


Northwest
Territories Legislative Assembly
Conflict of Interest Commission

May 27, 1998

Honourable Sam Gargan
Speaker of the Legislative Assembly
Legislative Assembly Building
Government of the Northwest Territories
Yellowknife, Northwest Territories

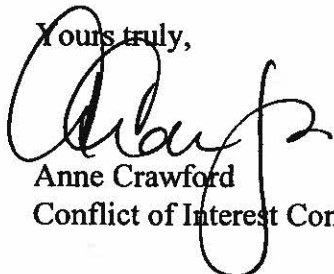
Dear Mr. Speaker:

In accordance with the requirements of Part III of the Legislative Assembly and Executive Council Act, I am submitting the required Annual Report.

I was appointed Conflict of Interest Commissioner by motion of the Assembly on February 14, 1997. As a courtesy, and to fill in for the time between the filing of the last report by the Commission and my appointment, I am providing this summary report for the period from April 16, 1996 to March 31, 1997.

Please convey my thanks and appreciation to all members and staff for their cooperation and support.

Yours truly,


Anne Crawford
Conflict of Interest Commissioner



Northwest Territories
Conflict of Interest Commission

ANNUAL REPORT

April 16, 1996 to March 31, 1997

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COMMISSIONER'S REMARKS

Several substantial amendments were made to the *Legislative Assembly and Executive Council Act* in 1996, most of them coming into force on August 1, 1996. The most significant change was the switch to a single-Commissioner system, instead of a five-member panel.

Aside from the obvious changes in wording of the Act to reflect the move to a single Commissioner, the changes to the *Legislative Assembly and Executive Council Act* also included some substantive amendments moving from a two-tiered process to a more flexible inquiry by the Commissioner which is intended to respond to the variable nature of conflicts complaints.

I was appointed as the Conflict of Interest Commissioner by motion of the Assembly on February 4, 1997, after several months as Acting Commissioner. As a courtesy, and to fill in for the time between the filing of the last report by the Commission and my appointment, I am providing this summary report for the period from April 16, 1996 to March 31, 1997.

STATUTORY REPORTING

The *Legislative Assembly and Executive Council Act* requires that the Commissioner submit an annual report which includes the following categories of information:

A. FILING OF DISCLOSURE STATEMENTS

Under section 77(1) of the *Legislative Assembly and Executive Council Act*, every Member is required to file a disclosure statement before the deadline set in section 77.

For the 1996-97 year, the deadline for most members fell on January 30, 1997.

(1). Late filing and failure to file

LATE FILING

Section 79.3(1)a(i) requires the Commissioner to identify those Members who had not filed a disclosure statement within 45 days of the filing deadline, or who obtained an extension of time to file after the 45 day period.

The following Member did not file a disclosure statement within 45 days of the filing deadline:

Mr. Tommy Enuaraq, Member for Baffin Central

FAILURE TO FILE

Section 79.3(1)c(ii) requires the Commissioner to identify any Member who failed to file a disclosure statement before the annual report was submitted.

As of May 11, 1998, the following Member has not filed a disclosure statement for 1996-97:

Mr. Tommy Enuaraq, Member for Baffin Central

Mark Evaloarjuk, Member for Amittuq, has not yet filed for 1995 but did file for 1996 and 1997.

(2). Extensions granted

The following Members obtained one extension and have filed within the time extension granted:

Mrs. Jane Groenewegen, Member for Hay River
Mr. Roy Erasmus, Member for Yellowknife North
Mr. Stephen Kakfwi, Member for Sahtu
Mrs. Manito Thompson, Member for Aivilik

The Members listed have been careful and responsible in complying with the requirements for timely filing and for receiving extensions.

I would note that there is a distinct injustice in being required to report these names and yet to allow a period of grace for late filings to members who have not requested an extension and have failed to meet their filing deadline. This is the case because the provisions of s. 79.3(1)a(i) give a period of grace to Members, allowing them to file late with no request for an extension and no repercussion for up to 45 days after the deadline, without any requirement that they be named in this report.

B. CONTRACT APPROVALS

(1). Authorization to enter a contract

Section 79.3(1)b(i) requires the Commissioner to identify any Member who was given authorization to accept a contract under s.75.1(3).

The following Members were given authorization by the Commissioner to accept a contract:

None

(2). Description of contract

Section 79.3(1)b(ii) requires the Commissioner to describe the nature of any contract which was authorized by the Commissioner and the conditions imposed.

The following contracts were authorized by the Commissioner and the following conditions were imposed:

None

C. OTHER EXTENSIONS

Section 79.3(1)c requires the Commissioner to identify any Member who obtains an extension of time for any other matter under s.79.1.

The following Members obtained an extension of time for other matters under s.79.1:

None

D. COMMENT

Section 72(1) requires that any Member who has a controlled corporation or a controlled subsidiary report any contract entered into by that corporation with the Government of the Northwest Territories. Although the Member's disclosure statements provide a space to comply with the requirements of s. 72(1) I am concerned that Members may not have turned their minds carefully to the issue. A conscientious review by Members is required to make the disclosure process effective.

1996-97 ACTIVITIES

A. CONFLICT OF INTEREST COMPLAINTS

No conflict of interest complaints were filed with the Clerk of the Assembly this year.

B. POTENTIAL AMENDMENTS TO LEGISLATION

In reviewing the new legislation and in working with it, particularly in the transition between Commissioners, a number of issues have arisen which should eventually be corrected by amendments to the *Act*.

1) Proposed Amendments

- a). Section 77(5) should be amended to confirm the Commissioner's right to access private statements of Members current and past, including decisions and opinions given by predecessors. All these documents should be retained together by the Clerk in the Members' file.
- b). Section 78.1 should require that opinions and relevant correspondence be destroyed at the same time as statements.
- c). The contract provisions should be amended to allow departments and agencies to enter into contracts with corporations controlled by a Minister, when it is in the public interest, similar to the current s.75.1 and the similar reporting requirements.
- d). Section 75.1(3) should be amended to provide that a contract should be "in the public interest" rather than "not contrary to the public interest".
- e) Section 79.3(1)a(i) should be amended to remove the 45 day grace period for late filing.

2) Reasoning for Proposed Amendments

The experience of the transition to a new Commissioner, and the work of dealing with substantially revised legislation have lead to the recommendations made. It is certainly appreciated that at this time in the history of the Assembly the legislative agenda is heavily occupied, but these items are put forward with the expectation that when the Act is next addressed, these can be considered.

a). Access to disclosure files and file contents for Commissioner

Any Commissioner, in order to become adequately familiar with the work of the Assembly and its Members needs current materials for orientation, and information on what has transpired on Member's files. The Commissioner should have access to the private statements of members, past and present and any opinions provided by predecessors. These are required by the Commissioner to effectively fulfill his or her duties, and yet this access is not permitted under the Act.

It is certainly anomalous and it makes the work of the Commissioner very difficult when the Act itself denies the Commissioner access to this information. It also robs the Assembly, its Members, and the public, of a Commissioner who can be quickly knowledgeable and effective after receiving a new appointment.

b). Destruction of files

Section 78.1 currently only provides for the destruction of Members' statements. These are to be destroyed in six years from the date the Member ceases to hold office.

Should the opinion files and correspondence files be destroyed as well? The objective and nature of the opinions is similar to that of the disclosures. Often, to get the opinions, the disclosures are reviewed. And the opinions are of little use without the remainder of the files.

The legal effect of opinions is to protect a Member from "*proceedings or prosecutions under this Part*". After six years they would have no obvious use. There are no prosecution sections in the Act, only the Inquiry provisions. The exception is for former Members, but this is a summary conviction offence and practically would only be laid with a year and a half of leaving office.

After a Member has been out of office for at least six years an Inquiry would almost certainly be frivolous or vexatious. It would be substantially impeded by the lack of statements. It is arguable that the Inquiry provisions do not apply to ex-Members in any event. And, if an issue of importance was uncovered at this point, then the government of the day could create an Inquiry under the *Public Inquiries Act*.

c). Allowing Contracts

At first appearance this is a relaxation of the conflicts rules, but it is one which will allow the Commissioner to make reasonable exceptions in the public interest.

A number of examples have arisen where a Minister controls a corporation which is the sole provider of goods or services and the prohibition becomes a disservice to the public.

Examples where this might be useful are where a Member, Minister or controlled corporation is the sole source in a community and provides the only market access including;

- the sole circulating newspaper, where job advertisements could no longer be purchased locally for government positions;
- the only local photocopier repair, and government offices need repair services;
- the sole accessible gas station, and government vehicles need fuel.

In these and similar cases, the Commissioner could authorize the contract and report it in the annual report, requiring reasonable reporting such as reporting of quarterly or annual usage to ensure that abuses do not occur.

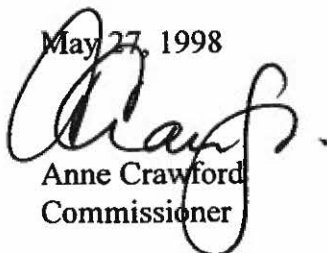
d). The test for contract approval

While expanding the ability of the Commissioner to approve contracts to deal with situations similar to those set out in c), it would be appropriate to insure that the standard against which a contract would be judged would be that of the public interest. The proposed change is more in keeping with the principles of the legislation and was the original recommendation of the Commission when this section was first proposed.

e) Eliminating the 45 day grace period

The combination of a 45 day grace period and a requirement to report extensions is unfair to memeber who receive and comply with extensions, and favours the rule flouters. Given that a series of extensions may be indicative of an issue under the Act, and in order to emphasize the need for prompt compliance my preference would be to have the grace period removed, rather than removing the public reporting of extensions.

May 27, 1998



Anne Crawford
Commissioner

