Integrity Commissioner of Nunavut
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Commissaire à l'intégrité du Nunavut
Immimut Agviarutiqaqtailimanirmut Kamisana

CONFIDENTIAL REPORT

RE: *INTEGRITY ACT* FIRST FIVE-YEAR STATUTORY REVIEW

January 10, 2007

To: The Honourable Peter Kilabuk, M.L.A., Speaker,
Chair, Management and Services Board

This report is in response to your request for input into the review provided for as follows in the *Integrity Act*:

> Review of Act
> 58. (1) Within five years from the day this section comes into force, and every five years after that, the Legislative Assembly shall begin a review of this Act.
>
> Amendments
> (2) Within one year of commencing a review under subsection (1), the Legislative Assembly shall consider any amendments that are proposed as a consequence of the review.

BACKGROUND

The First Legislative Assembly gave high priority to laying a sound democratic foundation for Nunavut. One of its earliest initiatives was to establish a system of standards and accountability for the conduct of its own Members as trustees for the public good. The pre-division Northwest Territories had suffered a long, costly inquiry under its conflict of interest legislation (duplicated in Nunavut) and had subsequently received extensive recommendations for reform from a distinguished review panel.

As your Conflict of Interest Commissioner, I was asked to review the NWT panel's report, research similar legislation in Canadian jurisdictions, and recommend a new law custom-tailored for the new Territory. The statute was to reflect contemporary Canadian as well as traditional Inuit values. The system it established was to be simple, flexible and economical to administer. My ensuing report, "For A Culture of Integrity", formed the basis of the *Integrity Act* ("the Act") which came into force on July 1, 2001. Covering only Members of the Assembly (including Ministers), the Act set an example of honesty, openness and accountability for all who govern and administer the Territory.

LEGISLATIVE CHANGE

Since the Act's inception, it has undergone only minor amendments to accommodate additional jurisdiction assigned to the Integrity Commissioner by other statutes, *e.g.* the *Nunavut Elections Act.*

Parliamentary conflict of interest codes across Canada have remained essentially unchanged, but are being complemented by new legislative initiatives designed to strengthen ethical oversight of the whole institution of government. Recent federal legislation left Senate and Commons codes intact while enacting a complex of new laws addressing such related matters as lobbying, whistle-blowing and comprehensive government integrity. A review now underway in Alberta is likely to produce conflict law amendments relevant mainly to that province, but also new legislation on lobbying. Ontario has signalled its intention to strengthen protection of whistle-blowers. The focus of public integrity concerns has evidently broadened from legislators to cover a wider spectrum of officeholders, people paid to influence them, and employees who expose official wrongdoing.

OUR EXPERIENCE

From the perspective of my experience with the Act during its first five years, it appears to have served its purpose well.

Members have shown both understanding of its principles and co-operation in its administration. They have frequently sought advice to avoid and resolve conflict situations. All Members, every year, have met the deadline for annual public disclosure and have conferred with me as required. Their accountability was tested when one Member was ruled to have breached the Act and had sanctions imposed on him by the Assembly. However, the process of that review was expeditious and economical; the outcome, apparently constructive. With that single exception, the Act seems to have achieved its preventive intent. Its sanctions, when necessary, seem to have succeeded in their design to be restorative -- for the Member, the Assembly and the public interest.

DISCLOSURE

For the purpose of the statutory review, the Clerk canvassed Members for concerns about the Act. He reports that question was raised only about disclosure of credit card balances. If this is a general concern, it could be resolved through exercise of the Integrity Commissioner's discretion without amending the law.

Transparency of Members' financial affairs, including disclosure of any but the most routine of their family liabilities over a certain value threshold, is a common feature of conflict of interest regimes. Usual and normal financial obligations are commonly excluded from disclosure. No Canadian legislation singles out credit card balances for blanket exemption, but thresholds vary widely and so do policies and practices as to what is made public. For instance, it might be the total or just the past-due balance that

triggers disclosure, or whether or not the balance was incurred for "ordinary living expenses".

Under our Act, public disclosure of a Member's liabilities is limited by two factors: a disclosure threshold of $10,000 (the highest in Canada) and the requirement for only *existence* of the liability, not its amount, to be revealed. It seems difficult to justify treating credit card debt at that level, incurred for whatever purpose, as less significant than a loan or credit line of similar amount. However, I would welcome Members' views on this matter. A consensus could be implemented and an Advisory issued without amendment of the Act.

CONCLUSION

All considered, I am satisfied with the Act in its present form. I have identified no amendments essential to its effective operation and I find its existing provisions practical and appropriate.

OPTIONS FOR ACTION: A. The Act could be confirmed, with or without amendment.

B. In a larger context, the Act could be confirmed as the first element of a comprehensive public integrity program begun by the First Assembly, to be completed by the Second.

Option A: Confirm the Act

The Act appears to have withstood the test of time. It remains essentially state-of-the-art while reflecting Nunavut needs and values. It seems to be understood and respected by Members. Its administration has been cost-effective and its enforcement restorative. It could likely continue to serve quite well for some time without amendment, and nothing prevents the Assembly making changes as seen fit between the five-year reviews required by the statute.

A1: Without amendment

In view of Members' apparent satisfaction with the Act, it might be simply confirmed as it stands. As the saying goes, "If it ain't broke, why fix it?"

A2: With amendment

One substantive amendment might be considered, to extend the jurisdiction of the Integrity Commissioner and the Legislative Assembly beyond a Member's term of office until completion of any process commenced during office. The purpose would be to prevent evasion of sanctions which apply only to "a Member". (For instance, the Assembly might wish to pursue costs or restitution from a former Member who has resigned, or whose term has ended in mid-review or before sanctions could be enforced.)

If it were decided to open the Act for amendment, minor housekeeping changes might be considered as time permits.

Option B: Comprehensive Public Integrity Initiative

This review presents an opportunity for the Assembly to expand on its own self-discipline to inspire a culture of integrity throughout government in the Territory. Public scrutiny is increasingly focused on a wider spectrum of officials and activities. A comprehensive public integrity structure could be built on the foundation laid by the First Assembly. It could cover the entire public sector, filling present gaps in ethical oversight, eliminating anomalies and applying a consistent approach to integrity in government. Issues which other jurisdictions have recognized as related could be addressed and their models and experience drawn upon. On some of these topics, the Government is understood to have underway already work which might be integrated into a comprehensive program with the following elements:

2A. Confirmation of the Act, with or without amendment;

2B. Enactment of a new part of the Act, or a separate statute, establishing for senior officials ethical standards and accountability similar to those for legislators (as recommended by the NWT review panel but deferred when the Act was introduced);

2C. Inclusion in that group of the municipal and territorial office holders now subject to court process under the *Conflict of Interest Act*;

2D. Establishment of a code of conduct for Government of Nunavut employees in general;

2D: Protection of whistle-blowers (employees who reveal official wrongdoing);

2E: Registration of lobbyists (persons who attempt for payment to influence official decisions).

Such new measures and a comprehensive Nunavut public integrity program, of course, would be within the prerogative of the Executive, but perhaps of particular interest to the Assembly. If I may be of help in addressing them, I am at your service.

Respectfully,

ORIGINAL SIGNED BY

Robert Stanbury