



Legislative Assembly of Nunavut

REPORT TO THE SPEAKER

RE: MR. DAVID SIMAILAK, MLA

SEPTEMBER 8, 2008

Norman B. Pickell

Acting Integrity Commissioner



**Office of the
Acting Integrity Commissioner of Nunavut**

September 8, 2008

The Honourable Peter Kilabuk, MLA
Speaker of the Legislative Assembly
Office of the Speaker
Legislative Assembly Precinct
Iqaluit, NU
X0A 0H0

Dear Speaker Kilabuk:

Pursuant to section 44 of the *Integrity Act*, I am transmitting my report concerning Mr. David Simailak, MLA.

Yours sincerely,

ORIGINAL SIGNED BY

Norman B. Pickell
Acting Integrity Commissioner of Nunavut

RE: MR. DAVID SIMAILAK, MLA

Request for a Review:

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

Mr. Hunter Tootoo has asked me to conduct a review of Mr. David Simailak’s conduct.

Mr. Tootoo is the Member of the Legislative Assembly (herein referred to as “MLA”) for Iqaluit Centre and Chair of the Legislative Assembly’s Standing Committee on Government Operations and Accountability.

Mr. David Simailak is the MLA for Baker Lake and a former Cabinet Minister.

The Allegations:

Mr. Tootoo alleges that Mr. Simailak contravened the *Integrity Act* and specifically the following:

1. The blind trust provisions of the Act;
2. The influence provision of the Act;
3. The conflict of interest provisions of the Act; and
4. The provision that prohibits a Minister from holding a corporate directorship.

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

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

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

1. The person requesting the review must have reasonable grounds for believing that there has been a contravention of the Act;
2. The request to the Integrity Commissioner must be in writing; and
3. The facts to support the allegations must be in an affidavit.

Background:

On May 30, 2008, the Standing Committee on Government Operations and Accountability approved a motion in support of Mr. Tootoo, the Chair of the Standing Committee, making a formal request to the Integrity Commissioner pursuant to section 36 of the Act in relation to the material which was subsequently contained in Exhibits A and B to his Affidavit of June 30, 2008.

I was appointed Acting Integrity Commissioner of Nunavut on July 3, 2008.

On July 7, 2008, I received a letter by fax from Mr. Hunter Tootoo. Accompanying the letter was an Affidavit that Mr. Tootoo affirmed on June 30, 2008.

On July 10, 2008, the original of Mr. Tootoo's Affidavit, together with Exhibits A, B and C attached, arrived by courier in my office.

Exhibits A and B are two binders of material that were obtained from the Secretary to Cabinet pursuant to two subpoenas that were issued by the Standing Committee on Government Operations and Accountability. Included in those binders are numerous emails.

Exhibit C is a Report of a review done by my predecessor, the Honourable Robert Stanbury.

On July 19, 2008, I sent an email to Mr. Simailak, telling him what I had received from Mr. Tootoo, and asking him if he had copies of Mr. Tootoo's Affidavit and the attached exhibits. I also asked him for his written response to the allegations made by Mr. Tootoo.

On July 24, 2008 I received an email from Mr. Simailak stating that he did not have a copy of Mr. Tootoo's Affidavit. Accordingly, on July 25, 2008, I faxed a copy of Mr. Tootoo's Affidavit to Mr. Simailak.

Mr. Simailak sent me his written response on August 17, 2008.

I met with Mr. Simailak on August 20, 2008.

I also interviewed the following persons (in alphabetical order):

- | | | |
|----------------------|---|---|
| Mr. Gerald Avery | - | Trustee under Mr. Simailak's Blind Trust Agreement |
| Hon. Paul Okalik | - | Premier |
| Hon. Robert Stanbury | - | former Integrity Commissioner of Nunavut |
| Mr. Hunter Tootoo | - | MLA and Chair of Standing Committee on Government Operations and Accountability |

Background Facts:

Mr. David Simailak was elected to Nunavut's Second Assembly on February 16, 2004 to represent Baker Lake. On March 9, 2004 he became a Cabinet Minister and member of the Executive Council. As a Cabinet Minister continuously from March 9, 2004 until December 11, 2007, Mr. Simailak held various portfolios, including Economic Development, Transportation, Energy and Finance.

Prior to entering territorial politics, Mr. Simailak had a distinguished business career. At the time of his election as an MLA, he was involved in several corporations.

Section 5 of the Act requires every MLA to complete and file a disclosure statement which includes (with some exceptions) a list of all of the member's assets.

Mr. Simailak completed an Annual Public Disclosure Statement on March 2, 2004 in which he listed an interest in three private companies. These companies were:

1. The Land Store (1991) Ltd.;
2. Qamanittuaq Development Corporation; and
3. Ilagiiktut Limited.

The March 2004 Annual Public Disclosure Statement that Mr. Simailak completed also showed three other companies in which the three companies listed above had an interest. These three other companies were:

1. Piruqsaijit Ltd.;
2. Tapiriit Developments Ltd.; and
3. Ikingutigiit Ltd.

(I am aware of the review of David Simailak conducted by the Honourable Robert Stanbury. That review found that Mr. Simailak had not been making complete disclosure in his Annual Public Disclosure Statements. I do not propose to re-visit Mr. Stanbury's review. His Report dated January 3, 2008, attached as Exhibit C to Mr. Tootoo's Affidavit, speaks for itself.)

Section 14 (2) of the Act states that:

“No member shall have an interest in a partnership or in a private company that is a party to a contract with the [Nunavut] Government [which includes government agencies] under which the partnership or company receives a benefit.”

Some of the businesses in which Mr. Simailak had an interest were parties to contracts with the Government of Nunavut.

Section 14 (8) of the Act states that:

“Subsection (2) does not apply if the member has entrusted his or her interest in the contract or his or her interest in the partnership or private company to one or more trustees on the following terms:

- a) the provision of the trust shall be approved by the Integrity Commissioner;
- b) the trustees shall be persons who are at arm’s length with the member ...;
- c) the trustees shall not consult with the member with respect to managing the trust property [subject to certain exceptions, none of which apply here];
- d) the trustees may consult with the Integrity Commissioner with respect to managing the trust property;
- e) annually, the trustees shall give the Integrity Commissioner a written report;
- f) the trustees shall give the member sufficient information to permit him or her to submit [income tax] returns ...;
- g) the trustees shall give the Integrity Commissioner copies of all information and reports given to the member.”

Section 16 (1) of the Act states that “A Minister shall not

- a) engage in employment ...;
- b) engage in the management of a business carried on by a corporation;
- c) carry on business through a partnership or sole proprietorship; or
- d) hold a directorship [in a corporation, subject to certain exceptions, none of which apply here].”

Section 16 (2) permits an exception to section 16 (1) (c) if a trust is set up similar to the trust described in section 14 (8).

On May 6, 2004, Mr. Simailak signed a Blind Trust Agreement in which he transferred control and management of his business interests to a Trustee, Mr. Gerald Avery.

The relevant emails in Exhibits A and B began in April 2004 and ended in June 2007.

Some of the emails involved requests for Mr. Simailak’s office to set up meetings with various people, including other Cabinet Ministers. Other emails contained information about the businesses in which Mr. Simailak had an interest. There were also emails which involved possible work for a friend of Mr. Simailak. I will be referring to these emails in more detail later in this Report.

In February 2005 – 11 months after he became a Cabinet Minister, it was discovered that David Simailak was still shown as a director of one of his corporations.

Issue:

This review is to determine if Mr. Simailak contravened the *Integrity Act*.

The Integrity Act:

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

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

1. integrity is the first and highest duty of elected office;
2. the elected members are to perform their public duties and arrange their private affairs in a way that promotes public confidence in each member's integrity; and
3. the elected members are to reconcile their public duties and private interests with openness, objectivity and impartiality.

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

Burden and Standard of Proof:

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

Blind Trust Issue:

As I have already stated, Mr. Simailak signed a Blind Trust Agreement May 6, 2004 in which he transferred control and management of his business interests to his Trustee, Mr. Gerald Avery.

Blind Trust Issue – Allegation:

Mr. Tootoo's Affidavit alleges a breach of section 16 (2) (c) of the Act. That section of the Act prohibits the Trustee from consulting with the Cabinet Minister with respect to managing the business assets.

However, section 16 (2) (c) of the Act refers only to a section 16 (2) trust. A section 16 (2) trust applies only to a Minister's business that is carried on through a partnership or a sole proprietorship, and not to one carried on through a corporation.

It is clear from Mr. Simailak's Blind Trust Agreement and from his Annual Public Disclosure Statements that Mr. Simailak carried on his business through corporations. Hence, Mr. Simailak does not have a section 16 (2) trust.

A section 14 (8) trust, on the other hand, applies to all ways of carrying on a business, including private corporations. Therefore, what Mr. Simailak does have is a section 14 (8) trust.

Does the fact that Mr. Tootoo did not specifically allege that Mr. Simailak breached section 14 (8) (c) – which is the companion section to section 16 (2) (c) – mean the end of this issue? No – for two reasons.

First, while Mr. Tootoo did allege that Mr. Simailak contravened certain specific sections of the Act, he also made the following broad statement in his Affidavit:

“It is my personal belief that Mr. Simailak contravened the provisions of the *Integrity Act*.”

As part of his Affidavit, Mr. Tootoo attached two volumes of emails. While sections 36 (2) and (3) require the person requesting the review to set out the grounds for his or her belief that there has been a contravention, I find that the supporting documents, and not just what is written in the complainant's affidavit, can be used to support that belief.

The second reason for saying that I can continue with the review of this issue is the fact that section 40 of the Act allows the Integrity Commissioner in certain circumstances to initiate his or her own review. If something serious is brought to my attention during the course of a review, I am not going to ignore it. I will at least consider it to see if it supports a possible finding of a contravention of the Act.

Based on what I have seen in the emails which are contained in Exhibits A and B, I find that there are sufficient grounds for me to continue this review to see if Mr. Simailak contravened the Act because of his Blind Trust Agreement.

Blind Trust Issue – Facts Generally:

The relevant parts of Mr. Simailak's Blind Trust Agreement are as follows:

“Whereas ... [David Simailak] has been required to divest himself of commercial and financial holdings by trusteeship in order to avoid the possibility of a conflict between personal interest and public duty;

“And Whereas [David Simailak] wishes to transfer the control and management of [his business assets] to the Trustee”

- “10. [The business assets] shall be under the direction, control and management of the Trustee to the entire exclusion of [David Simailak] and at no time and in no manner shall the Trustee seek, directly or indirectly, any advice, direction or instruction from [David Simailak] in connection with the [business assets] of the management, disposition or investment thereof. ... Except as expressly provided herein, no statements shall be rendered by the Trustee to [David Simailak].”
- “22. [David Simailak and the Trustee] agree that the day-to-day operations of The Land Store (1991) Ltd. ... shall remain under the control of [the Trustee]. ... [The Trustee undertakes] not to communicate to [David Simailak] any information with respect to the operations of [The Land Store (1991) Ltd.]”
- “23. The Trustee shall ... provide the Integrity Commissioner with copies of all information and reports given to [David Simailak]”
- “25. The Trustee ... agrees not to communicate with [David Simailak] in regard to the [business assets], except as permitted in accordance with the Act.”

The Trustee, Mr. Gerald Avery, is a Certified General Accountant practising in Yellowknife, Northwest Territories. From all of the evidence presented to me, I am satisfied that Mr. Avery never violated the terms of the Blind Trust Agreement. He never consulted or communicated with Mr. Simailak inappropriately nor did he ever provide prohibited information to Mr. Simailak.

Neither the Act nor the Blind Trust Agreement specifically prohibits the elected member or Cabinet Minister from consulting with or giving information to the Trustee. However, it seems logical that if the Trustee cannot do it except in limited circumstances, the elected member cannot do it either. Having said that, I find that Mr. Simailak did not consult or communicate inappropriately with his Trustee at any time.

However, there was information going to and from Mr. Simailak concerning his business interests. The question is whether that flow of information contravened the *Integrity Act*.

Blind Trust Issue – Facts – Emails:

Mr. Simailak signed his Blind Trust Agreement on May 6, 2004.

The evidence discloses that an email from Warwick Wilkinson to David Simailak dated February 21, 2005 is the first email giving Mr. Simailak information about his businesses.

Mr. Wilkinson was and is the General Manager of Piruqsaijit Ltd., which is the management arm of several of the businesses in which Mr. Simailak had an interest. He was also Secretary-Treasurer of some of those businesses.

Mr. Simailak told me that before he became an MLA, Mr. Wilkinson reported to him on Tapiriit Developments Ltd, Qamanittuaq Development Corporation and Ilagiiktut Ltd. because he – Mr. Simailak – was President of those three companies.

Prior to my interview of Mr. Simailak, my intention was to speak to Warwick Wilkinson. But after hearing Mr. Simailak's evidence, I did not deem it necessary to interview Mr. Wilkinson.

In the February 21, 2005 email, Mr. Wilkinson forwarded an email to Mr. Simailak that had come from the lawyer who was handling the purchase of some assets for one of the businesses in which Mr. Simailak had an interest. The email from Mr. Wilkinson was a follow-up to a conversation that he had had with Mr. Simailak earlier that day. It also makes reference to the fact that the company's lawyer had been in contact with Mr. Avery, the Trustee of David Simailak's Blind Trust.

Later on February 21, 2005, Mr. Simailak received a second email from Mr. Wilkinson. It, too, provided Mr. Simailak with information about his business matters.

On March 18 and 24, June 8 and 13, July 15, and August 18, 2005, Mr. Wilkinson sent Mr. Simailak more emails which contained information about Mr. Simailak's business interests.

In fact, the June 8, 2005 email said "The attached is to update you on your [business] transaction."

On September 16, 2005, Mr. Chris Lalande (who was the Executive Assistant to Mr. Simailak) forwarded to Mr. Simailak an email that he had received which read in part as follows:

"Hi Chris, Minister Akesuk [who at the time was the Minister responsible for Nunavut Housing Corporation] has agreed to meet with David Oolooyuk [President of Ilagiiktut Ltd., one of the corporations in which Mr. Simailak had an interest at the time] and [Warwick] Wilkinson [the General Manager of Piruqsajit Ltd., another company in which Mr. Simailak had an interest at the time] next week."

Mr. Simailak admits receiving these emails. But he says they came to him unsolicited and he did nothing with them.

However, on November 15, 2005, Mr. Wilkinson sent David Simailak an email which read in part:

"Hello David, Thanks for your phone call yesterday.... We would appreciate your assistance to set up a meeting with the Minister of Housing and it will also be beneficial to meet with the Minister of Community and Government Services since her department administers the commercial leasing portfolio. Let me know your preference with respect to time, location of meeting room, etc."

Later that same day, Mr. Simailak responded to Mr. Wilkinson:

"Will get Chris to see what can be set up for you.... We are all committed to a dinner ... on Monday.... I think the meeting with the Housing [Minister] is the more strategic one so will schedule around that. I think you and David [Oolooyuk, President of Ilagiiktut – one of the companies in which Mr. Simailak had an interest at the time] made the right decision...."

Still later that same day, Mr. Wilkinson responded to David Simailak as follows:

"Hello David, Thanks. I agree, the Housing Minister is our priority so lets do as you suggest and schedule around him. See you next week."

Mr. Simailak is again being given information about his business interests which he had placed in a blind trust. He is also providing advice to the man who had reported to him before he was elected an MLA.

On November 15, 2005, Chris Lalande sent the following email (with a copy to Mr. Simailak) to the Executive Assistant to the Housing Minister:

“Hi Karen, David Oolooyuk of Ilagiiklut [one of the companies in which Mr. Simailak had an interest] is coming to Iqaluit on the 21st and wants to meet with your Minister regarding a long-standing issue about payment of invoices for staff housing. Can you let me know when your Minister is available to meet with him.”

On February 16, 2006, Mr. Wilkinson sent an email to Mr. Simailak and to Mr. Lalande indicating that he has arranged a meeting of himself and Mr. Oolooyuk with the Nunavut Housing Corporation staff. He wanted either Mr. Simailak or Mr. Lalande to arrange a meeting with the Minister responsible for the Nunavut Housing Corporation while they were in Iqaluit.

On March 6, 2006, Warwick Wilkinson sent an email to the Honourable Levinia Brown, then Minister for Petroleum Products Division. The relevant portions of it read as follows:

“Good morning Levinia, David Oolooyuk [President of Ilagiiklut Ltd., one of the companies in which Mr. Simailak had an interest in – in fact, Mr. Simailak was President until his election as an MLA] and I would like to talk to you about a matter that is very serious for the development corporations [which included Qamanittuaq Development Corporation, another company in which Mr. Simailak had an interest]. Attached is a letter that you will receive in the next few days.... We feel we are being unfairly treated by the Government of Nunavut and would like the opportunity to talk to you directly....”

The letter which was attached to that email was addressed to Nunavut Housing Corporation, with a copy being sent to Mr. Simailak. It talked about the fact that because a significant amount of money was owed by Nunavut Housing Corporation to companies including Qamanittuaq Development Corporation and Ilagiiklut Ltd., the companies were not in a position to make their payments to the Petroleum Products Division of the Government of Nunavut.

On March 6, 2006, Mr. Wilkinson also sent to Mr. Simailak a copy of the email that he had sent to the Honourable Levinia Brown. The relevant portions of his email to Mr. Simailak (which was also sent to Tagak Curley, MLA for Rankin Inlet North) read as follows:

“Good morning David and Tagak, I want to keep you informed on the status of the issues raised at a meeting with [Nunavut Housing Corporation] on our recent visit to Iqaluit. Accordingly, I have attached a letter that you will receive in the next few days and the response we received from [Petroleum Products Division]. Below is a copy of an email sent to Hon. Levinia Brown in her capacity as Minister for Petroleum Products Division. Any assistance or advice you can offer in this regard will be greatly appreciated.”

From the evidence that I have before me, there is nothing improper about the above email being sent to Mr. Curley and asking for his assistance and advice. But the email also provided information to Mr. Simailak about his own business interests.

On June 12, 2006, the Honourable Olayuk Akesuk sent an email to Mr. Simailak telling him how much money had been paid by Nunavut Housing Corporation to one of the companies in which Mr. Simailak had an interest. Mr. Simailak sent Mr. Akesuk an email on June 12, 2006, thanking him.

On October 23, 2006, Warwick Wilkinson sent two emails to Mr. Simailak updating him on some matters having to do with Mr. Simailak's business interests. Mr. Simailak replied separately to each email he had received from Mr. Wilkinson.

On June 27, 2007, Chris Lalande sent an email to Mr. Simailak advising him about the renewal of some contracts involving one of the companies in which Mr. Simailak had an interest.

Blind Trust Issue – Analysis:

A Cabinet Minister is not allowed to engage in the management of a business carried on by a corporation and is not allowed to carry on business through a partnership or a sole proprietorship. In addition, section 14 prohibits (with some exceptions) any elected member – not just a Cabinet Minister – from having an interest in a business – regardless of how it is carried on – that is a party to a contract with the Government of Nunavut or a public agency which is under the umbrella of the Government of Nunavut.

Thus, as a Cabinet Minister, Mr. Simailak was prohibited from carrying on a business or engaging in the management of a business. In addition, as an MLA, he was not permitted to have an interest in a business that was a party to a contract with the Government of Nunavut.

Some of the businesses in which Mr. Simailak had an interest were parties to contracts with the Government of Nunavut.

Thus, unless there is an exception in the Act, Mr. Simailak would be required to divest himself of all of his business interests. That means he would have to sell his shares in all of his business interests and not be involved with them in any manner.

The purpose of such restrictions on an MLA or a Cabinet Minister is to avoid any real, apparent or potential conflict of interest in relation to their duties and responsibilities as an elected official.

However, the *Integrity Act* of Nunavut – as does the legislation in many other jurisdictions – has a means by which Mr. Simailak can avoid having to sell all of his business interests. He can sign a “blind trust agreement” (which in his case is more properly called a “blind management agreement”).

What is a blind trust? It is a trust which enables a person to avoid possible conflicts of interest by transferring assets to a Trustee. In doing so, the person gives up the right to information about those assets.

What is the purpose of a blind trust? It allows any Member of the Legislative Assembly to keep the businesses that the Member owns and still be able to perform his or her public duties in a manner that promotes public confidence in the elected member's integrity.

I have already found that there was no improper flow of information between Mr. Simailak and his Trustee.

But should Mr. Simailak have received any information from anyone about any of his business interests while he was a Cabinet Minister and while he had a Blind Trust Agreement in effect?

The opening paragraph of Mr. Simailak's Blind Trust Agreement states that he was required to set it up "in order to avoid the possibility of a conflict between personal interest and public duty."

Some blind trust agreements – but not the one that Mr. Simailak signed – have provisions such as:

"the elected member shall not take any action to obtain, and shall take appropriate action to avoid receiving, any information with respect to his or her businesses."

"the elected member shall not knowingly and wilfully, or negligently, solicit or receive any information that may not be properly disclosed to the elected member pursuant to the provisions of the *Integrity Act*."

(The *Integrity Act* requires the Integrity Commissioner to approve the terms of all trust agreements set up under the Act. I recommend that all trust agreements approved by the Integrity Commissioner include provisions similar to what I mentioned in the previous paragraph.)

In my view, the intent of the trust provisions of the Act is that the MLA or Cabinet Minister who signs a Blind Trust Agreement is not to receive any information from anyone about his or her businesses, unless it is expressly allowed under the Act.

In his written response to Mr. Tootoo's allegations, Mr. Simailak said that he did not request the emails. He also said that he did not do anything with those emails when he received them.

But the evidence shows that Mr. Simailak was not just receiving unsolicited emails and doing nothing with them.

When I met with David Simailak, he told me:

1. his assets were to be administered by his Trustee, Mr. Avery, while he was a Cabinet Minister because he could not run those companies while he was in Cabinet.
2. after he became a Cabinet Minister and after his Blind Trust Agreement was signed, new Presidents were appointed for Tapiriit Developments Ltd, Qamanittuaq Development Corporation and Ilagiiktut Ltd.
3. but even though new Presidents were appointed, Mr. Wilkinson still provided Mr. Simailak with information "to keep me in the loop."

4. he never told Mr. Wilkinson what Mr. Wilkinson could or could not tell Mr. Simailak about Mr. Simailak's businesses.

I asked Mr. Simailak about an email that Mr. Lalande sent on January 4, 2005 to a person in the accounting firm that acted for some of the businesses in which Mr. Simailak had an interest. The subject line was "David Simailak's blind trust" and the email said in part:

"I spoke with the Minister [meaning David Simailak] and he advises that you deal directly with Jerry Avery [the Trustee under Mr. Simailak's Blind Trust Agreement] of Avery Cooper for any matters concerning his business interests."

Mr. Simailak confirmed that those were his instructions to Mr. Lalande.

Mr. Simailak told me that that email applied only to The Land Store (1991) Ltd. which was in the process of being sold. He said that the January 4, 2005 email meant that he was not to be contacted about anything to do with The Land Store (1991) Ltd.

But I note that the subject line in the January 4, 2005 emails referred to Mr. Simailak's blind trust and the last phrase of the body of the email says "for any matters concerning his business interests." Nothing is said in the email about The Land Store (1991) Ltd.

Regardless, Mr. Simailak told me that Mr. Wilkinson continued to forward emails to him about the Land Store (1991) Ltd., even as late as July 2005. Mr. Simailak said that he never told Mr. Wilkinson not to provide him with any information concerning The Land Store (1991) Ltd.

On December 22, 2005, Mr. Simailak received a copy of an email that the then Integrity Commissioner of Nunavut sent to Mr. Avery, the Trustee under Mr. Simailak's blind trust. In that email, the Integrity Commissioner asked for copies of all information that Mr. Avery gave to Mr. Simailak.

When I asked Mr. Simailak about why Mr. Avery had to provide the Integrity Commissioner with copies of all of the information that Mr. Simailak received, Mr. Simailak told me that he did not know.

When I met with Mr. Simailak, he initially gave me the impression that he was very naïve about what a blind trust really meant.

But later in my interview with him, Mr. Simailak told me:

1. when he set up his blind trust, he was told that he was not to be getting any information about his businesses.
2. the emails that he was receiving from Mr. Wilkinson and others were giving him information about his businesses.
3. he knew that he was not to be receiving that information from anyone.

4. Mr. Lalande knew that Mr. Simailak was not to be getting any information about his businesses.
5. he did not know if Mr. Wilkinson knew that Mr. Simailak was not to be receiving any information about his businesses.
6. he does not know why he did not tell Mr. Wilkinson that he did not want any such information.
7. he let people give him information about his businesses. In fact, he told me “the emails kept coming.”
8. he never did anything, and does not know why he did nothing, to stop the flow of emails.

It would have been very easy for Mr. Simailak to tell everyone that he did not want to receive any information about his businesses. Alternatively, when he did receive an email, he could have forwarded it to the Integrity Commissioner and asked the Integrity Commissioner to tell the person to stop giving Mr. Simailak information about his businesses.

It is evident from what is said in some of the emails that Mr. Simailak was talking to others about his businesses in telephone conversations. This should not have been happening either.

I do not have any evidence that the Integrity Commissioner gave permission to anyone, other than the Trustee, to send business information to Mr. Simailak. Mr. Simailak was not aware of anyone being given such permission.

I have already referred to the fact that the first Integrity Commissioner of Nunavut, the Honourable Robert Stanbury, conducted a review of Mr. Simailak. In his Report, Mr. Stanbury said (referring to Mr. Simailak):

“On his appointment to the Cabinet, he had placed his shareholdings in trust as provided in the Act and **wished to prevent any matters touching on those companies from coming to his attention as Minister.**”

Mr. Simailak told me that he must have told Mr. Stanbury the part that I have bolded. Mr. Simailak is unable to reconcile that bolded statement with the fact that he **was** getting information about his companies from Mr. Wilkinson and others.

The Standing Committee on Government Operations and Accountability held hearings on the 2007 Report of the Auditor General to the Legislative Assembly regarding the Audit of the Nunavut Business Credit Corporation. On November 29, 2007, Mr. David Simailak testified at those hearings.

Mr. Keith Peterson, the MLA for Cambridge Bay and the Co-Chair of the Standing Committee asked Mr. Simailak the following question:

“How does the trust work when it comes to ministers ? How do you set it up ? How do you remain uninvolved in your assets ?”

Part of Mr. Simailak’s response was:

“When you become a minister, the minister has to make a declaration and identify who their [Trustee] is....”

“I don’t see any of the correspondence, or any other dealings related to my financial holdings. They go through [my Trustee].”

In a further question, Mr. Peterson asked Mr. Simailak the following:

“If you’re a minister ..., there would be no way for you to find out or know anything with what’s going on with your investments. Is that how a blind trust works?”

Mr. Simailak responded as follows:

“The only thing I can state and what I have experienced is that I have not had any dialogue with the [Trustee] because I want to adhere to the laws that apply to such things. I didn’t have any dialogue with [my Trustee] since I became a minister.”

But Mr. Simailak’s response to Mr. Peterson’s questions was not a complete answer. Mr. Simailak should have said that, while he was not having any communication with his Trustee, he had been receiving information from Mr. Wilkinson and others about his business interests.

Blind Trust – Conclusion:

I do not believe that Mr. Simailak is as naïve about blind trusts as he wants me to believe.

I find that Mr. Avery, the Trustee, never violated the terms of the Blind Trust Agreement. I also find that Mr. Simailak never consulted or communicated inappropriately with his Trustee at any time. But I do find that Mr. Simailak did breach the blind trust provisions of the *Integrity Act* because he was improperly communicating with other people about his business interests.

Mr. Simailak told me that he never thought anyone would find out about the emails that were exchanged between himself and people like Mr. Wilkinson. I believe him. But Mr. Simailak has been caught receiving information about his business interests that he never should have received.

Influence Issue:

Section 10 of the Act states:

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

Section 12 of the Act states:

“This Act does not prohibit the activities in which members properly engage on behalf of constituents in accordance with parliamentary convention.”

Influence Issue – Facts Generally:

While Mr. Simailak was a Cabinet Minister, he admits that he helped to arrange meetings between government officials (including Cabinet Ministers) and representatives of companies in which he had an interest. He did not see any problem doing that since he felt that he was only forwarding requests for meetings.

It is usually permissible for an MLA or Cabinet Minister to arrange meetings between any of his constituents and government officials (including Cabinet Ministers). But there are some exceptions.

One of the exceptions is when the meeting involves the private interest of the MLA or Cabinet Minister. The business interests of the MLA or Cabinet Minister clearly fall into the category of “private interest.”

This exception exists because even if there is no actual influence being exercised by the MLA or Cabinet Minister, the perception is there of a conflict of interest and of furthering one’s private interest. It comes back to elected members being required to perform their duties in a way that promotes public confidence in each member’s integrity.

On April 26, 2004, Chris Lalonde, as the Executive Assistant to Mr. Simailak (who was then the Minister of Economic Development and Transportation and Minister of Energy) sent an email to Warwick Wilkinson. As I have previously noted, Mr. Wilkinson was the General Manager of Piruqsajit Ltd., which is the management arm of several of the businesses in which Mr. Simailak had an interest, and the Secretary-Treasurer of some of the businesses in which Mr. Simailak had an interest.

The email read in part:

“Hi Warwick, ... I spoke to the Minister [meaning David Simailak] earlier today about our involvement in helping set up a dinner meeting for you. Both the Minister and myself have concern in being involved in helping you organize this event as there may be perceived conflict of interest. The Minister suggested that you may want to speak to one of Rankin’s MLAs to see if you can get some assistance in getting this off the ground. I hope you understand our concern....”

Mr. Simailak told me that both he and Mr. Lalonde had a concern about arranging the meeting. In fact, Mr. Simailak said that Mr. Lalonde was the first to express concern, and then Mr. Simailak agreed with him.

When I asked Mr. Simailak what his concern was, he said that he was technically still a shareholder in two of the companies. He said that it could be perceived as a conflict of interest if he arranged the meeting.

I find that Mr. Simailak's concern was valid and that the April 26, 2004 email set out the correct procedure to be followed in such circumstances.

Unfortunately, Mr. Simailak and Mr. Lalande did not always adhere to what was stated in the April 26, 2004 email.

Influence Issue – Mr. Simailak's Own Interest – Emails:

In September 2005, Mr. Lalande was arranging a meeting between representatives of businesses in which Mr. Simailak had an interest and the Minister responsible for Nunavut Housing Corporation. Under the section of my Report entitled "Blind Trust Issue – Facts – Emails," I have already quoted from the September 16, 2005 email Mr. Lalande received and forwarded to Mr. Simailak.

Likewise, I have already quoted from the email which Mr. Wilkinson sent to David Simailak on November 15, 2005.

Later that same day, Mr. Simailak responded to Mr. Wilkinson:

"Will get Chris to see what can be set up for you.... We are all committed to a dinner ... on Monday.... I think the meeting with the Housing [Minister] is the more strategic one so will schedule around that. I think you and David [Oolooyuk, President of Ilagiiktut – one of the companies in which Mr. Simailak had an interest at the time] made the right decision...."

It is evident from the exchange of emails on November 15, 2005 that Mr. Simailak was doing more than simply forwarding requests for meetings (as he told me he was doing). Simailak was also planning to attend the meeting.

I have previously quoted from the email which Chris Lalande sent on November 15, 2005 (with a copy to Mr. Simailak) to the Executive Assistant to the Housing Minister wherein, on behalf of one of the businesses in which Mr. Simailak had an interest, he was arranging a meeting with the Minister responsible for the Nunavut Housing Corporation.

Cabinet Ministers are responsible and accountable for the actions of their Executive Assistants.

On November 17, 2005, Mr. Wilkinson sent an email to Mr. Lalande and to Mr. Simailak which said in part:

"Hello Chris, ... We are looking forward to meeting with the Ministers, you and David [Simailak] next week. Thanks so much for setting them up for us and convey our appreciation to David as well."

As I have earlier noted, on February 16, 2006, Mr. Wilkinson sent an email to Mr. Simailak and to Mr. Lalande indicating that he had arranged a meeting of himself and Mr. Oolooyuk with the

Nunavut Housing Corporation staff. He wanted either Mr. Simailak or Mr. Lalande to arrange a meeting with the Minister responsible for the Nunavut Housing Corporation while they were in Iqaluit.

Influence Issue – Mr. Simailak’s Resignation from Cabinet:

Premier Paul Okalik found out about 3 of the emails in December 2007, before the Standing Committee had received the binders of emails which are contained in Exhibits A and B.

The 3 emails in particular are:

1. the September 2005 exchange wherein a meeting was being arranged between representatives of companies in which Mr. Simailak had an interest and the Minister responsible for Nunavut Housing Corporation.
2. the November 2005 exchange wherein meetings were being arranged between representatives of companies in which Mr. Simailak had an interest and the Minister of Housing and the Minister of Community and Government Services.
3. the February 2006 exchange wherein a meeting was being arranged between representatives of companies in which Mr. Simailak had an interest and the Minister of Housing.

As soon as the Premier found out about those emails, he asked for Mr. Simailak’s resignation as a Cabinet Minister.

Mr. Simailak, who was Minister of Finance at the time, was enroute to a meeting in Ottawa of Finance Ministers when he received the Premier’s request to resign.

Mr. Simailak phoned the Integrity Commissioner. Mr. Simailak told me that the Integrity Commissioner agreed with the Premier’s position that Mr. Simailak was wrong to get involved in arranging those meetings since they involved companies in which Mr. Simailak had an interest.

Mr. Simailak told me that he still does not think that he did anything wrong in arranging those meetings. But because the Integrity Commissioner agreed with the Premier’s position, Mr. Simailak resigned from Cabinet on December 11, 2007.

Mr. Simailak did not continue on to the Finance Ministers’ meeting in Ottawa.

The Premier told me that he asked for Mr. Simailak’s resignation because he would not allow personal private interests to interfere with Ministerial duties.

The Premier did say that it was permissible for an MLA – even a Minister – to arrange meetings. But the moment the member’s personal interest is involved, arranging meetings is no longer permitted.

The Premier told me that any meetings that were being arranged through Mr. Simailak and Mr. Lalande which involved Mr. Simailak's business interests should have been arranged through another MLA. That is exactly what Mr. Lalande told Warwick Wilkinson in his email of April 26, 2004.

Influence Issue – Mr. Simailak's Own Interest – Analysis:

The April 26, 2004 email from Chris Lalande to Warwick Wilkinson set out the correct procedure.

But by September 16, 2005 and in the months that followed, that procedure was no longer being followed. Instead, both Mr. Lalande and Mr. Simailak were active in arranging meetings between representatives of businesses in which Mr. Simailak had an interest and Government of Nunavut officials.

When I asked Mr. Simailak what the difference was between April 2004 and September 2005, his response to me was:

1. "I felt there was no conflict in forwarding requests for meetings."
2. "While I was a Cabinet Minister, I never asked Mr. Lalande why he thought it was now alright to arrange these meetings."

Mr. Simailak told me that he did not know why Mr. Wilkinson did not follow the route of going through another MLA, as he was advised to do by Chris Lalande on April 26, 2004.

In his written response to Mr. Tootoo's Affidavit containing the allegations, Mr. Simailak says:

"I was informed some time after I resigned as Minister [in December 2007] by [Mr. Lalande] ... that he had had a telephone conversation with the former Integrity Commissioner regarding unsolicited emails requesting arranging meetings, etc. The former Integrity Commissioner directed him to forward the emails to appropriate departments. [Mr. Lalande] had apparently had the same conversation with the former Integrity Commissioner during the previous Nunavut Government [and] was given the same direction."

Mr. Lalande resigned as Mr. Simailak's Executive Assistant in November 2007. I was unable to locate Mr. Lalande to interview him.

The Honourable Robert Stanbury had been Conflict of Interest and Integrity Commissioner from 2000 until he retired on March 31, 2008 for health reasons. I did have a brief interview with Mr. Stanbury. I told him what Mr. Simailak's written response said. Unfortunately, Mr. Stanbury was unable to recall any conversations that he may have had with Mr. Lalande concerning that issue.

My observations of Mr. Simailak's comments are:

1. Section 35 of the Act does allow an MLA to obtain written advice from the Integrity Commissioner. As long as all of the material facts are communicated to the Integrity Commissioner in writing and as long as the MLA complies with the

advice of the Integrity Commissioner, no sanction can be imposed against the MLA.

2. The advice which was apparently given to Mr. Lalande by the former Integrity Commissioner, Mr. Stanbury, was all verbal. There was nothing in writing. Therefore, section 35 of the Act cannot be relied upon.
3. Mr. Simailak told me that even after Mr. Lalande told him about his conversation with the Integrity Commissioner, he never consulted with the Mr. Stanbury about the advice that Mr. Lalande was apparently given. I find it strange that Mr. Simailak would not have wanted to have an answer for himself since this was the very issue over which Mr. Simailak had resigned from Cabinet. The Integrity Commissioner was only a phone call away.
4. The verbal advice was apparently given in the context of unsolicited emails. Not all of the emails that I have commented upon could be classified as “unsolicited.”
5. I doubt very much that the facts given to the former Integrity Commissioner by Mr. Lalande included reference to the involvement of the Minister’s business interests.
6. Mr. Simailak told me that in April 2004, Mr. Lalande expressed concern about arranging meetings with government officials. The prior Government of Nunavut was before April 2004. Therefore, if the statement in Mr. Simailak’s written response is true that “[Mr. Lalande] had apparently had the same conversation with the former Integrity Commissioner during the previous Nunavut Government [and] was given the same direction,” why would Mr. Lalande have had a concern in April 2004 – which was **after** the prior Government of Nunavut – about arranging such meetings?
7. Thus, I do not believe that the former Integrity Commissioner said that it was alright for Mr. Simailak and Mr. Lalande to do what they were doing in September and November 2005 and in February 2006 to arrange such meetings.
8. Mr. Simailak did not find out until after he resigned as a Cabinet Minister in December 2007 about the conversation that took place between Mr. Lalande and the former Integrity Commissioner. Yet even though Mr. Lalande was the first one to raise the concern, Mr. Simailak also agreed in April 2004 with the concern.
9. Mr. Simailak never gave me a believable reason as to why he changed his own opinion between April 2004 and September 2005.

As I noted earlier in my Report, on March 6, 2006, Mr. Wilkinson sent an email to Mr. Simailak and to Tagak Curley, MLA for Rankin Inlet North. The relevant portions of this email read as follows:

“Good morning David and Tagak, I want to keep you informed on the status of the issues raised at a meeting with [Nunavut Housing Corporation] on our recent visit to Iqaluit. Accordingly, I have attached a letter that you will receive in the next few days and response

we received from [Petroleum Products Division]. Below is a copy of an email sent to Hon. Levinia Brown in her capacity as Minister for Petroleum Products Division. Any assistance or advice you can offer in this regard will be greatly appreciated.”

From the evidence that I have before me, there is nothing improper about the above email being sent to Mr. Curley and asking for his assistance and advice. Mr. Curley would have been free to assist and advise.

But the email should not have been sent to Mr. Simailak. He was not free to assist and advise because of his relationship with the companies involved.

Mr. Simailak acknowledged to me that Mr. Wilkinson was asking for his assistance. He told me that Mr. Wilkinson probably thought that Mr. Simailak could help him. Mr. Simailak told me that he never responded to him.

Mr. Simailak told me that he never talked to Ms. Brown. He said that it would be a conflict if he tried to influence her decision because he was a shareholder in some of the companies involved.

I have no evidence that Mr. Simailak did directly try to help Mr. Wilkinson. But one wonders why Mr. Wilkinson was spending his time asking for Mr. Simailak’s help if he did not think that Mr. Simailak could help him. Just the fact that Mr. Simailak, as a Cabinet Minister, was involved in the discussions could give the perception that he was influencing decisions that affected his own business interests.

In fact, there was an email exchange between Mr. Simailak and Mr. Wilkinson on October 23, 2006. Mr. Wilkinson updated Mr. Simailak on some issues involving Mr. Simailak’s business interests. Part of Mr. Simailak’s response said:

“Wish I could help you openly.”

When I asked Mr. Simailak what he meant by that, he said it was just a wish. When I pointed out to him that he could have expressed his wish without using the word “openly” and asked him what the addition of that word meant, he said he did not know.

While Mr. Simailak’s first language is Inuktitut, he admitted to me that he has no problem reading, writing and understanding English.

The Oxford Dictionary describes “openly” as meaning “without concealment, publicly.” By the time that Mr. Simailak used that word in his email to Mr. Wilkinson, he had been a Cabinet Minister for over 2.5 years. Was Mr. Simailak helping his business associates behind the scenes? While I am suspicious, I have no evidence that he was, other than what he expressed in some of the emails to which I refer in my Report.

Influence Issue – Another Person’s Interest – Emails:

On April 2, 2007, David Simailak sent an email to Alex Campbell, who was then Deputy Minister of Economic Development and Transportation. At the time, Mr. Simailak was the Minister of Economic Development and Transportation and therefore Mr. Campbell’s boss.

The email read as follows:

“Please give John Todd a call regarding the prospect of him doing some contract work for the department. I’d like him to do some stuff on infrastructure/transportation related issues.”

John Todd was a former MLA and former Finance Minister in the Northwest Territories Government before Nunavut formally existed. Mr. Tootoo alleges in his affidavit that Mr. Todd is a business associate of Mr. Simailak. Mr. Simailak denies that. But Mr. Simailak told me he and Mr. Todd have known each other for thirty years.

Mr. Simailak told me that he **was** trying to influence his own Deputy Minister to hire Mr. Todd. In fact, Mr. Simailak said to me “What’s wrong with that.”

The Deputy Minister wrote back to Mr. Simailak:

“Yes, I will call John Todd to advise him that the Department will be issuing the standard request for proposals from interested individuals and consulting firms to provide certain services to the department through the course of the fiscal year 2007/2008. We will then follow up with him to engage his services on infrastructure and transportation related issues as you have indicated below.”

On April 3, 2007, Mr. Simailak then forwarded the Deputy Minister’s email to Mr. Todd with the accompanying note:

“done. Hope you and Alex can work out the numbers.”

Mr. Todd replied to Mr. Simailak the same day by saying:

“We will don’t worry.”

Influence Issue – Another Person’s Interest – Analysis:

Section 10 of the *Integrity Act* does not just prohibit an elected member from using his office to seek to influence a decision so as to further that member’s own private interest. That section also prohibits an elected member from trying to influence a decision that would improperly further another person’s private interest.

It is obvious from the Deputy Minister’s response, that there is a procedure to be followed when someone, such as Mr. Todd, wants to do work for the Government of Nunavut. That procedure includes responding to a request for proposals – or as some would say “an RFP.” Since Mr. Todd was a former MLA, he may have known the procedure. If he did not, he could have asked Mr.

Simailak what it was. Then Mr. Todd could have contacted the Department of Economic Development and Transportation himself. Mr. Simailak should not have done anything more than advise Mr. Todd what the correct procedure was.

Having a Cabinet Minister telling his Deputy Minister that he wants a certain person to do some work for his Department is improper. It is a violation of section 10 and is not saved by section 12 of the Act. Ministers always wear the cloak of ministerial responsibility. There is no way that their actions can be considered by the Deputy as other than actions by a Minister, and thus can reasonably be considered as attempting to influence a decision.

Mr. Simailak told me that John Todd ended up working as a consultant for the Department of Economic Development and Transportation. But that is immaterial to the issue. Section 10 was violated regardless of whether Mr. Todd ended up working for the Department. The mere attempt by Mr. Simailak to influence his Deputy Minister was wrong.

Influence Issue – Conclusion:

I find that Mr. Simailak contravened Section 10 of the Act in two ways:

- 1) by improperly making arrangements for meetings with government officials – either directly himself or through his Executive Assistant, and
- 2) by urging a Deputy Minister to hire a friend of his.

I am dealing only with emails. I do not know what arrangements were being made by telephone. But the same principles apply, regardless of what means of communication is used.

Conflict of Interest Issue:

I have already referred to various emails that concerned Mr. Simailak’s business interests.

Section 8 of the Act states that:

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

Just the fact that Mr. Simailak, as a Cabinet Minister, was involved in the discussions can give the perception that he was influencing decisions. Some of those decisions affected his own business interests. One decision at least involved the hiring of a friend of his to work for his own Ministry.

Accordingly, I find that David Simailak violated section 8 of the Act.

Corporate Directorship Issue:

As I have already stated, in February 2005 – 11 months after he became a Cabinet Minister, it was discovered that David Simailak was still shown as a director of one of his corporations.

Section 16 (1) (d) of the Act prohibits a Cabinet Minister from holding a directorship in a corporation, subject to certain exceptions, none of which apply here.

Mr. Simailak knows that he could not be a corporate director while he was a Cabinet Minister.

At the time of his election to the Legislative Assembly, Mr. Simailak was President and sole director of The Land Store (1991) Ltd. He was in the process of selling it to another company in which he had an interest.

Mr. Simailak told Mr. Avery, his Trustee, about the positions that he held with The Land Store (1991) Ltd. Mr. Simailak assumed that his Trustee was looking after all of the necessary corporate changes.

Mr. Avery knew that Mr. Simailak was a director of The Land Store (1991) Ltd. Mr. Avery thought that the lawyer for the corporation was looking after making the changes.

It appears that Mr. Simailak had been removed as President, but not as director, of The Land Store (1991) Ltd. He was eventually removed as a director as well.

I find that the failure to remove Mr. Simailak as a corporate director in a more timely fashion was an oversight on someone's part. Therefore, while I find that technically there was a violation of section 16 (1) (d) by Mr. Simailak, it was inadvertent.

Summary of Conclusions:

To summarize, I have found that Mr. David Simailak, Member of the Legislative Assembly for Baker Lake, has contravened the following areas of the *Integrity Act*:

1. The blind trust provisions of the Act;
2. The influence provision of the Act;
3. The conflict of interest provisions of the Act; and
4. The provision that prohibits a Minister from holding a corporate directorship.

Mr. Simailak told me that he never thought that all of the emails contained in Exhibits A and B would be discovered. Fortunately, through the diligence of the Standing Committee on Government Operations and Accountability, the emails were exposed.

I commend the Premier for acting quickly once he found out about the 3 inappropriate emails. Such swift action helps to maintain integrity and confidence in the government.

Sanctions - Generally:

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

- a) no sanction;
- b) the member be reprimanded;
- c) the member publicly acknowledge his conduct;
- d) the member undertake such remedial action as may be directed, including paying compensation;
- e) the member pay a fine not exceeding \$ 10,000.00;
- f) the member's right to sit and vote in the Legislative Assembly be suspended for a period of time;
- g) the member's seat be declared vacant;
- h) any other sanction that I consider appropriate.

Mr. Simailak's conduct which I have outlined in this Report was totally unacceptable, both as an MLA and as a Cabinet Minister.

The question is what sanction or sanctions I should recommend that the Legislative Assembly impose.

Sanction for Still Being Corporate Director:

I will deal first with the fact that Mr. Simailak was still a corporate director when he was a Cabinet Minister. As I have already said, even though this violates section 16 (1) (d), I find that it a technical breach and that it was inadvertent on the part of Mr. Simailak.

Section 47 (1) (b) states that:

“The Integrity Commissioner shall recommend that no sanction be imposed if the Integrity Commissioner finds ... that there has been a contravention of this Act but the contravention was ... committed through inadvertence....”

Accordingly, for his contravention of section 16 (1) (d), I recommend that no sanction be imposed on Mr. Simailak.

Sanctions for Violating the Blind Trust, Influence and Conflict of Interest Sections of the Act:

I will now deal with the remaining contraventions of the *Integrity Act* as one group.

Section 2 (a) of the Act states:

“Integrity is the first and highest duty of elected office.”

The Honourable Coulter Osborne, a former Integrity Commissioner in Ontario, stated in his Annual Report to the Ontario Legislature in July 2007:

“Ethics and integrity remain at the heart of public confidence in government.”

We are not talking about just one occasion where Mr. Simailak was given information about his business interests or one email in which he tried to use his influence improperly or one time when he had a conflict of interest.

We are talking about numerous occasions commencing in February 2005 and ending in June 2007 – a time span of over 2 years!

One of the most severe sanctions that I can recommend would be to declare Mr. Simailak’s seat vacant. Some people might think that that is appropriate, considering the number of occasions on which Mr. Simailak contravened the *Integrity Act*.

On other hand, some might think that Mr. Simailak has been punished enough because:

1. He lost his position and stature as a Cabinet Minister; and
2. He and his family have already suffered public embarrassment through the media and by other means, both in his own community of Baker Lake and throughout the Territory of Nunavut.

A Territorial election will be held on October 27, 2008. I hope that the Legislative Assembly will consider this Report at the Fourth Session of the Second Legislative Assembly which reconvenes on September 9, 2008.

As I have stated, Section 4 (b) of the Act requires that each elected member is to “act in a manner that will bear the closest public scrutiny.” If Mr. Simailak decides to be a candidate in the October election, his constituents should be made aware of this Report and they can then decide whether they want him to represent them in the Third Legislative Assembly.

I am mindful that Mr. Simailak’s Blind Trust Agreement did not specifically state that Mr. Simailak could not be given information about his businesses by people such as Mr. Wilkinson.

If Mr. Simailak’s Blind Trust Agreement had contained the wording that expressly prohibited him from receiving any information about his business interests, I would be recommending more severe sanctions than what I am recommending in this Report.

This is the third review that has been done under the *Integrity Act* of Nunavut. However, it is the first review involving the specific issues of blind trust, influence and conflict of interest.

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

1. David Simailak shall be reprimanded by the Legislative Assembly.
2. David Simailak shall make a statement in the Legislative Assembly acknowledging his wrongful conduct; apologizing to his peers, his constituents and all of Nunavummiut, and promising to fulfil faithfully in the future his commitments under the *Integrity Act*.
3. If Mr. Simailak fails to fulfill the requirements of sanction 2 within two sitting days after the Legislative Assembly's acceptance of these recommendations, his right to sit and vote in the Legislative Assembly shall be suspended without indemnity or allowance until such requirement has been fulfilled.
4. If David Simailak decides to be a candidate in the October 2008 Territorial election, he shall, within 20 days after the Legislative Assembly's acceptance of these recommendations, deliver to every household in his constituency a letter
 - (a) acknowledging his wrongful conduct, apologizing to his constituents and promising to fulfil faithfully in the future his commitments under the *Integrity Act*; and
 - (b) informing his constituents of this Report and its availability on request through the Office of the Legislative Assembly and on the Integrity Commissioner's website, including providing the website address.

and certify to the Clerk of the Legislative Assembly in writing within 25 days after the Legislative Assembly's acceptance of these recommendations that he has done so.

5. If Mr. Simailak fails to fulfill the requirements of sanction 4, and if he is re-elected in the October 2008 Territorial election, his seat in the Third Legislative Assembly shall immediately be declared vacant.
6. David Simailak shall pay a fine of Five Thousand Dollars (\$ 5,000.00).

Further Recommendations:

1. I recommend that all trust agreements made pursuant to sections 14 (8), 16 (2) or 17 (3) should include provisions similar to the following:
 - a) "the elected member shall not take any action to obtain, and shall take appropriate action to avoid receiving, any information with respect to his or her businesses."

- b) “the elected member shall not knowingly and wilfully, or negligently, solicit or receive any information that may not be properly disclosed to the elected member pursuant to the provisions of the *Integrity Act*.”
- 2. I recommend that the incoming members of each new Assembly, commencing with the Third Legislative Assembly, be briefed by the Integrity Commissioner on the provisions of the *Integrity Act*.
- 3. I recommend that all senior public servants and Ministerial political staff be briefed by the Integrity Commissioner on the provisions of the *Integrity Act*.

Respectfully submitted,

Norman B. Pickell
Acting Integrity Commissioner

September 8, 2008