



# Legislative Assembly of Nunavut

## ANNUAL REPORT 2018 – 2019 (*Part 2*)

OFFICE OF THE INTEGRITY COMMISSIONER

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Integrity Commissioner  
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## Introduction

The Integrity Commissioner is required to provide an annual report to the Legislative Assembly on the activities of the Integrity Commissioner during the previous fiscal year. The purpose of this report is to inform the legislature -- to whom I am accountable --and all Nunavummiut on the activities of my office from the date of my appointment October 23, 2018 to the end of the fiscal year.

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 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. It also promotes public confidence in and the credibility of the Legislative Assembly as an institution.

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, for example:

- obligation to periodically file a Public Disclosure Statement, describing the member's assets, liabilities, sources of income, etc.
- obligation to meet annually with the Integrity Commissioner to review the member's responsibilities under the Integrity Act
- 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 October 23, 2019 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

Each member is required to file a Public Disclosure Statement (Form 1) within 90 days of his/her election and annually each year thereafter. All 22 members of the Fifth Assembly filed their initial Public Disclosure Statement as requested in the time frame provided by notice to the members.

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 fiscal 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 upon payment of a set fee.

### Annual Meetings with Integrity Commissioner

Members are required under the Integrity Act to meet with the Integrity Commissioner once each year. This meeting can occur in person or by telephone. Meetings with members were scheduled to occur in June 2019 during Session of the Assembly in Iqaluit. The purpose of the annual meeting is to review the contents of the Public Disclosure Statement made by the member and to discuss any other issues or concerns that the member may have. These meetings with the members are confidential so that each member has full confidence to discuss any issues that he or she may have in order to receive appropriate advice and guidance.

### Advice and Guidance for Members

Any elected member of the Assembly 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 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. If a member requests the advice of the Integrity Commissioner in writing, and if the member follows the advice so given by the Commissioner, there can be no complaint or sanction of the member in regard to the activity about which the member sought advice.

During the past fiscal year, members sought 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. At times

members were requested to provide documents or other information which would assist in providing advice. Without exception, members provided information as requested and followed advice which was provided to them. Failure to follow advice sought from the Commissioner can result in the recommendation of sanctions to the member under the provisions of the Integrity Act.

The topics on which members sought advice were varied: possible conflict of interest (sections 8 and 15 of the Act); 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 provision of letters of support or reference for a member or members of the public. The most frequent areas for which advice was sought were the contents of Public Disclosure Statements and activities or circumstances that may give rise to a conflict of interest.

I reiterate that my communications with the individual MLAs in carrying out this advisory function are confidential in nature. The availability of a reliable email connection with members allowed me to provide advice and feedback in a timely fashion.

### Inquiry Role: Formal Investigations

As stated earlier in this Report, the main role of the Integrity Commissioner is an advisory one, namely, 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 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. In addition to an investigation arising from a complaint made in writing to the Integrity Commissioner, the Commissioner may him or herself commence an investigation if a matter has come to the attention of the Commissioner by some other means. The Commissioner has extensive powers granted by the

legislation to compel the provision of documents, information or for a person to attend for the purpose of providing information necessary for the conduct of the investigation.

Any member of the public, can request that the Integrity Commissioner review an alleged contravention of the Integrity Act by an MLA. A complaint made to the Integrity Commissioner which requests that the conduct of an MLA be investigated must be in writing and must be accompanied by a sworn affidavit. This is required by sections 36(2) and (3) of the Integrity Act.

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.

Any report arising from an investigation by the Integrity Commissioner is tabled by the Speaker in the Legislative Assembly once it is in session.

One formal investigation was conducted by me during the period October 23, 2018 to March 31, 2019. The investigation arose as a result of information coming to my attention and not as a result of a formal complaint accompanied by an affidavit. The investigation concerned the conduct of elected member Cathy Towtongie regarding a concern of possible influence or attempted influence of a judicial officer during the course of a court proceeding. The details of the issue are set out in the tabled report. I concluded, based on the information provided by persons directly involved in the matter, that there was no contravention of the provisions of the Act by the elected member.

No formal complaints were lodged with my office during this reporting period.

The existence or lack thereof of a complaint with the Office of the Integrity Commissioner remains confidential unless or until a report arising from such a complaint is tabled in the Legislative Assembly. This assists in ensuring that the complaint process does not become a political tool for improper purposes.

## 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 then 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.

As in recent years, the Premier's office requested the signed confidential disclosure statements. I was in receipt (via the Premier's office) of these signed confidential disclosure statements early in 2019. 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.

#### **· 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 or her 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, 2019. The remaining matter was dealt with by communication directly with the statutory officer respecting any changes or amendments to prior disclosure statements.

## 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.*

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 two outstanding matters to be concluded under this arrangement. In both cases, with the assistance of the Chief Electoral Officer and the RCMP, these matters were concluded by the signing of compliance agreements.

## Other Inquiries from Public

During this past fiscal year, I received inquiries from members of the public regarding the office of the Integrity Commissioner and its mandate and from government departments. While respecting the principle of confidentiality referenced earlier in this Report, I provided information and assistance as appropriate.

## Conclusion

It has been a distinct privilege to work with elected members of the Legislative Assembly, senior staff, deputy ministers and independent officers of the Assembly. I have been deeply impressed with the desire of these individuals to

ensure that their conduct meets the high ethical standards expected of them by the people of Nunavut.

I would also like to sincerely thank the Honourable Justice J.E. (Ted) Richard, the former Integrity Commissioner, for assisting in the transition of this office and for assisting me in commencing my duties as Integrity Commissioner.

Respectfully submitted

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Integrity Commissioner