



**Legislative Assembly of Nunavut**

**REPORT TO THE SPEAKER**

**RE: MR. DAVID SIMAILAK, M.L.A.**

**JANUARY 3, 2008**

**The Honourable Robert Stanbury, P.C., Q.C.**

**Integrity Commissioner**

**RE: MR. DAVID SIMAILAK, M.L.A.**

**Review**

On December 19, 2007, I commenced a review of the admitted contravention of section 5(2) (d) of the *Integrity Act* (the Act) by Mr. David Simailak, Member of the Legislative Assembly for Baker Lake (“the Member”)

**Authority**

The authority for such a review is found in sections 36 and 40(1) of the Act. By section 36, any responsible complainant may request one; section 40(1) adds the possibility that one may be undertaken at the Integrity Commissioner’s own initiative.

36. (1) Any person, including a member, 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.

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

(3) A request under subsection 1 must be supported by 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, 37 or 38 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.

Any initiation of a review, which can have serious consequences in terms of reputations and costs, must be based on a well-founded belief that a contravention of the Act has occurred and it requires a conscientious exercise of discretion by the Integrity Commissioner. The Act anticipates that the primary source of a review will be a request from the public or a fellow-Member of the Assembly (the *only* source in some jurisdictions), with initiation by the Integrity Commissioner as a secondary alternative. This is consistent with the Integrity Commissioner’s prime function being to advise Members individually and collectively and guide their compliance with the law. This office is neither police nor prosecutor, and its role in enforcement is adjudicative not accusatory. It has been compared with that of a priest or pastor. Perhaps it is more comparable with a coach or elder. A collaborative relationship between Member and Integrity Commissioner is encouraged and it should not be lightly inhibited by a shift to an adversarial context. However, on deliberation I concluded that in this case of an admitted, clear-cut, significant breach of the Act, it would be in the interest of the Member, the Assembly and the public that the Assembly have an opportunity to render judgment. I therefore exercised my discretion to commence a review on my own initiative.

## **Facts**

The Member has admitted publicly, and confirmed to me in the course of this review, that since his election he had omitted listing in his Annual Public Disclosure Statements, as he was obliged to do under section 5(d) of the Act, a subsidiary of a private company in which he and his family had an interest.

The Member informed the Committee of this interest during hearings of the Standing Committee on Government Operations and Accountability in November, 2007. At that time the Member had consulted me on ways in which he might strengthen the safeguards against any potential conflict between his private interests and his public duties as a Minister. 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. These consultations continued until the Member resigned from Cabinet on December 7, 2007. Attention was then turned to the discrepancy between the Member's annual disclosure statements and his committee evidence, *i.e.* identification in the Committee of an interest the Member had not disclosed in his Annual Public Disclosure Statements. On December 19, 2007, I informed him that I had initiated this review.

The Member undertook to file with the Clerk of the Legislative Assembly a corrective statement and on January 2, 2008, he filed by fax a new Annual Public Disclosure Statement dated December 20, 2007, with a covering letter dated December 29, 2007, correcting and supplementing information previously disclosed, and for the first time listing Kangiqliniq Developments Ltd. as a subsidiary of Ilagiiktut Ltd. He explained, as he represented to me in the course of this review, that in previous disclosures he had inadvertently entered the name of a Rankin Inlet building owned by Kangiqliniq Developments Ltd. instead of the name of that company, with no intention to deceive.

## **Issues**

The issues to be determined in this review are: (1) whether or not the Member contravened the Act by failing to identify a subsidiary of a private company in which he held an interest and (2) if so, what sanction or sanctions if any might be appropriate in the circumstances.

## **Analysis**

Openness is a fundamental feature of the Act. Disclosure is the essential means by which potential conflicts between private and public interests can be identified and avoided or actual conflicts corrected. Every Member is accountable for full and accurate disclosure so that his or her integrity, objectivity and impartiality can be fairly judged.

3.

The Member admits that he failed on four occasions to fulfill his obligation of disclosure. He pleads that his failure was the result of honest error and his explanation is plausible. I am prepared to accept the Honourable Member's word that his failure was inadvertent and not deliberate. Nevertheless, it left incomplete and inaccurate the record on which the public is entitled to rely.

In keeping with Inuit tradition, if he takes public responsibility for this error and seeks the pardon of his peers and his people, he might re-establish the trust which earned his election as a Member and a Minister.

### **Disposition of Report**

The Act prescribes that the report of a review be dealt with as follows:

44 (1) If a request for a review is made under section 36 or 37 or if the review is made on the Integrity Commissioner's own initiative, the Integrity Commissioner shall make his or her report to the Speaker.

(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 or, if the Legislative Assembly is not sitting, cause the report to be laid before the Legislative Assembly within the first ten sitting days of the next sitting.

(3) If the Legislative Assembly is not sitting, the Integrity Commissioner shall also give a copy of the report to the Clerk who shall give a copy of the report to all members.

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.

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

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

(a) accept all 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.

**Conclusion and Recommendations**

I find that Mr. David Simailak, Member of the Legislative Assembly for Baker Lake, has contravened the *Integrity Act* by failing to disclose the name of a subsidiary of a private company in which he had an interest, as required by section 5(2)(d) of the Act, in his Annual Public Disclosure Statements of 2004, 2005, 2006 and 2007, thereby depriving Nunavummiut of timely and accurate information to which they are entitled.

I recommend that the Assembly impose on the Member the following sanctions:

1. The Member shall be reprimanded by the Assembly.
2. The Member shall make a statement in the Assembly acknowledging his wrongful conduct; apologizing to his peers, his constituents and all Nunavummiut, and promising to fulfill faithfully in future his commitments under the *Integrity Act*.
3. If the Member has failed to fulfill the requirement of sanction 2 within 10 sitting days after the Assembly's acceptance of these recommendations, his right to sit and vote in the Assembly shall be suspended without indemnity or allowance until such requirement shall have been fulfilled.

Respectfully submitted,



The Honourable Robert Stanbury, P.C, Q.C.,  
Integrity Commissioner

January 3, 2008

