



Legislative Assembly of Nunavut

ANNUAL REPORT 2016–2017

OFFICE OF THE INTEGRITY COMMISSIONER

Hon. J.E. (Ted) Richard
Integrity Commissioner
July 2017

Introduction

The office of the Integrity Commissioner of Nunavut was established in 2001 with the enactment of the Integrity Act by the First Legislative Assembly of Nunavut.

The Integrity Commissioner is an independent officer of the Legislative Assembly, and is appointed by the Commissioner of Nunavut, on the recommendation of the Legislative Assembly, for a term of five years. The main role of the Integrity Commissioner is to assist the members of the Legislative Assembly (MLAs) in fulfilling their commitment to always serve the public interest, to act with integrity, and to avoid any contravention of the Integrity Act.

The Act requires the Integrity Commissioner to report annually to the Speaker and to the Legislative Assembly on his/her activities. By an amendment to the Act in March 2017, the annual report is now required to contain information of these activities for the previous “fiscal year”. What follows is my report for the period April 1, 2016 to March 31, 2017. (There is, accordingly, an overlap with my previous report which covered the period September 9, 2015 to September 8, 2016.)

The Integrity Act

It can fairly be stated that Nunavut's Integrity Act was put in place many years ago to ensure that members of the legislature "always adhere to the highest standard of ethics as they go about the people's business". The focus of the statute is the need to keep public responsibilities ahead of private interests. It reflects what Nunavummiut want and expect from their elected representatives. It promotes **public** confidence in elected **public** officials as they conduct **public** business.

The founding principles of the Integrity Act are as follows:

- a) integrity is the first and highest duty of elected office;
- 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, that maintains the Legislative Assembly's dignity and that justifies the respect in which society holds the Legislative Assembly and its members;
- c) the members of the Legislative Assembly are committed, in reconciling their public duties and private interests, to honour that expectation with openness, objectivity and impartiality, and to be accountable for so doing; and
- d) the Legislative Assembly can serve the people of Nunavut most effectively if its members come from a spectrum of occupations and continue to participate actively in the economic and social life of the community.

Nunavummiut expect their MLAs to act with openness, objectivity and impartiality. The MLA's duty to act in the public interest supersedes the MLA's private interest.

The Integrity Act describes the MLA's ethical obligations in these general terms:

- (a) perform his or her duties of office and arrange his or her private affairs in such a manner as to maintain public confidence and trust in the integrity, objectivity and impartiality of the member;
- (b) refrain from accepting any remuneration, gift or benefit, the acceptance of which might erode public confidence and trust in the integrity, objectivity or impartiality of the member, and in all other respects act in a manner that will bear the closest public scrutiny;
- (c) arrange his or her private affairs in conformity with the provisions of the Act and act generally to prevent any conflict of interest from arising; and
- (d) make all reasonable efforts to resolve any conflict of interest that may arise in favour of the public interest.

The goal of most of the provisions in the Act is to minimize the possibility of conflicts arising between public and private interests. The Act imposes certain specific obligations and prohibitions upon each elected MLA, e.g.:

- obligation to periodically file a Public Disclosure Statement, describing the member's assets, liabilities, sources of income, etc.

- prohibition against receipt of “additional” remunerations, gifts or benefits connected to the performance of the member’s duties of office
- prohibition against contracting with the Government of Nunavut (GN) or any of its public agencies
- avoiding, and declaring, any conflict of interest
- prohibition against improper use of insider information
- prohibition against exercising improper influence
- prohibition against improper lobbying

Role of the Integrity Commissioner

The Integrity Commissioner is appointed by the Commissioner of Nunavut, on the recommendation of the Legislative Assembly. I was appointed on September 9, 2013 for a term of five years.

The Integrity Commissioner is an independent officer of the Legislative Assembly and cannot be removed from office except for cause or incapacity. He or she is responsible for impartially administering the Integrity Act. He or she has taken an oath to perform the duties of the office impartially and not to disclose any confidential information or advice except in accordance with the Integrity Act. Decisions made by the Integrity Commissioner are not subject to any appeal.

The main role of the Integrity Commissioner is to help members understand their obligations under the Integrity Act and to provide guidance to prevent conflicts of interest from arising and to properly deal with those conflicts that do arise. The Integrity Commissioner is an important resource for the MLAs. This advisory

role is considered to be the most important function of the Integrity Commissioner.

Each member is required to meet with the Integrity Commissioner within ninety days of his or her election, and annually thereafter. The main purpose of the meeting is to review the contents of the member's Public Disclosure Statements, and to obtain advice on the member's general and specific obligations under the Integrity Act. Between the dates of these meetings, a member can consult with the Integrity Commissioner at any time to obtain advice on the member's obligations under the Act.

Public Disclosure Statements

All 22 MLAs filed their annual Public Disclosure Statements (Form 1) prior to the deadline of January 31, 2017.

The contents of the Form 1 Public Disclosure Statement are prescribed in the Act, and in addition to assets, liabilities, incomes, contracts, shareholdings, etc, include details of any activity which is otherwise prohibited but which has been authorized by the Integrity Commissioner pursuant to the Act.

During the past year, members filed a Supplementary Disclosure Statement (Form 2) or a Disclosure Statement of Gifts and Personal Benefits (Form 3), when required by the Integrity Commissioner or on the member's own initiative. All of these filed public disclosure statements are available for examination by members of the public at the Office of the Clerk of the Legislative Assembly.

Annual Meetings with Integrity Commissioner

I met in person with each of the 22 individual MLAs in the period May 30–June 3, 2016 in Iqaluit during the Spring sitting of the Legislative Assembly. During these one-on-one meetings we had an opportunity to review the contents of their most recent public disclosure statements, their specific and general obligations under the Act, and I was available to respond to any queries the individual member had regarding those personal obligations. Thus, each MLA complied with the statutory requirement to meet annually with the Integrity Commissioner during the past fiscal year.

My meetings and discussions with the individual MLAs are confidential in nature.

Advisory Role: A Preventative Approach

As stated earlier, any MLA can at any time consult with the Integrity Commissioner to obtain advice or guidance on his or her obligations under the Integrity Act. The consultations, and the advice given, whether verbal or in writing, are confidential, subject to a few specific exceptions. The MLAs are encouraged by me to seek advice before acting. By availing themselves of the advice and guidance of the Integrity Commissioner, they can effectively avoid conflicts of interest or other contraventions of the Integrity Act from arising, and avoid any later formal investigation. A pro-active preventative approach is preferable.

During the past fiscal year, members did not hesitate to avail themselves of the advice of the Integrity Commissioner, particularly

in advance of an action or activity being contemplated by the member, an action or activity that the member believed might possibly constitute a contravention of the Integrity Act. Most of these consultations were by e-mail, some by telephone, some in person. Many of these consultations were brief, e.g., a 10 minute telephone call, or a short exchange of email communications; whereas others were ongoing, with an exchange of information, lengthy correspondence and advice continuing for days or weeks. I have been able to respond to members' queries on a timely basis.

As in previous years, topics on which members sought advice were varied: possible conflict of interest (sections 8 and 15 of the Act); special restrictions on Ministers' outside activities (sections 16–17); specific information to include/not include in public disclosure statements (section 5 and Forms 1, 2 and 3); prohibition against receipt of additional remuneration, gifts or benefits connected to the performance of the member's duties of office (section 13), and prohibition against contracting with the Government of Nunavut or its public agencies (section 14). The two categories of advice which occupied the most of my time as Integrity Commissioner during the past fiscal year were a) the additional restrictions placed on Ministers' outside activities, and b) possible conflict of interest situations.

I am pleased to report that, without exception, all of the members accepted (eventually) and followed the advice and recommendations of the Integrity Commissioner during the past fiscal year.

I reiterate that my communications with the individual MLAs in carrying out this advisory function are confidential in nature.

Inquiry Role: Formal Investigations

As stated earlier in this Report, the main role of the Integrity Commissioner is an advisory one, i.e., assisting the MLAs to understand their obligations under the Integrity Act and providing guidance to avoid conflicts arising between public and private interests. While the focus is on prevention, the Integrity Commissioner also has an investigative role under the Act, i.e., to determine whether an MLA has contravened the Act.

Allegations of an MLA's misconduct (i.e., a contravention of a specific provision of the Integrity Act) are received by the Integrity Commissioner and investigated and reported upon pursuant to a process detailed in sections 36–45 of the Act.

Any member of the public, including another MLA, can request that the Integrity Commissioner review an alleged contravention of the Integrity Act by an MLA. There is a class of senior public officials who are excluded from initiating a review by the Integrity Commissioner. These officials are listed in subsection 36(1.1) of the Act. The Legislative Assembly itself can, by resolution, request a review by the Integrity Commissioner. The Premier can request a review with respect to a Minister. The Integrity Commissioner can also conduct a review on his own initiative.

The request for a review by the Integrity Commissioner is made in writing, sets out the alleged contravention, the grounds for

believing that the contravention occurred, and is supported by an affidavit of the person making the request. Upon receipt of the request the Integrity Commissioner gives notice to the affected MLA, and commences the review as soon as practicable. The Integrity Commissioner has a discretion to conduct the review in private or in public. The Integrity Commissioner is to make his or her report within 90 days of commencing the review, although there is provision for an extension of time in appropriate circumstances.

Following the review, the Integrity Commissioner will make a determination whether the MLA has contravened the Integrity Act, and, if so, the Integrity Commissioner can recommend one or more sanctions to the Legislative Assembly.

I am pleased to report that there were no instances in the past fiscal year which required me to formally open a file to investigate alleged improper conduct of an MLA, i.e., an alleged contravention of the Integrity Act.

In the sixteen years since the introduction of the Integrity Act in Nunavut, there have only been six occasions when the Integrity Commissioner was required to commence a formal review of any alleged contravention of the Act, and none in the past five years. This speaks well of the current culture of integrity, and ethical behavior by our democratically elected representatives, in Nunavut's Fourth Legislative Assembly.

Other Assignments Requested by Management and Services Board

In addition to the statutory duties of the Integrity Commissioner described earlier in this Report, subsection 24 (2.1) of the Integrity Act provides further:

24(2.1).The Integrity Commissioner may undertake any assignment the Integrity Commissioner considers appropriate that is requested by the Legislative Assembly or the Management and Services Board.

- **Executive Assistants and Executive Secretaries**

The Management and Services Board (MSB) has given an additional assignment to the Integrity Commissioner in relation to the personal staff employed by each Minister of the Government of Nunavut (GN), i.e., executive assistants(EA) and executive secretaries (ES).

Each EA and ES, upon commencement of employment, signs a written contract with his or her Minister and the GN. In addition to the usual employment terms regarding duties, compensation and other benefits, there are provisions regarding conflict of interest. In order to avoid any real or perceived conflict of interest the EA or ES is required to make a confidential disclosure to the Integrity Commissioner within 30 days of commencing employment (and thereafter as appropriate) regarding the employee's business activities, personal holdings and volunteer and related outside activities in which GN policies or funds may be impacted. The contract provides that the Integrity Commissioner is to review the

disclosure and to give direction for resolution of any perceived or actual conflict of interest.

In the past fiscal year, there were only a few occasions on which Ministerial staff made a confidential disclosure to, and/or sought confidential advice from, the Integrity Commissioner pursuant to this arrangement.

- **Deputy Heads**

Prior to 2014, Deputy Heads of government (Deputy Ministers and other senior government officials) were required to annually disclose in a confidential report to the Premier a statement of any current business activities or personal holdings or investments that may represent a conflict of interest, as well as volunteer or community positions or businesses pursued without remuneration. It was then for the Premier to determine whether any activities or holdings were in conflict with the Deputy Head's obligations to the Government of Nunavut, and to take action where necessary.

In 2014, the Premier, the Honourable Peter Taptuna, requested the Management and Services Board (MSB) to authorize the Integrity Commissioner to take on an additional assignment in connection with these confidential disclosure statements. Under this assignment, authorized by the MSB in September 2014, the Premier can request that the Integrity Commissioner review and assess these confidential disclosure statements that are submitted to the Premier's office by the Deputy Heads. Following such review and assessment in each case, the Integrity Commissioner is to report any matter of concern, in confidence, to the Premier.

I was in receipt (via the Premier's office) of 15 of these signed confidential disclosure statements from Deputy Ministers and other Deputy Heads prior to the deadline of March 31, 2017. At the Premier's request, I did a review and assessment of each of these statements, in the context of any real, perceived or potential conflict of interest. I advised the Premier in a confidential letter of the result of my review in each case.

- **Independent Officers of the Legislative Assembly**

Also in 2014, the Management and Services Board (MSB) of the Legislative Assembly made a determination, with a view to consistency at the most senior level of government, to require the Clerk of the Legislative Assembly, and four Independent Officers of the Legislative Assembly (Languages Commissioner, Information and Privacy Commissioner, Representative for Children and Youth, and Chief Electoral Officer) to submit confidential disclosure statements (with respect to assets, liabilities, sources of income, GN contracts and outside activities) to the Integrity Commissioner for his review. The MSB directed that the Integrity Commissioner then report any findings of concern to the MSB. The format of the confidential disclosure statement adopted is broadly consistent with the format of the public disclosure statement submitted by MLAs pursuant to the Integrity Act.

These annual confidential disclosure statements were received by me directly from four of the individuals by the deadline of January 31, 2017. I sent a confidential letter to the Chair of MSB (the Honourable George Qulaut, Speaker) in each case advising of the

result of my review. The office of the other Independent Officer (Languages Commissioner) was vacant at the time.

Nunavut Elections Act

Subsection 24(2) of the Integrity Act provides:

24(2). The Integrity Commissioner shall perform the duties set out in this Act and the duties assigned to the Integrity Commissioner by any other Act.

Indeed, in the Elections Act, the legislature established a “diversion process” whereby a person charged with an offence under the Elections Act (for example, failure to file a required Financial Return with the Chief Electoral Officer) can avoid a formal prosecution in Court for such a summary conviction offence. This is done by entering into a voluntary Compliance Agreement with the Integrity Commissioner.

This is an assignment given to the Integrity Commissioner by the legislature and is unrelated to, and separate and apart from, the Integrity Commissioner’s main responsibilities under the Integrity Act, discussed earlier in this Report.

During the past fiscal year, there were no new enforcement matters brought to my attention by the RCMP or the Chief Electoral Officer.

Other Inquiries from Public

As in previous years, during this past fiscal year, I received inquiries from the media and other sources regarding the office of the

Integrity Commissioner and its mandate. While respecting the principle of confidentiality referenced earlier in this Report, I provided information and assistance as appropriate.

Interaction with Other Commissioners

As Integrity Commissioner for Nunavut, I belong to a national network of Commissioners with similar mandates in the other northern territories, the provinces, the federal House of Commons and the federal Senate. It is entitled Canadian Conflict of Interest Network, or CCOIN for short. This group of Conflict of Interest Commissioners, Ethics Commissioners and Integrity Commissioners meet annually, usually in September, and keep in close contact throughout the year to share common experiences, challenges and best practices to assist each other with their duties of office. I have benefitted from the vast experience of these colleagues, and am fortunate to have them, individually and collectively, available as important resource persons when needed.

Conclusion

I want to thank all MLAs for their continuing co-operation during the past fiscal year, and for their individual commitment to the principles of the Integrity Act.

And I want to once again express my appreciation to the Clerk of the Legislative Assembly, John Quirke, and his staff for their administrative and general support and assistance to me in carrying out my duties of office.

Respectfully submitted,

Hon. J.E. (Ted) Richard
Integrity Commissioner