



Legislative Assembly of Nunavut

ANNUAL REPORT

APRIL 2020-MARCH 2021

OFFICE OF THE INTEGRITY COMMISSIONER

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Integrity Commissioner
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INTRODUCTION

Public confidence in the integrity of elected members is essential to the operation of the Legislative Assembly and the Government of Nunavut as a whole. Nunavummiut expect that elected members, in whom the public has placed their trust, will conduct themselves in a way that puts the public interest before any private interest of the member, and that he or she will not use the office which they have received via the will of the people in a way that benefits themselves, members of their family or other such contacts.

After the creation of Nunavut, the First Legislative Assembly passed the Integrity Act in 2001. The Act affirms in law the commitment of the members of the legislature to always serve the common good and to act with integrity. It establishes a system of standards and accountability for fulfilling that commitment. It creates the position of Integrity Commissioner, an independent officer of the Legislative Assembly. The main role of the Integrity Commissioner is to assist members of the Legislative Assembly (MLAs) in fulfilling their commitment to act with integrity by avoiding any contravention of the Integrity Act.

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 for the previous fiscal year. Accordingly this report details activities during the period April 2020 to March 2021.

In 2020/2021 Canada, Nunavut and the world experienced a global pandemic now known as COVID 19. This pandemic affected every aspect of private and public life, and called upon all Nunavummiut to exhibit strength and cohesion in the face of isolation and adversity. Protocols were developed which altered how individuals carried out work, home and school responsibilities. Many were

required to work from home, and travel into and out of Nunavut was severely restricted in order to protect the well being of all Nunavummiut. Advice and guidance were provided by public health authorities and government leaders.

These circumstances dictated that personal meetings between myself and elected members were not possible, being replaced by telephone conferences and conversations. The less than ideal interactions are hopefully behind us so that more effective and personal exchanges can again occur. I would like to thank all members and staff for their patience and assistance during these trying times.

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 annually file a Public Disclosure Statement, describing the member's assets, liabilities, sources of income, etc.
- obligation to file Supplementary Disclosure Statements or Disclosure Statement of Gifts and Benefits as the circumstances require
- 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, 2018 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 also provides advice regarding gifts and benefits which may be offered to a member, proper activities and appropriate exercise of a member's duties of office and handling of confidential information. 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. As indicated earlier in this report, in person meetings were not possible and telephone meetings had to replace the normal personal interactions. In addition, a member can consult with the Integrity Commissioner at any time to obtain advice on the member's obligations under the Act.

As this is an election year, once newly elected members are sworn into office, I will conduct an orientation with all members concerning their obligations and responsibilities under the Integrity Act.

ACTIVITIES DURING THE APRIL 2020 – MARCH 2021 YEAR

Public Disclosure Statements

All members of the Fifth Assembly filed their initial Public Disclosure Statements. In addition, Calvin Pedersen (Kugluktuk) and Craig Simailak (Baker Lake) filed initial Disclosure Statements within the time allowed for newly elected members. These two newly elected members met with me by telephone to review their statements and to become acquainted with their responsibilities under the Integrity Act.

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. All members submitted their Public Disclosure Statements.

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 appropriate arrangements being made for that purpose.

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. 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.

As stated, in person meetings were not possible during the course of the COVID pandemic. Approximately one half of the members availed themselves of the opportunity to review their disclosure statements by telephone.

This is a statutory obligation under the Integrity Act. Failure by an elected member of fulfil a statutory obligation under this legislation can result in a report to the Assembly and a recommendation for sanction of the member. The circumstances of this year were challenging for all, including elected Members of the Assembly. Because of this exceptional situation, I did not initiate any action regarding a failure of a member to meet with me. However, members are reminded that such latitude will not be exercised in normalized circumstances in the future.

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 that the member believed might possibly constitute a contravention of the Integrity Act. Most of these consultations were by e-mail, some by telephone. 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 to the Assembly 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);
- the requirement to file a Supplementary Disclosure Statement;
- prohibition against receipt of additional remuneration, gifts or benefits connected to the performance of the member's duties of office (section 13);
- prohibition against additional remuneration outside of the member's duties of office, and whether such an activity can be authorized by the Integrity Commissioner as an exception to the general prohibition;
- provision of letters of support or reference for a member or members of the public;
- Involvement in volunteer or community activities;
- The reporting or engagement in duties, travel or token gifts arising from the members' duties of office;

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 or breach of a specific provision of the Act.

I reiterate that my communications with the individual MLAs in carrying out this advisory function are confidential in nature. Neither the request of advice, nor the advice given can be disclosed without the express agreement and consent of the member. This allows for a completely frank and open discussion of issues which the member communicates to the Integrity Commissioner.

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.

The existence or lack 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.

During the course of my tenure as Integrity Commissioner, the elected members have not used the complaint process for political purposes, or self advancement, as occurs in other jurisdictions. Members are to be applauded for their responsible attitudes in this regard and I encourage them to continue in this manner throughout their tenures as elected representatives.

OTHER ASSIGNMENTS REQUESTED BY THE 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 no occasions on which Ministerial staff made a confidential disclosure to, and/or sought confidential advice from, the Integrity Commissioner pursuant to this arrangement. It is likely that this

obligation has been overlooked and Ministers are reminded to ensure that this aspect of employment of executive staff is adhered to and fulfilled.

· **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.

In recent years, I have initiated the request for provision of signed disclosure statements from deputy ministers and heads of public bodies through the deputy minister of the Department of Executive and Intergovernmental Affairs. I was in receipt of these signed confidential disclosure statements early in 2021 representing disclosures for the prior year. Due to the existence of the COVID 19 virus, there was greater latitude extended regarding the provision of Disclosure Statements and the usual time frames for fulfillment of this obligation. I did a review and assessment of each of these statements, in the context of any real, perceived or potential conflict of interest. No concerns arose regarding as a result of this review.

· **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 all of the individuals by the deadline of January 29, 2021 representing activities and financial status during the prior year. The provision of these Statements included statements provided by the newly appointed Officer – the Information and Privacy Commissioner. No concerns arose as a result of my review of these statements. Results of the review of these statements are reported to the Management and Services Board through the Speaker of the Legislative Assembly.

INQUIRIES FROM THE 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.

There continues to be some misapprehensions regarding the jurisdiction and role of the Integrity Commissioner. Understandably, it is often assumed that the Integrity Commissioner has the power or authority to investigate matters that may be described as a complaint or concern regarding ethical conduct generally of an elected member of the Assembly. However, the authority accorded to the Integrity Commissioner is confined to those matters specifically set out in the Integrity Act. These are financial disclosure, conflicts of interest, not using the position of MLA to influence decisions or proceeding by other bodies such as

courts or tribunals, not disclosing or using insider information to advance the position of the MLA, his or her family or associates, not lobbying for the benefit of another for remuneration. In one jurisdiction (Northwest Territories), Members' obligations pursuant to the oath that they have taken have been included in the jurisdiction of the Integrity Commissioner (although the process for review and resolution is somewhat different than that in Nunavut). All other jurisdictions operate with a process which is largely parallel to that of Nunavut. Any expansion of the jurisdiction of the Integrity Commissioner is a complex issue which has advantages and disadvantages. These should be fully explored by members should there be consideration respecting amendment of the legislation and enlargement of the jurisdiction of the Integrity Commissioner.

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 no outstanding matters requiring attention.

The approach of handling Elections Act infractions in this way has much merit even though the logistics of doing so can be difficult. A Compliance Agreement contains such provisions as the Integrity Commissioner considers necessary to

promote the purposes of the Elections Act or to ensure compliance with it. It must include a statement by the person that he or she accepts responsibility for the act or omission that constitutes the offence (section 231 (6) Elections Act). It may also contain other provisions which as a public or private apology, performance of community service, payment of a sum of money, depending on what the Integrity Commissioner feels is appropriate in the circumstances. Such agreements must seek to achieve a balance of being both meaningful and practical.

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 called the Canadian Conflict of Interest Network, or CCOIN for short. This group of Conflict of Interest Commissioners, Ethics Commissioners and Integrity Commissioners normally meets 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. This year, two meetings, one in September 2020 and one in March 2021 were held by zoom. In addition to this annual meeting, throughout the year Commissioners share with one another reports and decisions made in their respective jurisdictions.

A data base of decisions from these bodies is maintained by the Parliamentary Office of the Conflict of Interest and Ethics Commissioner. I have utilized access to this resource in order to advise members of the Nunavut Legislative Assembly. I have further benefitted from the advice and perspective of my provincial, territorial and federal counterparts who unfailingly share freely of their time, experience and wisdom. I wish to acknowledge this ongoing collegial and professional support which has assisted me in the conduct of my duties.

LEGISLATIVE STAFF AND FACILITIES

As in prior years, staff of the Legislative Assembly, particularly the Office of the Clerk, have provided invaluable assistance and support. I would like to express my gratitude for the time and effort so generously provided. It has facilitated the fulfilment of my responsibilities in countless ways.

Respectfully submitted

Katherine R. Peterson, Q.C.

Integrity Commissioner