minister of Human Resources Kunuk and once again brought up Art Stewart …. He asked whether [he] had gotten written permission to run for Hamlet Council."

"On January 20th, 2012, while the Deputy Minister and Minister prepared for presentations to the Standing Committee, Mr. Stewart's name came up again, and the Mr. Kunuk assured Minister Schell that Mr. Stewart … had sought and received written permission to run for … Hamlet Council."

[Mr. Vandermeulen's letter refers to Mr. Stewart being the topic of conversation between Minister Schell and Deputy Minister Kunuk at meetings held on February 7 and 20, 2012.]

"On [February 28th, 2012, the Minister's Executive Assistant sent an email to Deputy Minister Kunuk and copied to Minister Schell]. In spite of numerous assurances to the contrary, [the Executive Assistant] once again alleged that Mr. Stewart had misrepresented his residency, and implied that the Minister was considering revoking Mr. Stewart's appointment [as Manager, Transportation Programs, Department of Economic Development & Transportation (EDT), Cape Dorset, NU]."

"Since becoming the Minister of Human Resources ..., Minister Schell has taken an untoward interest in the employment by the Government of Nunavut of Mr. Arthur Stewart...."

"It appears that as Minister of Human Resources Mr. Schell had been going out of his way to try to discover wrongdoing on the part of GN employee Stewart. In so doing he had inappropriately attempted to use his office as Minister of Human Resources for an entirely personal reason; to negatively affect and perhaps end Mr. Stewart's employment with the Government of Nunavut which would appear to be a contravention of the *Integrity Act* ...."

"It was inappropriate for Mr. Schell as Minister of Human Resources to be attempting to pursue and discipline individual employees in other Departments with whom he had a long standing ongoing personal enmity."

"Minister Schell's specific and repeated enquiries and other attempts to use his office as Minister responsible for the Public Service regarding public servants towards whom he is personally antagonistic is a violation of section 8 of the *Integrity Act*:

> "A member shall not ... 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 ...."

"Minister Schell's business, Polar Supplies Ltd., had had a long standing fraught relationship with the Hamlet of Cape Dorset."

"Minister Schell's personal antagonism towards Mr. Arthur Stewart is a private interest, and inquiring if he had sought permission to run for the Hamlet's Council [in Cape Dorset] is the exercise of an official power (that is, if he had been anybody other than the Minister of Human Resources the question would not have been asked, or if asked, may not have been answered.)

"Deputy Minister of Human Resources Joe Kunuk has advised that Minister Schell made inquiries about the status of the investigation into Mr. Stewart's employment every time they met. Mr. Schell's personal interest in Mr. Stewart's ... employment within the Government of Nunavut and [his] candidacy for Hamlet Council was highly inappropriate."

Mr. Vandermeulen Affidavit of April 18, 2012:

[Mr. Vandermeulen's affidavit repeats much of what I have quoted above regarding Mr. Arthur Stewart. Therefore, I will only refer to a few paragraphs of Mr. Vandermeulen's affidavit.]

par. 15 Mr. Stewart has occupied a position on the Hamlet of Cape Dorset Council since his election in December 2008, and has since been re-elected for a second term.

par. 29 The relationship between Polar Supplies and the Hamlet of Cape Dorset deteriorated after Mr. Schell left municipal office. In March 2010, Polar Supplies filed a Statement of Claim against the Hamlet of Cape Dorset. In July 2010, Polar Supplies commenced two additional actions against Cape Dorset.

par. 32 In the fall of 2009, [prior to his appointment to the Executive Council], MLA Schell contacted Robert Long, newly appointed Deputy Minister of ED&T [Economic Development and Transportation], and expressed his concern about Mr. Stewart's appointment to the Government of Nunavut.

par. 33 Mr. Schell stated that there was "something fishy" about the appointment of Art Stewart....

My Summary of the Allegations:

2. He breached section 8 (the "conflict of interest" section) of the Act. As Minister of Human Resources, he made inappropriate inquiries about certain Government of Nunavut (herein "GN") employees to further his own private interest.

3. He breached section 15 (the "procedure on conflict of interest" section) of the Act. He did not follow the proper procedure when he did have a conflict of interest.

5. He breached section 10 (the "influence" section) of the Act. As Minister of Human Resources, he attempted to influence the Deputy Minister of Human Resources to terminate the employment of Arthur Stewart, a GN employee, thereby furthering his (Mr. Schell's) own private interest.

6. He breached section 9 (the "insider information" section) of the Act. As a Cabinet Minister, he attempted to obtain information concerning some

GN employees that was not available to the general public to further his private interest.

8. He breached section 1(a) of the Act, in that he has not always served the common good in keeping with traditional Nunavummiut values and democratic ideals.

9. He breached section 2(b) of the Act, in that he did not perform his public duties and arrange his private affairs in a way that promotes public confidence in his integrity.

10. He breached section 2(c) of the Act, in that he did not reconcile his public duties and private interests with the openness, objectivity and impartiality required by the Act.

11. He breached section 4(a) of the Act, in that he did not perform his duties of office and arrange his private affairs in a way that promotes public confidence and trust in his integrity, objectivity and impartiality.

12. He breached section 4(b) of the Act, in that he did not act in a manner which bore the closest public scrutiny.

13. He breached section 4(c) of the Act, in that he did not act generally to prevent any conflict of interest from arising.

15. He raised issues inappropriately about GN employee Arthur Stewart, with whom Minister Schell has had previous problems even pre-dating his time as an MLA. In so doing he attempted to interpret the *Public Service Act* in a way that would amount to an abuse of his authority by allowing himself to go to each Deputy Minister and make sure that each Deputy was following the *Public Service Act*. This was a breach of the *Integrity Act*, including 2(b), 4(a) and 4(b).

Analysis of the Case Law:

The only case to which Mr. Smith referred in his Application for recusal is *King-Yonge Properties Ltd. v. Great-West Life Assurance Co.*, [1989] O.J. No. 1097 (Ont. C.A.). That case was an application to set aside a decision of an arbitrator on the basis that he had failed to act judicially in his duties as an arbitrator. One of the arbitrators in that case had several meetings with one of the parties before the hearing where they discussed various aspects of the arbitration. The other party was not aware of those meetings. The court found those prehearing communications were improper and set aside the award.

The Supreme Court of Canada in *Szilard v. Szasz*, [1955] S.C.R. 3 said:

> "From its inception arbitration has been held to be of the nature of a judicial determination and to entail incidents appropriate to that fact. The arbitrators are to exercise their function not as advocates of the parties nominating them, and a fortiori of one party when they are agreed upon by all, but with as free, independent and impartial minds as the circumstances permit. In particular they must be untrammelled by such influences as to a fair minded person would raise a reasonable doubt of that impersonal attitude which each person is entitled to. This principle has found expression in innumerable cases, ...
>
> In *Kemp v. Rose* [(1858) 1 Giff. 258 at 264.], the Vice-Chancellor remarked:
>
> > "A perfectly even and unbiased mind is essential to the validity of every judicial proceeding...."

Those cases are distinguishable from the request for the review of Mr. Schell's conduct.

A review of the conduct of an MLA under Nunavut's *Integrity Act* is not a judicial proceeding. In addition, as Integrity Commissioner I do not act as an arbitrator.

As part of the process of reviewing the conduct of an MLA, I have the power to investigate and conduct an inquiry. But I do not have any power to make a binding decision. I can only express an opinion and make recommendations in the report that I make to the Speaker of the Legislative Assembly. The Legislative Assembly can reject my report if it chooses to do so. There is nothing that compels the Legislative Assembly to accept any recommendations that I might make. The Legislative Assembly has reserved to itself the ultimate decision on whether or not to accept my report.

In the Supreme Court of Canada decision of *Godson v. Toronto (City)*, (1890), 18 S.C.R. 36, Toronto City council passed a resolution directing a county court judge to inquire into dealings between the city and certain persons and to ascertain in what respect, if any, certain procedures were defective. Chief Justice Ritchie, speaking for the majority of the court, said:

> "... The proceeding before the county court judge was, in my opinion, in no sense a judicial proceeding.... The object of such inquiry was simply to obtain information for the council ... and to report the result of the inquiry to the council with the evidence taken, and upon which the council might in their discretion, if they should deem it necessary, take action. The county court judge was in no way acting judicially; he was in no sense a court; he had no powers conferred on him of pronouncing any judgment, decree or order imposing any legal duty or obligation whatever on the applicant ... nor upon any other individual...."

The Northwest Territories Supreme Court decision of *Morin v. Northwest Territories*, [1999] N.W.T. J. No. 5 involved an application by the Conflict of Interest Commissioner for the summary dismissal of Mr. Morin's application for judicial review. Mr. Morin was a member of the Legislative Assembly of the Northwest Territories. The Conflict of Interest Commissioner wrote a report concluding that Morin had violated various conflict of interest provisions, and recommended that Morin be reprimanded by the Assembly. The report was tabled and debated in the legislature. The legislature passed a resolution adopting the sanctions recommended in the report. Mr. Morin argued that there was a denial of natural justice in the Conflict of Interest Commissioner's inquiry. Justice Verity had this to say at paragraph 106 of the decision:

> "The Commissioner is required to conduct an inquiry. It is essentially an investigation into facts. She must report to the Assembly on her findings. These are findings of fact. The Commissioner must be able to make those findings that are relevant to explain her recommendations. She must necessarily be able to weigh testimony and make findings of credibility. If some of those findings turn out to be critical of some witness, then that is part of the inquiry process."

In the Federal Court of Canada decision of *B v. Canada (Commission of Inquiry pertaining to the Department of Manpower and Immigration*, [1975] F.C.J. No. 81, Justice Addy said, commencing at paragraph 18,

> "It has been firmly established from the very beginning, and it is still the case today, that, in order to be subject to control by means of prohibition, the person or body must be exercising a judicial or quasi-judicial function.
>
> "The scope of the functions of the person, body or commission exercising a power is the governing factor in determining whether a judicial or quasi-judicial function is being exercised and the mere fact that a person's rights might be affected, as opposed to being determined by the finding, does not render the proceeding a judicial or quasi-judicial one."

I do not believe that I, as Integrity Commissioner, have a duty to act judicially. Therefore, what I did cannot, as Mr. Smith suggests in his Application, be compared to a Judge in the Nunavut Court of Justice drafting a Statement of Claim from written representations made by a potential plaintiff.

However, I do have a duty to act fairly.

Chief Justice Laskin, speaking for the majority in the Supreme Court of Canada's decision of *Nicholson v. Haldimand Norfolk (Regional) Police Commissioners*, [1979] 1 S.C.R. 311, said:

> "[The police constable who had been dismissed] should be treated "fairly" not arbitrarily...."

> "The emergence of a notion of fairness involving something less than the procedural protection of traditional natural justice has been commented on in de Smith, Judicial Review of Administrative Action (3rd ed. 1973) at p. 208, as follows:
>
> > "That the donee of power must "act fairly" is a long-settled principle governing the exercise of discretion, though its meaning is inevitably imprecise. Since 1967 the concept of a duty to act fairly has often been used by judges to denote an implied procedural obligation. In general it means a duty to observe the rudiments of natural justice for a limited purpose in the exercise of functions that are not analytically judicial but administrative...."
>
> "What rightly lies behind this emergence is the realization that the classification of statutory functions as judicial, quasi-judicial or administrative is often very difficult, to say the least; and to endow some with procedural protection while denying others any at all would work injustice ...."
>
> "In my opinion, the [police officer] should have been told why his services were no longer required and given an opportunity ... to respond.... Once it had the [police officer's] response, it would be for the Board [of Commissioner of Police] to decide on what action to take, without it decision being reviewable elsewhere, always premising good faith. Such a course provides fairness to the [police officer] ...."

Justice Dickson elaborated on this concept in the Supreme Court of Canada's decision of *Martineau v. Matsqui Institution*, [1980] 1 S.C.R. 602:

> "... a distinction is clearly drawn between the duty to act judicially and the duty to act fairly..."
>
> "... the application of a duty of fairness with procedural content does not depend upon proof of a judicial or quasi-judicial function. Even though the function is analytically administrative, courts may intervene in a suitable case."
>
> "... procedural fairness extends well beyond the realm of the judicial and quasi-judicial, as commonly understood."
>
> "... public bodies exercising legislative functions may not be amenable to judicial supervision. On the other hand, a function that approaches the judicial end of the spectrum will entail substantial procedural safeguards. Between the judicial decisions and those which are discretionary and policy-oriented will be found a myriad decision-making processes with a flexible gradation of procedural fairness through the administrative spectrum. That is what emerges from the decision of this Court in [*Nicholson v. Haldimand Norfolk (Regional) Police Commissioners*] ...."

> "... The fact that a decision-maker does not have a duty to act judicially, with observance of formal procedure which that characterization entails, does not mean that there may not be a duty to act fairly which involves importing something less than the full panoply of conventional natural justice rules...."
>
> "... Fairness involves compliance with only some of the principles of natural justice...."
>
> "The content of the principles of natural justice and fairness in application to the individual cases will vary according to the circumstances of each case...."
>
> "In the final analysis, the simple question to be answered is this: Did the tribunal on the facts of the particular case act fairly toward the person claiming to be aggrieved? It seems to me that this is the underlying question which the courts have sought to answer in all the cases dealing with natural justice and with fairness."

Justice Cory, in the Supreme Court of Canada case of *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] S.C.J. No. 21 said:

> "Some boards will have a function that is investigative, prosecutorial and adjudicative...."
>
> "All administrative bodies, no matter what their function, owe of a duty of fairness to the regulated parties whose interests they must determine. [*Nicholson v. Haldimand Norfolk (Regional) Police Commissioners*, supra.]
>
> "Although the duty of fairness applies to all administrative bodies, the extent of that duty will depend upon the nature and the function of the particular tribunal. [*Martineau v. Matsqui Institution*, supra.] ... The duty to act fairly includes the duty to provide procedural fairness to the parties. ... Courts have taken the position that an unbiased appearance is, in itself, an essential component of procedural fairness. To ensure fairness the conduct of members of administrative tribunals has been measured against a standard of reasonable apprehension of bias. The test is whether a reasonably informed bystander could reasonably perceive bias on the part of an adjudicator."
>
> "In *Szilard v. Szasz*, supra., Rand J. found a commercial arbitration was invalid because of bias. He held that the arbitrator did not possess "judicial impartiality" because he had a business relationship with one of the parties to the arbitration. This raised an apprehension of bias that was sufficient to invalidate the proceedings...."
>
> "Bias was considered in a different setting in *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1170. That case concerned a planning decision which was made by elected municipal councillors. The governing legislation for municipalities was designed so that councillors would become involved in planning issues before

taking part in their final determination. Sopinka J., at p. 1197, set forth the "open mind" test for this type of situation:

> "The party alleging disqualifying bias must establish that there is a prejudgment of the matter, in fact, to the extent that any representations at variance with the view, which has been adopted, would be futile. Statements by individual members of council while they may very well give rise to an appearance of bias will not satisfy the test unless the court concludes that they are the expression of a final opinion on the matter, which cannot be dislodged."

"... there is a great diversity of administrative boards. Those that are primarily adjudicative in their functions will be expected to comply with the standard applicable to courts. That is to say that the conduct of the members of the Board should be such that there could be no reasonable apprehension of bias with regard to their decision. At the other end of the scale are boards with popularly elected members such as those dealing with planning and development whose members are municipal councillors. With those boards the standard will be much more lenient. In order to disqualify the members a challenging party must establish that there has been a pre-judgment of the matter to such an extent that any representations to the contrary will be futile...."

"... the courts must take a flexible approach to the problem so that the standard which is applied varies with the role and function of the Board which is being considered. In the end, however, commissioners must base their decision on the evidence which is before them...."

"It can be seen that the Board, pursuant to [the applicable legislation], has a duty to act as an investigator with regard to rates or charges and may have a duty to act as prosecutor and adjudicator with regard to these same expenses pursuant to [the applicable legislation]."

"What then of the statements made by Mr. Wells ? Certainly it would be open to a commissioner during the investigative process to make public statements pertaining to the investigation. Although it might be more appropriate to say nothing, there would be no irreparable damage caused by a commissioner saying that he, or she, was concerned with the size of executive salaries and the executive pension package. Nor would it be inappropriate to emphasize on behalf of all consumers that the investigation would "leave no stone unturned" to ascertain whether the expenses or rates were appropriate and reasonable. During the investigative stage, a wide licence must be given to board members to make public comment. As long as those statements do not indicate a mind so closed that any submissions would be futile, they should not be subject to attack on the basis of bias."

> "Statements made by Mr. Wells before the hearing began on December 19 did not indicate he had a closed mind. ... However, should a commissioner state that, no matter what evidence might be disclosed as a result of the investigation, his or her position would not change, this would indicate a closed mind. Even at the investigatory stage statements manifesting a mind so closed as to make submissions futile would constitute a basis for raising an issue of apprehended bias ...."
>
> "Once the matter reaches the hearing stage a greater degree of discretion is required of a member. Although the standard for a commissioner sitting in a hearing of the Board of Commissioners of Public Utilities need not be as strict and rigid of that expected of a judge presiding at a trial, nonetheless procedural fairness must be maintained. The statements of Commissioner Wells made during and subsequent to the hearing viewed cumulatively, led inexorably to the conclusion that a reasonable person appraised of the situation would have an apprehension of bias."
>
> "Everyone appearing before administrative boards is entitled to be treated fairly."

The final case to which I want to refer is *Chrétien v. Canada (Ex-Commissioner, Commission if Inquiry into the Sponsorship Program and Advertising Activities*, [2009] 2 F.C.R. 417 (upheld on appeal to the Federal Court of Appeal – [2010] F.C.J. No. 1274). The issue was whether Commissioner Gomery in a Commission of Inquiry had breached the duty of procedural fairness by demonstrating a reasonable apprehension of bias. Justice Teitelbaum said:

> "Procedural fairness is a basic tenet of our legal system. It requires that public decision makers act fairly in coming to decisions that affect the rights, privileges or interests of an individual. There is no exception of the application of this principle for commissions of inquiry...."
>
> "The content of the duty of fairness is variable and flexible. The requirements of procedural fairness will depend on the nature and function of the administrative board...."
>
> "In [*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817], the Supreme Court of Canada identified five non-exhaustive factors that are to be considered when determining the content of the duty of fairness. They are: (i) the nature of the decision and the decision-making process; (ii) the statutory scheme; (iii) the importance of the decision to the individuals affected; (iv) the legitimate expectation of the parties; and (v) the choices of procedure made by the decision-making body. Justice L'Heureux-Dubé in *Baker*, in paragraph 22, stressed that:
>
> > "... underlying all of these factors is the notion that the purpose of the participatory rights contained within the duty of procedural fairness is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and

> social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker."

"Some of the rules and the procedures adopted by the Commission are similar to the procedures found in the judicial process,..."

"Despite these similarities, however, commissions of inquiry are not synonymous to trials.... Unlike trials, commissions of inquiry are inquisitorial in nature rather than adversarial."

"There are also significant differences in the nature of the decisions.... The findings of a Commissioner 'are simply findings of fact and statements of opinion' that carry 'no legal consequences .... They are not enforceable and do not bind courts considering the same subject matter' ...."

"Although there are similarities in procedure, the role played by commissioners is distinct from the role of a judge presiding over a trial. The nature of a commissioner's report and recommendations are also vastly different than judicial decisions. This suggests that a lower content of procedural fairness is required."

"A lower content of procedural fairness will be called for where a statute leaves to the decision maker the ability to choose its own procedures...."

"... The standard of impartiality expected of a decision maker is variable depending on the role and function of the decision maker involved (*Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities*, supra.)."

"Although the Commissioner's experience as a judge may have assisted him in his role as Commissioner, he was not sitting as a judge while performing his duties as a Commissioner. Thus, it does not necessarily follow that his impartiality is to be assessed using a strict application of the reasonable apprehension of bias test."

2011 Review of Mr. Schell:

In his Application requesting me to recuse, Mr. Smith made the comment:

> "Given our past dealings with you, we concede that no malice was intended and your actions were inadvertent and in all likelihood an attempt to expeditiously move this matter along."

The "past dealings" have to do with a review I did last year. In 2011, the then-Deputy Minister of Justice, Janet Slaughter, requested that I review the conduct of Mr. Fred Schell.

That review had to do with allegations which are different from the ones in the present review.

Ms. Slaughter provided me with a letter and an affidavit. I provided Mr. Schell and his lawyer, who was also Mr. Patrick Smith, with copies of the Ms. Slaughter's letter and affidavit.

Just like in the present case, neither the letter nor the affidavit of Ms. Slaughter specifically mentioned what sections of the *Integrity Act* were alleged to have been breached.

As part of that review, I prepared a 6-page document entitled "Questions for Mr. Fred Schell." Copies of this document were provided to both Mr. Schell and to Mr. Smith. On pages 1, 2 and 3 of that document, I summarized what the allegations appeared to be. There were four allegations in total. I also referred to the sections of the *Integrity Act* which appeared to align with the allegations. I then posed written questions for Mr. Schell to answer concerning each of the allegations.

As the review progressed, and after receiving the answers to the questions which I posed to Ms. Slaughter, I advised Mr. Smith that I did not see any merit to Allegations # 3 and # 4. I then indicated to Mr. Smith that he and his client only needed to concentrate on Allegations # 1 and # 2.

Neither Mr. Smith nor Mr. Schell objected to me conducting that review in 2011 of Mr. Schell's conduct.

This time I have essentially been following the same preliminary procedure. The difference between the two reviews is how it will proceed going forward. In 2011, I conducted the review by way of written questions, written answers and emails. This time, subject to what Mr. Schell's substantive response is to the allegations, I am proposing that the review be conducted by way of a hearing in Iqaluit with Commissioner's Counsel asking the questions, instead of me.

Result:

When I prepared the Summary of Allegations this time, I was at the investigative stage of my review of the conduct of Mr. Schell. Based on the case law cited above, I am given more flexibility and latitude at that stage than if the review was at the hearing stage.

As I said earlier, I could have prepared the Summary of Allegations and kept it solely for my own use. But I wanted to be fair and transparent to Mr. Schell. Hence, I sent a copy to Mr. Schell and his lawyer for the reasons stated earlier.

After sending the Summary of Allegations to Mr. Schell and to his lawyer, Mr. Smith, I asked them to provide me with a response. To date I have not received any substantive response

to Mr. Vandermeulen's letter or affidavit. Thus, at this point, I don't know what Mr. Schell is going to be saying about the allegations made against him.

When Mr. Schell and his lawyer provide their substantive response, it is open to them to say that some or all of the allegations contained in the Summary of Allegations are without merit.

When I responded to Mr. Smith's inquiry about the review being done in public versus in private, I asked him to provide me with his reasons for whichever forum his client preferred. Likewise, I would expect that Mr. Smith will give me his reasons why any or all of the allegations against his client are without merit.

As I said earlier with reference to the 2011 Review, even though I summarized what the allegations appeared to be from the material supplied to me by the then-Deputy Minister of Justice, Ms. Slaughter, I found that 2 of the 4 allegations were without merit even without receiving submissions from Mr. Schell or Mr. Smith.

Even though I prepared the Summary of Allegations in this case, I have not pre-judged this case at all. I have kept and will continue to keep an open mind until all of the evidence has been presented and submissions made at the conclusion of the presentation of the evidence.

As I said earlier, with reference to an email I sent to Mr. Smith (and assuming that Mr. Schell's response warrants conducting a hearing in Iqaluit):

1. I have retained Sheila MacPherson to be Commissioner's Counsel;

2. This removes me from having to ask the questions of each witness (even though I am entitled to do that by the *Integrity Act*);

3. I will be able to take notes at the hearing, observe each witness and decide what the true facts are;

4. When Mr. Schell gives his evidence, his own lawyer will be able to examine him in chief (which is different from the other witnesses who will be giving evidence)

Of course, if Mr. Schell chooses not to provide me with a response, then I will have to complete my review with the material with which I have been provided.

Having carefully considered all of the facts in this matter and the law, I do not believe there is any evidence to give substance to the allegation of reasonable apprehension of bias. An informed person, viewing everything that has taken place in this review to date realistically and practically, and having thought the matter through, could not conclude that I would not conduct the review of Mr. Schell's conduct fairly.

Accordingly, Mr. Smith's Application on behalf of Mr. Schell to have me recuse myself – or withdraw or remove myself – from this review is dismissed.

Dated at Goderich, Ontario this 26th day of June, 2012.

Original signed by "Norman Pickell"

_____

Norman Pickell
Integrity Commissioner

Integrity Commissioner of Nunavut
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Commissaire à l'intégrité du Nunavut
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APPENDIX 2 to REPORT to the SPEAKER

IN THE MATTER OF THE *INTEGRITY ACT*, S.NU. 2001, C.7 (AS AMENDED)

IN THE MATTER OF A REQUEST FOR A REVIEW OF THE CONDUCT OF

THE HONOURABLE FRED SCHELL

RULING ON SECOND REQUEST THAT THE INTEGRITY COMMISSIONER RECUSE HIMSELF

SEPTEMBER 23, 2012

Summary:

On April 23, 2012, I, as Integrity Commissioner of Nunavut, received a request from Daniel Vandermeulen, Deputy Minister of Executive and Secretary to Cabinet for the Government of Nunavut, to review the conduct of the Honourable Fred Schell, MLA for South Baffin.

By May 4, 2012, I had read the material submitted by Mr. Vandermeulen and concluded that there were sufficient grounds to warrant commencing a review under the *Integrity Act*. I so notified Mr. Schell and the lawyer that he had at the time.

An Application was made to me on June 5, 2012 on behalf of Mr. Schell that I recuse myself – or withdraw or remove myself – from this review. In a Ruling dated June 26, 2012, I dismissed that Application and declined to recuse myself.

In mid-July, I was advised that Mr. Schell had retained Michael Penner to be his new lawyer in this matter.

On August 3, 2012, I sent a Notice of Hearing to Mr. Schell and Mr. Penner setting Wednesday October 10, 2012 as the commencement date for the Hearing in Iqaluit.

On September 10, 2012, I received a copy of another Application that I recuse myself – or withdraw or remove myself – from this review. This time it was from Mr. Penner on behalf of Mr. Schell.

58 South Street, ᒌᑐᕆᒃ, ᐋᓐᑎᐅᕆᔪ, ᑲᓇᑕ N7A 3L5 ᐅᖄᓚᐅᑖ: 888-398-2785 or (519) 524 2954 ᓲᒃᑲᔪᒃᑯᑦ: (519) 524-5107
58 South Street, Goderich, Ontario, Canada N7A 3L5 Tel: 888-398-2785 or (519) 524 2954 Fax: (519) 524-5107
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Because I was away the week of September 10, 2012, I arranged for oral submissions to be made to me on Monday September 17, 2012 on this second Application for Recusal.

In this second Application, Mr. Schell is alleging that there is a reasonable apprehension of bias by me against him.

After careful consideration of the facts and the law, and after hearing submissions from both Mr. Penner (as Mr. Schell's lawyer) and Ms. Sheila MacPherson (as the Integrity Commissioner's lawyer) and for the reasons which appear below, I now dismiss Mr. Penner's Application and decline to recuse myself.

Summary of the Relevant Law:

In my 31-page Ruling dated June 26, 2012, wherein I dismissed the first Application for Recusal, I quoted at length from the applicable law. I do not intend to repeat here everything that I said in my June 26th Ruling. [I attached a copy of the June 26th Ruling as Exhibit A to the original version this September 23rd Ruling.]

Two pieces of law that I want to refer to at this time are as follows:

Test for Reasonable Apprehension of Bias:

The test to be applied to see if there is a reasonable apprehension of bias is:

"What would an informed person, viewing the matter realistically and practically, and having thought the matter through, conclude ?"

- Bell Canada v. Canadian Telephone Employees Assn., [2003] 1 S.C.R. 884
- Newfoundland Telephone Co. v. Newfoundland, [1992] 1 S.C.R. 623
- Chrétien v. Canada, [2009] 2 F.C.R. 417

Burden of Proof to Establish Reasonable Apprehension of Bias:

"The onus of demonstrating bias lies with the person who is alleging its existence and the threshold for finding a reasonable apprehension of bias is high."

- Chrétien v. Canada, [2009] 2 F.C.R. 417

In addition to the cases referred to in my June 26, 2012 Ruling and the cases referred to above, I also considered the following:

- Ocean Port Hotel Ltd. v. British Columbia, [2001] 2 S.C.R. 781
- C.U.P.E v. Ontario (Minister of Labour), [2003] 1 S.C.R. 539

Absent any constitutional restraints, those latter cases stand for the following propositions:

1. The degree of independence and impartiality required of a particular government decision-maker or tribunal is determined by its enabling statute.

2. The statute must be construed as a whole to determine the degree of independence the legislature intended.

3. A statutory regime expressed in clear and unequivocal language prevails over common law principles of natural justice.

4. If the legislation specifically authorizes a multiplicity of functions, the doctrine of Parliamentary supremacy means that the rule against bias must yield to the legislation.

Second Application to Recuse Myself – or Withdraw – from this Hearing:

On this second Application, Mr. Schell is relying on the totality of the following four grounds in support of his allegation that there is a reasonable apprehension of bias on my part:

1. The acts of myself, as Integrity Commissioner, with regard to the preparation of the Summary of the Allegations against Mr. Schell;

2. My Annual Report to the Legislative Assembly of Nunavut dated May 16, 2012;

3. A Media Release that I issued on August 4, 2012 concerning this Review; and

4. The possibility that I may have to be a witness at the Hearing.

I will address each of the above grounds separately before examining their cumulative effect.

Preparing a Summary of the Allegations Against Mr. Schell:

My preparation of a Summary of the Allegations against Mr. Schell formed the basis of the first Application for Recusal that was submitted by Mr. Schell's first lawyer.

With two exceptions, there is nothing new in this second Application concerning the preparation of the Summary of Allegations.

The two exceptions are:

1. Mr. Penner now asks me to consider the totality of the 4 grounds listed above; and

2. Mr. Penner submits that by drafting the Summary of Allegations, I had changed the review from one pursuant to section 36 of the *Integrity Act* (which is a request from "any person") to one pursuant to section 40 of the *Integrity Act* (which is a review which I self-initiate). As such, Mr. Penner suggests that I had an obligation to advise Mr. Schell that I was conducting a review on my own initiative.

As I have already said, I will deal with the "totality" issue after I have dealt with each of the four grounds separately.

I detailed the facts regarding this issue in my June 26, 2012 Ruling. I do not intend to repeat in this Ruling everything that I said in that Ruling.

What follows is a summary of some of the things that were said in my first Ruling:

1. The allegation was that by me preparing a Summary of the Allegations against Mr. Schell, I had placed myself in a conflict of interest and thereby raised a reasonable apprehension of bias in this matter.

2. Mr. Schell conceded that no malice was intended and said that my actions were inadvertent and in all likelihood an attempt to expeditiously move this matter along.

3. Nunavut's *Integrity Act* expects the Integrity Commissioner to perform both investigative and adjudication roles in the same review.

4. On April 23, 2012, I received certain information from the Complainant, Mr. Vandermeulen, requesting me to conduct a review of Mr. Schell's conduct.

5. Before commencing a review, the *Integrity Act* required me to be satisfied that there were sufficient grounds to justify a review.

6. After reading Mr. Vandermeulen's material, I prepared a list of what the allegations appeared to be and sent this list to Mr. Vandermeulen for comment.

7. After receiving Mr. Vandermeulen's comments, I revised the Summary of Allegations.

8. On May 4, 2012, I sent the Summary of Allegations to Mr. Schell and to his lawyer. At the same time I indicated to them that I was regarding that date as the day upon which I was commencing my review.

9. I could have prepared the Summary of Allegations and kept it for my own use when I was considering if there were sufficient grounds to warrant commencing a review.

10. Instead, I felt it was only fair that I give a copy of the Summary of Allegations to Mr. Schell and his lawyer so that they would know what I had in my possession. I also thought it would help them in preparing their response to Mr. Vandermeulen's material.

11. When I prepared the Summary of Allegations, I was at the investigative stage of my review of the conduct of Mr. Schell.

12. Even though I prepared the Summary of Allegations, I had not pre-judged this case at all. I had kept and would continue to keep an open mind until all of the evidence has been presented and submissions made at the conclusion of the presentation of the evidence.

13. Having carefully considered all of the facts and law in this matter, I did not believe there was any evidence to give substance to the allegation of reasonable apprehension of bias. An informed person, viewing everything that has taken place in this review to date realistically and practically, and having thought the matter through, could not conclude that I would not conduct the review of Mr. Schell's conduct fairly.

In support of this second Application, Mr. Penner makes the following submission:

> "... the Commissioner's actions in this instance, the active re-drafting and reconstitution of the original complaint, represented a shift from a review pursuant to Section 36 to one pursuant to Section 40. As such, it behooved the Commissioner to communicate this evolution to Mr. Schell. By not knowing the change in the Commissioner's role, Mr. Schell was placed in a prejudicial position with respect to his communication with the Commissioner. Simply put, Mr. Schell could not have known that the Commissioner had adopted an active, rather than passive, role with the complaint and any representation made by Mr. Schell could be used to further the Commissioner's active investigation."

I did not adopt any more of an active role than is contemplated by section 40(2) of the *Integrity Act*. I received the complaint. I considered the material. I prepared a Summary of the Allegations based on the material I had received from the Complainant. I sent the Summary of Allegations to the Complainant and asked if those were the allegations. I did not re-write the complaint. After receiving the Complainant's response, I decided that there were sufficient grounds to warrant commencing a review. I advised Mr. Schell that I was commencing a review.

I have the authority under section 40(1) of the *Integrity Act* to initiate a review. But this review of Mr. Schell's conduct has always been a review pursuant to section 36 of the *Integrity Act*. I did not do anything having to do with this review until after I had received the complaint from Mr. Vandermeulen. It was not then, and is not now, a review initiated by myself.

On May 4, 2012, I advised both Mr. Schell and his lawyer that I was commencing my review. Since that date, I have not had any communication from Mr. Schell.

On May 16, 2012, I did send Mr. Schell a copy of an email that I sent to his lawyer asking for some information, including:

a) whether he wanted the review conducted in private or in public; and

b) whether the hearing can take place in Iqaluit.

Mr. Schell has never directly responded to me regarding those questions. His lawyer did answer them. Other questions were asked in my May 16th email to which I have never received a response from either Mr. Schell or his lawyer. However, I understand that Mr. Penner and my lawyer, Ms. MacPherson, have had some discussions regarding some of those other questions which I asked in my May 16th email. I am not privy to the answers, and I do not want to be.

On August 3, 2012, I sent the Notice of Hearing to both Mr. Schell and to Mr. Penner and requested an acknowledgment. I sent a follow-up email to both of them on August 14th. Mr. Penner acknowledged receipt on behalf of Mr. Schell.

On August 4, 2012, I sent a copy of the August 4th Media Release to both Mr. Schell and to Mr. Penner.

I have not sent any other information to Mr. Schell since advising him on May 4th that I was commencing my review. I have not heard from Mr. Schell in any way (whether in writing or verbally) since I advised him that I was commencing my review. As I have already said, I did receive some emails from Mr. Penner.

I said it in my first Ruling and I will say it again here:

> I have not pre-judged this case at all. I have kept and will continue to keep an open mind until all of the evidence has been presented and submissions made at the conclusion of the presentation of the evidence.

I have again considered all of the facts in this matter and the law. I have heard and read the oral and written submissions of Mr. Penner and Ms. MacPherson. I have considered the additional issue (which was not argued in the first Application for Recusal) of whether this Section 36 Review became a Section 40 Review.

I am not satisfied that Mr. Penner and Mr. Schell have satisfied the onus of proving that I have a reasonable apprehension of bias against Mr. Schell.

An informed person, viewing everything that has taken place in this review to date realistically and practically, and having thought the matter through, could not conclude that I would not conduct the review of Mr. Schell's conduct fairly.

Annual Report to the Legislative Assembly of Nunavut:

Section 57 of the *Integrity Act* directs the Integrity Commissioner to make an Annual Report to the Legislative Assembly of Nunavut.

The Annual Report "must contain information generally on the activities of the Integrity Commissioner and, in particular, an account of any request for an extension" for time to complete a review of the conduct of a Member of the Legislative Assembly.

As I indicated on pages 28 and 29 of my June 26, 2012 Ruling on the first Recusal Application, I was asked in 2011 by the then-Deputy Minister of Justice to conduct a review of the conduct of Mr. Schell. My Report of that review was tabled in the Legislative Assembly on October 18, 2011. As part of that review process, I asked for an extension (at the request of Mr. Schell) to complete my Review. The extension was granted.

On May 16, 2012, I provided the Speaker with my Annual Report for the period covering April 1, 2011 to March 31, 2012. (I will refer to this as my 2012 Annual Report.) In that Annual Report I had a section entitled "2011 Review of Fred Schell." [I attached a copy of the body of my 2012 Annual Report as Exhibit B to the original version this September 23rd Ruling.]

Mr. Penner submits that "the section [in my 2012 Annual Report] entitled '2011 Review of Fred Schell' is an unprecedented and highly prejudicial account of the Integrity Commissioner's review."

The following are Mr. Penner's submissions on this ground:

1. My predecessor, the first Integrity Commissioner of Nunavut, conducted 2 reviews of Members of the Legislative Assembly. In his Annual Reports which followed those reviews, the Integrity Commissioner devoted no more than two paragraphs to each of the reviews and did not name the Members of the Legislative Assembly whose conduct had been reviewed. He did say that the reports of those reviews could be found on the Integrity Commissioner's website.

2. In the Annual Reports which followed the first two reviews that I conducted as Integrity Commissioner, I followed the first Integrity Commissioner's format and kept the Members whose conduct I had reviewed anonymous and did not devote more than two paragraphs to each review. I also said that the reports of those reviews could be found on the Integrity Commissioner's website.

3. In my 2012 Annual Report I departed from the above format and devoted 2 pages to the 2011 Review of Fred Schell.

4. By providing so much detail in my 2012 Annual Report, I caused prejudice to Mr. Schell.

5. I also made editorial comments about the results of the 2011 Review of Mr. Schell in my 2012 Annual Report (including publicly endorsing the sanctions imposed on Mr. Schell by the Legislative Assembly) which were also prejudicial to Mr. Schell.

In response to Mr. Penner's submissions, I commented on the 2011 Review of Fred Schell in my 2012 Annual Report with the detail that I did for 3 reasons:

1. **Extension of Time:**

   Section 57(1.1) of the *Integrity Act* – which is a recent amendment to the Act – requires me to account for any request for an extension to complete my review. (Pursuant to section 40 of the *Integrity Act*, I am to complete my review with 90 days after commencing the review unless I receive an extension from the Management and Services Board.)

   My 2012 Annual Report was the first time that an Integrity Commissioner of Nunavut has had to provide an account of a request for an extension to complete a review.

2. **Rejection of My Report by the Legislative Assembly:**

   As I stated in my Ruling on the first Recusal Application, after the Integrity Commissioner makes his report to the Speaker with his recommendations, the Legislative Assembly can either accept all of those recommendations or reject all of those recommendations.

   The Legislative Assembly rejected my Report of my review of Mr. Schell. In the history of the *Integrity Act* of Nunavut, the Legislative Assembly had never before rejected such a Report of the Integrity Commissioner.

   The rejection of my Report by the Legislative Assembly had nothing to do with Mr. Schell.

   The rejection was because of "Parliamentary Privilege." Even though I had found that Mr. Schell had not breached the *Integrity Act* by asking a question in the Legislative Assembly, it turns out that I did not have any jurisdiction in the first place to deal with that allegation.

Because of this unprecedented action by the Legislative Assembly, and because of the reasons why my Report was rejected, I felt it necessary to explain myself and apologize for breaching Parliamentary Privilege. The only appropriate way I could do that was through my Annual Report to the Legislative Assembly.

3. Content of Annual Report:

Section 57 of the *Integrity Act* requires the Integrity Commissioner to provide information about the activities of the Integrity Commissioner in his Annual Report.

Part of my function as Integrity Commissioner is to educate not only the Members of the Legislative Assembly but also all of Nunavummiut. One of the ways I have for doing this is my Annual Report.

After my Annual Report is tabled in the Legislative Assembly, it is also posted on the Integrity Commissioner's website. This is the same website where the Reports of all of the Reviews of the conduct of Members of the Legislative Assembly are posted.

In other words, both the Annual Reports and the Reports of Reviews of the conduct of Members of the Legislative Assembly are public documents available for anyone in Nunavut to see.

Section 57(2) specifically states that my Annual Report must not disclose confidential information or identify a Member of the Legislative Assembly except a Member who has been the subject of a review if the review has been completed and a Report made.

As stated earlier, my Report of the 2011 Review of Mr. Schell had been tabled in the Legislative Assembly on October 18, 2011.

All Members of the Legislative Assembly know that when their conduct is reviewed by the Integrity Commissioner and a report is tabled in the Legislative Assembly, all of Nunavummiut will be able to know about it. It will not be a secret.

In my 2012 Annual Report, I commented that of the four allegations made against Mr. Schell, I found that Mr. Schell had only contravened the *Integrity Act* with respect to one of the allegations. I stated that "I found that he did not do anything wrong in connection with those [other three] allegations."

If it had not been for the first and second reasons that I have given for commenting about the 2011 Review of Mr. Schell in my Annual Report, the space devoted to Mr. Schell in my 2012 Annual Report would not have been much more than it was for the first two reviews that I did.

There is no requirement in the *Integrity Act* to keep the names of Members of the Legislative Assembly whose conduct has been reviewed confidential. In fact, the Act allows for their names to be mentioned in the Integrity Commissioner's Annual Report.

In his Submissions to me, Mr. Penner stated that I caused prejudice to Mr. Schell because:

1. I provided so much detail about the 2011 Review of Mr. Schell in my 2012 Annual Report; and

2. I made editorial comments about what happened in the Legislative Assembly following the receipt of my Report of the 2011 Review of Mr. Schell.

When I asked Mr. Penner what the prejudice was to Mr. Schell, he never referred to "bias" or "an apprehension of bias" on my part. He did comment on what others might think about Mr. Schell because I departed from what had appeared to be the practice in the past when Annual Reports had been submitted to the Legislative Assembly.

It should be noted that:

1. The Report of my 2011 Review of Mr. Schell was already available to the public.

2. The debate in the Legislative Assembly concerning my Report of that 2011 Review was televised.

3. The media reported on my 2011 Review of Mr. Schell when my Report of that review was tabled in the Legislative Assembly.

4. What I said in my 2012 Annual Report was factual.

I disagree with Mr. Penner that there was any prejudice to Mr. Schell as a result of the comments I made in my 2012 Annual Report. But even if there was some prejudice, that is not the test to be applied on an Application for me to recuse – or withdraw or remove myself – from this review.

Mr. Penner has not shown any reasonable apprehension of bias on my part as a result of what I said in my 2012 Annual Report.

Media Release issued on August 4, 2012:

Most reviews of the conduct of Members of the Legislative Assembly are done without the public knowing about them until the Report of the review is tabled in the Legislative Assembly.

Accordingly, Integrity Commissioners do not normally issue Media Releases in advance of a Report of a review being made public.

However, in this case, Premier Eva Aariak announced to the media on March 11, 2012 that she had asked the Secretary of Cabinet to request the Integrity Commissioner to review the conduct of the Honourable Fred Schell.

The media assumed that I started conducting my review shortly after the Premier's announcement. Accordingly, the media kept contacting my office to see when my Report would be tabled in the Legislative Assembly.

But, as I said in the opening paragraph of this Ruling, I did not receive the request from the Secretary of Cabinet until April 23, 2012.

On May 10, 2012, I issued the first Media Release. A copy is attached as Exhibit C. As I said in that Release, it was being issued because of the level of media interest in the investigation. I closed by saying:

> "The Integrity Commissioner will not be making any more comments to the Media about this Review, either while the Review is being conducted or after his Report has been made."

At that time I fully expected that my Report would be made within the 90 days stipulated by the *Integrity Act*.

The media know that the Integrity Commissioner must complete his review within 90 days after commencing it.

Because an extension to complete the review was granted, and to stop the media from contacting my office, I issued a further Media Release on August 4, 2012, a copy of which is attached as Exhibit D. I did not obtain anyone's prior consent to send out this Media Release because I am not required to do so. In the August 4th Media Release, I did not make any comment about the allegations against Mr. Schell.

It is this August 4, 2012 Media Release which Mr. Penner and Mr. Schell find objectionable. In his submissions, Mr. Penner concedes that the contents of the Media Release are factual. He also concedes that the Media Release is not by itself prejudicial. His concern is that, when considered with the other grounds advanced in support of this Application to Recuse, there is prejudice to Mr. Schell.

In his written submissions, Mr. Penners states:

> "The inevitable result of Commissioner Pickell's media release was the resulting coverage by Nunatsiaq News and CBC North, both of whom had not reported anything on the story for several weeks leading up to the Commissioner's [media] release."

In his submissions regarding the Media Release, Mr. Penner never referred to "bias" or "an apprehension of bias" on my part.

When I deal with the "Totality of Events" later in this Ruling, I will respond to Mr. Penner's submission about prejudice to Mr. Schell.

Integrity Commissioner as a Witness at Hearing:

The Summary of Allegations which I prepared contain 21 allegations against Fred Schell. Allegation # 14 states in part:

> "[Mr. Schell] ... misrepresented the Cabinet Secretary and the Premier's Principal Secretary to the Integrity Commissioner when he told the Commissioner that the Cabinet Secretary and the Principal Secretary to the Premier had approved of the appointment of Michael Constantineau as Mr. Schell's Executive Assistant...."

Mr. Penner submits that I, as Integrity Commissioner, will need to testify as a witness at the Hearing as a result of Allegation # 14.

Mr. Schell's first lawyer never raised this issue in the first Application to Recuse, even though Mr. Schell and his lawyer have been in possession of that particular allegation since May 4, 2012.

I agree that if I am going to be a witness as to Allegation # 14, I cannot also preside over the hearing of that allegation.

However, I am not satisfied at this point that it will be necessary for me to be a witness regarding Allegation # 14. In support of that statement, I rely upon the following:

1. Based on what was said by both Mr. Penner and Ms. MacPherson in their submissions, once the evidence of all of the other witnesses has been heard and received regarding Allegation # 14, it may not be necessary for me to be a witness.

2. As part of his submissions on this application, Mr. Penner provided me with a document which, on the surface, appears to support Mr. Schell's position that he did not misrepresent the Cabinet Secretary to me. If that is the case, I will have nothing to add and will be able to dismiss that allegation.

3. Pursuant to section 40(2) of the *Integrity Act*, I have the authority to discontinue conducting a review of any allegation at any time – even before the hearing commences or during the hearing.

4. At the outset of the Hearing, I will be asking both Commissioner's Counsel and Mr. Schell's lawyer to address the issue of this document which was produced as part of Mr. Penner's submissions to determine if it is necessary to proceed any further with Allegation # 14.

As I have said, there are 21 allegations in the Summary which I prepared. They relate to approximately 10 different alleged incidents.

If it becomes necessary for me to be a witness regarding Allegation # 14 (which is a result of one alleged incident), that allegation can be severed from the rest. It is not related to the other 9 alleged incidents. A separate review of the conduct of Mr. Schell as alleged in Allegation # 14 can then be conducted by a different Commissioner.

Totality of Events:

Having dealt with each of the 4 grounds separately which have been put forth by Mr. Penner in support of this Application that I should recuse myself – or withdraw or remove myself – from these proceedings, I will now deal with Mr. Penner's final submission.

Mr. Penner is relying on the totality of the four grounds in support of his allegation that there is a reasonable apprehension of bias on my part:

Mr. Penner submits that:

> "... this application for recusal requires an analysis of a pattern of conduct by the Commissioner, rather than a series of isolated events...."

The four grounds are:

1. The acts of myself, as Integrity Commissioner, respecting preparing a Summary of the Allegations against Mr. Schell.

2. My Annual Report to the Legislative Assembly of Nunavut dated May 16, 2012.

3. A Media Release that I issued on August 4, 2012 concerning this Review.

4. The possibility that I may have to be a witness at the Hearing.

For Mr. Schell to be successful on this Application, he has to show that there is a reasonable apprehension of bias on my part.

Mr. Penner submits that:

> "A reasonable person would perceive bias [by Commissioner Pickell] against Mr. Schell as evidenced by:
>
> a. Mr. Pickell's statements contained in the Annual Report 2011 – [he means the 2012 Annual Report];
>
> b. Mr. Pickell's release to the media, after explicitly promising not to do so, and without seeking the consent of Mr. Schell;
>
> c. Mr. Pickell's active involvement in the creation of a request for review pursuant to Section 36 of the *Integrity Act*; and
>
> d. Mr. Pickell's anticipated participation as witness adverse to Mr. Schell within a hearing over which he will determine whether Mr. Schell breached the *Integrity Act*."

Earlier I mentioned that one of Mr. Penner's submissions was that while the August 14, 2012 Media Release was not by itself prejudicial, when considered with the other grounds advanced in support of this Application, there is prejudice to Mr. Schell.

I disagree that the August 14th Media Release, when considered with the other grounds, caused any prejudice to Mr. Schell. But, as I said when dealing with the issue of the 2012 Annual Report to the Legislative Assembly, even if there was some prejudice, that is not the test to be applied on a Application such as this. Mr. Schell needs to show that my issuing the August 14th Media Release somehow helped to create a reasonable apprehension of bias on my part. He has not done so.

In his submissions, Mr. Penner suggested that because of previous conversations I might have had with some of the witnesses in my role as Integrity Commissioner, my prior knowledge might have an impact on some of my findings at the Hearing.

My response to that suggestion is:

1. As stated earlier in this Ruling, the case law provides that if the legislation specifically authorizes a multiplicity of functions, the doctrine of Parliamentary supremacy means that the rule against bias must yield to the legislation.

2. The *Integrity Act* contemplates that the Integrity Commissioner may very well have prior knowledge of some things when he or she conducts a review. As I indicated in

my June 26, 2012 Ruling, the person doing the review is not expected to be someone with no prior knowledge of the subject matter of the review. I have been the Integrity Commissioner of Nunavut for approximately 4 years. During that time I have met and talked with every Member of the Legislative Assembly and given advice when asked. I have also spoken with other government officials from time to time. According to the legislation, these are all part of the duties of the Integrity Commissioner. If the Legislative Assembly of Nunavut had wanted someone who did not have any prior close contact with any of the witnesses in a review to conduct the review, the *Integrity Act* would have been drafted differently. (In my June 26, 2012 Ruling, I compared the review process in Nunavut with the process in Northwest Territories.)

3. I handled criminal cases for over 25 years, mostly as a defence lawyer, but sometimes as a prosecutor. I used to also handle civil litigation files as a lawyer. For over 26 years, I have been a Deputy Judge in the Small Claims Court in Ontario. I have participated in many *voir dires* over the years. ("*Voir dires*" are hearings within trials to determine the admissibility of evidence.) I am well aware of the fact that sometimes a judge hears some evidence that is not admissible. The judge has to then exclude that evidence from his or her mind when making a final decision.

4. When I write my Report of the review of Mr. Schell's conduct for presentation to the Speaker of the Legislative Assembly, I will be relying solely upon the evidence that I hear and receive at the Hearing in Iqaluit and my observations of the witnesses inside the Hearing room.

As I have already stated:

1. The test to be applied to determine whether there is a reasonable apprehension of bias is:

> "What would an informed person, viewing the matter realistically and practically, and having thought the matter through, conclude ?"

2. The onus of demonstrating bias lies with the person who is alleging its existence and the threshold for finding a reasonable apprehension of bias is high.

I have considered all of the facts presented to me. I have considered the pattern of my conduct, and not just the four grounds in isolation to each other.

I have also considered the applicable law. Some of that law was quoted extensively in the Ruling I made on June 26, 2012.

Whether the four grounds are looked at individually or all together, I find that Mr. Penner and Mr. Schell have not met the burden of proof for demonstrating that there is a reasonable apprehension of bias on my part.

As I have already said, if any of my actions caused any prejudice to Mr. Schell – and I do not believe they have, that is not sufficient to demonstrate a reasonable apprehension of bias on my part.

Result:

The allegations in the Summary of Allegations are simply allegations at this point. Nothing has been proven.

As I said in my June 26, 2012 Ruling on the first Recusal Application, in the 2011 Review I did of Mr. Schell:

1. I summarized what the allegations appeared to be from the material supplied to me by the Complainant in that review, the then-Deputy Minister of Justice.

2. I received all of the evidence.

3. I found that 2 of the 4 allegations were without merit even without receiving submissions from Mr. Schell or his lawyer.

4. After I received submissions on the remaining 2 allegations, I found that one of them was proven, but the remaining one was not.

At the Hearing in Iqaluit, Mr. Penner will have the opportunity to cross-examine the witnesses which Ms. MacPherson presents to give evidence. Mr. Penner will also have the right to call any witnesses that he wants to give evidence.

I will listen to and observe each witness. I will consider any documentary evidence which is produced. I will take notes. I will listen to the submissions by the lawyers after all of the evidence has been presented. I will then decide what the true facts are. I will then write my Report.

An informed person, viewing everything that has taken place in this review to date realistically and practically, and having thought the matter through, could not conclude that I would not conduct the review of Mr. Schell's conduct fairly.

To state the above paragraph in a positive way, an informed person, viewing everything that has taken place in this review to date realistically and practically, and having thought the matter through, would likely conclude that I would conduct the review of Mr. Schell's conduct fairly.

Accordingly, Mr. Penner's Application on behalf of Mr. Schell to have me recuse myself – or withdraw or remove myself – from this review is dismissed.

Two Separate Applications for Recusal:

In closing, I want to comment on the two separate Applications for Recusal.

As I have stated, Mr. Schell's first lawyer brought an Application on June 5, 2012 that I recuse myself – or withdraw or remove myself – from this review. On June 26, 2012, I dismissed that Application and declined to remove myself.

Mr. Penner became Mr. Schell's lawyer in mid-July 2012. On September 10, 2012, I received a copy of this Application from Mr. Penner that I remove myself from this review.

While I would have preferred that Mr. Penner had brought his Application sooner, I indicated that I was prepared to deal with it. I agreed for several reasons.

Section 52 of the *Integrity Act* states:

> "The Integrity Commissioner may conduct a review into a matter which has already been reviewed only if new evidence is presented that, in the opinion of the Integrity Commissioner, justifies a new review."

Mr. Penner submitted that:

> "The Integrity Act clearly contemplates the revisitation of the Commissioner's decisions upon the introduction of pertinent new evidence."

He submitted that this included interim decisions such as my June 26, 2012 Ruling.

I am also aware of Section 32 of the *Integrity Act* which states:

> "Decisions made by the Integrity Commissioner are not subject to appeal to, or review by any court."

Therefore, it is incumbent upon me to do the best I can to get my decisions right.

Mr. Penner did present some new grounds in his argument which had not been presented by his first lawyer. These new grounds are detailed above.

Other than the argument about my August 4, 2012 Media Release (which occurred after my first Ruling in June 2012), all of the other grounds were available or should have been available at the time that the first Application was presented in June.

But I wanted to be fair to Mr. Schell. He has a new lawyer for reasons which I have been told are beyond the control of Mr. Schell and not because of anything which Mr. Schell has done. I wanted to give his new lawyer a chance to see if he could persuade me that I should withdraw from conducting this review.

Accordingly, I agreed to consider this second Application for Recusal.

When Ms. MacPherson and Mr. Penner made their oral submissions to me on Monday September 17, 2012, both of them indicated that if I dismissed this Application (as I have done) they would be ready to proceed with the Hearing on Wednesday October 10, 2012. Therefore, I look forward to seeing both Mr. Penner and Ms. MacPherson on that date in Iqaluit.

Dated at Goderich, Ontario this 23rd day of September, 2012.

Original signed by "Norman Pickell"

_____

Norman Pickell
Integrity Commissioner

Integrity Commissioner of Nunavut
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Commissaire à l'intégrité du Nunavut
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Media Release

Exhibit C to Ruling re 2nd Recusal Application

May 10, 2012

<u>Re Fred Schell Review</u>

Premier Eva Aariak announced on March 11, 2012 that she had asked the Secretary of Cabinet to request the Integrity Commissioner to review the conduct of the Honourable Fred Schell, MLA for South Baffin (which includes the communities of Cape Dorset and Kimmirut).

The Secretary of Cabinet spoke by phone to the Integrity Commissioner on the weekend of March 11, 2012.

The *Integrity Act* sets out the procedure to be followed when anyone asks the Integrity Commissioner to review the conduct of an MLA. The request must be in writing and supported by an affidavit stating that the maker of the affidavit believes that the MLA has contravened the *Integrity Act*. The affidavit must set out the grounds in support of that belief.

On March 28th, the Cabinet Secretary advised the Integrity Commissioner that he was still working on his affidavit

The Cabinet Secretary's letter, affidavit and supporting documents were couriered from Iqaluit on April 19, 2012, arriving in the Integrity Commissioner's office on April 23rd.

After reviewing the material, the Integrity Commissioner asked for and received some clarification from the Cabinet Secretary on May 1, 2012. The Integrity Commissioner commenced the Review on May 4, 2012, having concluded that there was sufficient grounds for conducting a Review.

Mr. Schell and his lawyer have been provided with copies of the relevant material and are in the process of preparing a response.

The Integrity Commissioner expects to conduct the Review in private.

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Once the Review is completed, the Integrity Commissioner will make his Report to the Speaker of the Legislative Assembly in accordance with the *Integrity Act*. The *Integrity Act* also provides for the Report to be presented to the Legislative Assembly. Eventually the Report will be published on the Integrity Commissioner's website.

This is the fourth time that the present Integrity Commissioner has been asked to review the conduct of an MLA since he was appointed on July 3, 2008.

The Integrity Commissioner does not normally issue a Media Release when he commences a review of an MLA's conduct. However, this Media Release is being issued because of the level of media interest in this investigation.

The Integrity Commissioner will not be making any more comments to the Media about this Review, either while the Review is being conducted or after his Report has been made.

Norman Pickell
Integrity Commissioner

Integrity Commissioner of Nunavut
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Commissaire à l'intégrité du Nunavut
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Exhibit D to Ruling re 2nd Recusal Application

Media Release

August 4, 2012

Re Fred Schell Review

This is an Update to the Media Release which was issued by the Integrity Commissioner on May 10, 2012.

On April 23, 2012, the Integrity Commissioner received a request from Mr. Daniel Vandermeulen, the Deputy Minister of Executive and Secretary to Cabinet for the Government of Nunavut to review the conduct of the Honourable Fred Schell, MLA for South Baffin. This request was pursuant to section 36 of the *Integrity Act*.

After reviewing the material, the Integrity Commissioner commenced the Review on May 4, 2012.

Section 40 of the *Integrity Act* states that the Integrity Commissioner shall conduct the Review as soon as practicable and shall make a Report to the Speaker of the Legislative Assembly within 90 days after commencing the Review.

That 90 days ended in August 2, 2012.

The *Integrity Act* allows the Integrity Commissioner to request an extension if the Integrity Commissioner is of the opinion that additional time is needed to complete the Review.

On July 6, 2012, the Integrity Commissioner wrote to the Chairperson of the Management and Services Board of the Legislative Assembly requesting an extension until October 31, 2012 to complete his Report.

The reasons for the request for the extension were provided to the Management and Services Board and will become public as part of the Integrity Commissioner's Report.

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On July 16, 2012, the Chairperson of the Management and Services Board advised the Integrity Commissioner that the requested extension has been granted.

Once the Review is completed, the Integrity Commissioner will make his Report to the Speaker of the Legislative Assembly in accordance with the *Integrity Act*. The *Integrity Act* also provides for the Report to be presented to the Legislative Assembly. Eventually the Report will be published on the Integrity Commissioner's website.

Norman Pickell
Integrity Commissioner