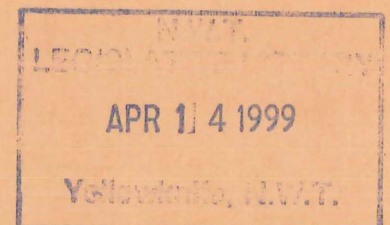


REPORT OF
THE CONFLICT OF INTEREST REVIEW PANEL

Sue Heron-Herbert
E.N. (Ted) Hughes, Q.C.
Robert C. Clark - Chair

Yellowknife, NT

April 8, 1999



Please attach this sheet to your copy of the Report of the Conflict of Interest Review Panel. The Report was released in Yellowknife on April 8, 1999.

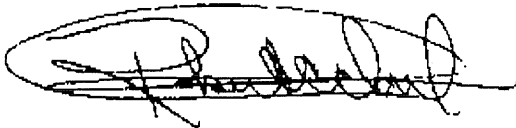
ERRATUM

Report of the Conflict of Interest Review Panel, page 14, final paragraph.

In all places where reference is made to Minister it should read "Member including a Minister".

The Panel also wishes to draw the reader's attention to the recommendation made in lines 4 and 5 of that paragraph which states:

"Alternatively, a Member including a Minister could seek a specific exemption from the Conflict of Interest Commissioner to allow a company in which the Member including a Minister has an interest to enter into a specific contract."

A handwritten signature in black ink, appearing to read "Robert C. Clark", enclosed within a hand-drawn oval.

Robert C. Clark, Chair
Conflict of Interest Review Panel

CONFLICT OF INTEREST REVIEW PANEL

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I BACKGROUND

The Legislative Assembly of the Northwest Territories passed a motion on December 17, 1998, directing the Management and Services Board to establish a three-member panel to review the conflict of interest provisions contained in the *Legislative Assembly and Executive Council Act*.

The Panel met for the first time in Yellowknife on February 22, 1999. The Panel consists of Sue Heron-Herbert from the Northwest Territories, Robert C. Clark, Ethics Commissioner for the Province of Alberta, and the Hon. E.N. (Ted) Hughes, Conflict of Interest Commissioner for the Yukon Territory.

The Panel's terms of reference are:

1. To review and assess the appropriateness, adequacy and effectiveness of the conflict of interest provisions contained in Part III of the *Legislative Assembly and Executive Council Act*, and any policies, procedures and guidelines developed which relate to conflict of interest for Members of the Legislative Assembly;
2. To assess the appropriateness, adequacy and effectiveness of the conflict of interest policies, procedures and guidelines established by Executive Council for senior government officials;
3. To consider specifically what are the appropriate standards regarding financial dealings for Members of the Legislative Assembly, senior government officials and their respective spouses;

4. To consider the present duties and powers of the Conflict of Interest Commissioner to determine whether legislative amendments are necessary to enhance the efficiency and effectiveness of the office;
5. To consider the recommendations made by the Conflict of Interest Commissioner in the Commissioner's annual reports and any other matters relating to conflict of interest;
6. To seek input from Members of the Legislative Assembly, the Conflict of Interest Commissioner, senior government officials, and the public on the issue of proposed amendments to the conflict of interest provisions of the *Legislative Assembly and Executive Council Act*, and the policies, procedures and guidelines relating to conflict of interest;
7. To make recommendations to the Management and Services Board by April 15, 1999, with respect to the conflict of interest provisions of the *Legislative Assembly and Executive Council Act* and conflict of interest policies, procedures and guidelines for Members of the Legislative Assembly and senior government officials.

The Northwest Territories concluded a lengthy conflict of interest inquiry in 1998 that resulted in the resignation of the Premier, Donald Morin. A conservative estimate indicates that the conflict of interest inquiry cost the taxpayers of the Northwest Territories approximately 1.7 million dollars. This Panel was not given the task of revisiting the issues raised in that conflict of interest inquiry and we did not do so. The Panel did, however, reflect on that process and the lessons to be learned from it. The Panel considered the difficult question of how to construct an open and honest conflict of interest regime which establishes ethical standards and still allows for effective decision-making and fiscal responsibility.

In preparing this report, the Panel reviewed the legislation of a number of other jurisdictions including Ontario, British Columbia, Alberta, Saskatchewan, Nova Scotia, New Brunswick, Newfoundland and the Yukon Territory. Looking at the way that other jurisdictions deal with conflicts of interest allowed the Panel to consider all of the options available, and to learn from the experiences of the other provinces and territory.

In formulating its recommendations, the Panel gave special consideration to the unique nature of the Northwest Territories. The Northwest Territories and Nunavut Territory are the only jurisdictions in Canada that do not have a political system dominated by party politics, but rather, utilize a consensus style of decision-making where Members are free to vote on issues independent of the party system. This means that the co-ordinated monitoring function often performed by opposition parties in other jurisdictions is not present in the North. This poses a unique challenge for the North.

In preparing its report, the Panel interviewed all those expressing a willingness to talk to us, including a number of Members of the Legislative Assembly (Donald Morin, Jane Groenewegen, Vince Steen, Roy Erasmus, Michael Miltenberger and Jake Ootes). The Panel also heard from Anne Crawford, the Conflict of Interest Commissioner, Lew Voytilla, the Secretary of the Financial Management Board, David Hamilton, the Clerk of the Legislative Assembly, and Sheila MacPherson, the Law Clerk of the Legislative Assembly. Written submissions were received from Sam Gargan, the Speaker of the Legislative Assembly, and from Jim Antoine and Charles Dent, Members of the Legislative Assembly. The Panel received three written submissions from members of the public.

We sincerely thank these people for taking the time to meet with us and share their thoughts and insights into the conflict of interest process. This input has been of tremendous assistance to the Panel.

The Panel invited presentations, both in person and in written form, from members of the community. Advertisements were placed in the local newspaper, and on a local radio station for that purpose.

We chose to hear presenters individually to encourage them to share their thoughts and experiences with the Panel in a candid manner. All of the insights shared by the presenters were considered by the Panel as a whole, and in this report no particular thought or comment is attributed to any one individual. This report will be a public document, and it is our expectation that it will give rise to public debate in the Legislative Assembly, in the media, and in other public forums. The further expectation is that the debate will be followed by legislative change.

The Panel had six weeks from the time that interviews commenced until the requested date for the submission of its final recommendations. We have identified what we consider to be the key concerns with the current legislation, and have framed a series of recommendations which we believe address those concerns. We believe that these recommendations are workable, and will encourage a fair, open and honest system that is still practical and cost-effective. The Panel is mindful that, ultimately, the elected representatives of the people must decide on the appropriate laws for the Northwest Territories. However, given the importance of these issues to the people of the Northwest Territories, the Panel expects that these recommendations will receive serious consideration and subsequent action by Members of the Legislative Assembly.

II THE CURRENT SITUATION

The existing conflict of interest rules were enacted in 1991 by an amendment to the *Legislative Assembly and Executive Council Act* of the Northwest Territories. Part III of the *Act* sets out the rules that Members of the Legislative Assembly must follow in dealing with public matters which may be influenced by private interests. The *Act* also places positive duties on the Members of the Legislative Assembly, and prohibits them from taking part in certain kinds of activities.

The *Act* imposes the following duties on all Members of the Legislative Assembly:

- ◆ to perform their duties of office and arrange their private affairs in such a manner as to maintain public confidence in the integrity, objectivity and impartiality of the Member - Section 67(a);
- ◆ to refrain from accepting any remuneration, gift or benefit if accepting it will erode public confidence - Section 67(b);
- ◆ to act in a manner that will bear the closest public scrutiny - Section 67(b);
- ◆ to disclose the general nature of any conflict of interest which arises during a meeting of the Legislative Assembly, the Management and Services Board, the Executive Council, or any committee or caucus of the Legislative Assembly or the Executive Council, and withdraw from the meeting without voting or participating in the consideration of the matter - Section 69(1);

- ◆ to file a detailed financial disclosure report with the Clerk within 60 days of the commencement of the first session of the Legislative Assembly, and thereafter annually on that day - Section 77(1);
- ◆ to make all reasonable efforts to resolve any conflict of interest that may arise in favour of the public interest - Section 67(d);

The *Act* also imposes the following restrictions on Members of the Legislative Assembly:

- ◆ not to use or share information gained from their office to further their private interests or those of their spouse or dependants - Section 68(1);
- ◆ not to use their office to influence a decision made by another person in order to further the Members' private interests or those of their spouse or dependants - Section 68(2);
- ◆ not to lobby for money on behalf of any person seeking a contract or benefit from the Government of the Northwest Territories - Section 70;
- ◆ not to hold or enter into a contract, with some exceptions, with the Government of the Northwest Territories - Section 71.

The *Act* imposes additional duties on the Speaker of the Legislative Assembly and on the members of Executive Council. The Speaker and the members of the Executive Council are restricted in their activities outside of the Legislative Assembly. They cannot hold another job, and they cannot be involved in running a business, other than managing routine financial interests. The Speaker and the members of the Executive Council are not allowed to enter into contracts with the Legislative Assembly. Their spouses and their dependent children are restricted in the same way. Former Speakers and former Ministers are not allowed to enter

into contracts with the Legislative Assembly or to lobby for such contracts on behalf of others for a period of 12 months after they leave public office.

The 1991 *Act* allowed for a Conflict of Interest Commission consisting of the Conflict of Interest Commissioner and four other members. Public inquiries were conducted by a panel of three of them. This procedure was changed in the *Budget Measures Implementation Act* passed by the Legislative Assembly in 1996. The Conflict of Interest Commission was replaced with a single Conflict of Interest Commissioner.

The current legislation requires that Members of the Legislative Assembly file a disclosure statement each year. That disclosure statement must set out the source and amount of income received in the previous 12 months by the Member, his or her spouse and dependent children, all assets, liabilities, and financial interests held by the Member, his or her spouse and dependent children, and all interests in any corporation in which the Member, his or her spouse and dependent children have a controlling interest. The Member is required to file an update when there is a change in his or her financial circumstances.

The disclosure statement is filed with the Clerk of the Legislative Assembly, and not with the Conflict of Interest Commissioner. There is no requirement that Members of the Legislative Assembly meet with the Conflict of Interest Commissioner on an annual basis to review their disclosure statements, although they are free to set up such a meeting should they wish to do so.

The Conflict of Interest Commissioner is an officer of the Legislative Assembly and is independent from government. The Conflict of Interest Commissioner has an important role to play in making sure that Members of the Legislative Assembly understand their responsibilities under the *Act*. Any Member can request that the Conflict of Interest Commissioner provide him or her with a written opinion as to whether or not the Member is

in breach of his or her responsibilities, along with recommendations on how to make sure that the Member's actions comply with the conflict of interest legislation. So long as the Member discloses all of the relevant facts to the Conflict of Interest Commissioner, the Member is entitled to rely on the opinion that he or she receives.

The Conflict of Interest Commissioner also has an important role to play in making sure that Members of the Legislative Assembly live up to their responsibilities under the *Act*. Any person who believes that a Member has a conflict of interest can file a written complaint with the Conflict of Interest Commissioner. The opportunity to lay a complaint is open to Members of the Legislative Assembly and to members of the public. It is the responsibility of the Conflict of Interest Commissioner to conduct hearings into complaints about the Members of the Legislative Assembly, to make findings as to whether or not a breach of the *Act* has occurred, and to recommend the appropriate sanction to the Legislative Assembly. The Conflict of Interest Commissioner has the discretion to refuse to conduct a hearing into a complaint where he or she is of the opinion that there are insufficient grounds to warrant the hearing or the complaint is frivolous or was not filed in good faith.

This Report makes a number of recommendations for changes to the current system. These changes result from the presentations that were made before us, as well as the expertise and experience of each of the Panel Members. We believe that the recommendations will result in the following:

- ◆ A stronger Conflict of Interest Commissioner's office with total responsibility for dealing with Members and working with them to understand what is expected of them;
- ◆ A defined procedure for dealing with conflict of interest investigations with clear parameters as to the role of all the parties involved;

- ◆ A less expensive and more timely alternative to a full public inquiry available in circumstances where such an approach is warranted; and

- ◆ A conflict of interest regime where the people of the Northwest Territories know what is expected of their elected representatives and senior appointed officials, and are able to voice any concerns.

III THE ROLE OF THE CONFLICT OF INTEREST COMMISSIONER AS AN OFFICER OF THE LEGISLATIVE ASSEMBLY (RECOMMENDATIONS 1 TO 13)

An independent Conflict of Interest Commissioner is an essential feature of the conflict of interest regime. The parties who deal with the Conflict of Interest Commissioner must be confident that they will be dealt with in a fair and impartial manner, and the public must be confident that investigations will be thorough and cost-effective. Once the Legislative Assembly has appointed the Conflict of Interest Commissioner, it must also provide the Conflict of Interest Commissioner with sufficient resources, and with the independence to perform the task entrusted to him or her.

The Panel proposes several changes to the way that the Conflict of Interest Commissioner's office operates. These changes are designed to enhance the independence and availability of the Conflict of Interest Commissioner.

Good people are attracted to public office out of a genuine desire to serve their constituents. The Conflict of Interest Commissioner should be readily available to assist those people in understanding their responsibilities under the law and ordering their financial and related affairs to avoid conflicts of interest. It is important that the Members perceive the Conflict of Interest Commissioner as someone that they can work with to ensure that they have complied with the legislation. The Conflict of Interest Commissioner should be known to the Members, and be readily available to assist them.

Recommendation #1 - The Conflict of Interest Commissioner should be readily available so that Members of the Legislative Assembly can obtain advice in a timely manner.

One thing that came to our attention during the course of this review is that the majority of Members have very limited, if any, contact with the Conflict of Interest Commissioner on a

day-to-day basis. Under the present legislation, the Members are free to contact the Conflict of Interest Commissioner at any time. However, at present, information regarding conflict of interest is often provided by the Law Clerk of the Legislative Assembly. This places the Conflict of Interest Commissioner in the position of not always knowing what advice has been provided to the Members. It also means that the Conflict of Interest Commissioner is seen more as a policeperson than as an advisor. The Panel envisions a change in the role of the Conflict of Interest Commissioner to include advice and direction as well as enforcement.

Recommendation #2 - The Conflict of Interest Commissioner should carry the responsibility as the sole source of advice to the Members of the Legislative Assembly regarding conflicts of interest.

The Conflict of Interest Commissioner should try to establish a relationship with the Members from the time that they take office. Members need to know what is expected of them so that they can feel confident that they are protected so long as they follow those rules.

Recommendation #3 - The Conflict of Interest Commissioner should conduct an orientation seminar for all new Members of the Legislative Assembly after each election.

The Panel recognizes that issues relating to conflict of interest often arise with very little notice. The current Conflict of Interest Commissioner has developed conflict of interest guidelines dealing with a number of situations. Several Members of the Legislative Assembly told us that they find these guidelines to be very helpful in understanding their responsibilities. The Panel believes that further guidelines would be useful.

Recommendation #4 - The Conflict of Interest Commissioner should, within the jurisdiction of his or her office, develop guidelines to assist Members of the Legislative Assembly.

Under Section 77 of the *Legislative Assembly and Executive Council Act*, all Members of the Legislative Assembly are required to file annual disclosure statements with the Clerk of the Legislative Assembly. Those disclosure statements are confidential and are not available to anyone other than the Clerk of the Legislative Assembly and the Member who submitted them. The Conflict of Interest Commissioner is only entitled to view the disclosure statement during the conduct of an inquiry.

This means that, under the current system, the Conflict of Interest Commissioner does not have access to the disclosure statements when he or she is approached for advice by a Member about his or her financial holdings. It also means that the Conflict of Interest Commissioner has no knowledge of the financial holdings of the Members, and no ability to review their activities outside the context of an inquiry. This is wrong, and the Panel is of the opinion that the Members' disclosure statements should be filed with the Conflict of Interest Commissioner rather than with the Clerk of the Legislative Assembly.

Recommendation #5 - The Members' annual disclosure statements should be filed with the Conflict of Interest Commissioner and it should be his or her responsibility to prepare the public disclosure statement pursuant to Section 78 of the *Act*.

Members of the Legislative Assembly are not currently required to review their disclosure statements with the Conflict of Interest Commissioner. The result is that the filing of the disclosure forms may be viewed by Members, who are very busy people, as but another routine administrative task. Once the disclosure forms are filed, they may well be forgotten. The Panel is of the opinion that it is important that the Member review his or her disclosure forms with the Conflict of Interest Commissioner on an annual basis. This would give the Conflict of Interest Commissioner a chance to raise any concerns that may be relevant to the Member and to answer any questions. Many conflict of interest violations are inadvertent and arise from a failure by a Member to pay adequate attention to his or her financial and related

affairs. An annual meeting helps make sure that the Members monitor their financial and related affairs on an ongoing basis and that they think through the conflict of interest implications of their actions.

Recommendation #6 - Members of the Legislative Assembly should be required to meet with the Conflict of Interest Commissioner on an annual basis to review their disclosure forms.

The Panel recommends that Section 79.3(1)(a) of the *Act* be amended to remove the 45-day grace period for the late filing of disclosure statements. This would require Members who need an extension of time to file their disclosure statements to apply to the Conflict of Interest Commissioner pursuant to Section 79.1. All requests for extensions of time must be reported by the Conflict of Interest Commissioner in his or her annual report. Currently, it is unfair that Members who apply for an extension are identified in the report, but Members who do not apply for an extension, but file within the 45-day grace period are not. The 45-day grace period only encourages late filing, and should be eliminated.

Recommendation #7 - Section 79.3(1)(a) of the *Legislative Assembly and Executive Council Act* should be amended to remove the 45-day grace period for the late filing of disclosure statements.

Under the current legislation, the Conflict of Interest Commissioner is required to file a report with the Speaker identifying those Members who fail to file their disclosure statements and amended disclosure statements, or do not file them on time. However, late filing is not identified as a breach of a Member's conflict of interest obligations, and is not specifically set out as grounds for a complaint.

Recommendation #8 - The *Legislative Assembly and Executive Council Act* should be revised to state that failure to comply with the requirements for filing disclosure statements is a breach of a Member's conflict of interest obligations and may be the subject of a complaint.

The Panel recommends that provisions be made in the legislation to allow Members, including Ministers, to have an interest in a private business which is a party to a contract with the Government of the Northwest Territories where it would not be contrary to the public interest.

Currently, Ministers and businesses owned by Ministers are absolutely prevented from entering into contracts with the government. The logic behind this is quite understandable but it works a hardship on able people, particularly business people, who wish to seek election to the Legislative Assembly. It may also work a hardship on government. Due to the small size of the business community in the Northwest Territories, if a business operated by a Minister cannot contract with government, there may not be an alternative local business, in which case government cannot do its business in the North. If there is a local competitor, it may place the competitor in a monopoly position.

The Panel is of the opinion that, if a Minister is removed from running a company in which he or she has an interest, the company could do business with government. The Panel believes that, as in Ontario, a Minister should be allowed to put both stocks and securities and business interests into a proper blind trust. Alternatively, a Minister could seek a specific exemption from the Conflict of Interest Commissioner to allow a company in which the Minister has an interest to enter into a specific contract. The Conflict of Interest Commissioner would ensure that the rules respecting the blind trust and the conditions of the exemption are followed and he or she could be asked to investigate a complaint that the Minister was involved in the

procurement of a government contract should anyone come forward alleging a contravention of the *Act* on that account.

Recommendation #9 - A Member should be permitted to have an interest in a private company that is a party to a contract with the Government of the Northwest Territories if the Member has entrusted his or her interest to one or more trustees on the following terms:

1. The provisions of the trust shall be approved by the Conflict of Interest Commissioner;
2. The trustees shall be persons who are at arm's length with the Member and approved by the Conflict of Interest Commissioner;
3. The trustees shall not consult with the Member with respect to managing the trust property, but may consult with the Conflict of Interest Commissioner;
4. Annually, the trustees shall give the Conflict of Interest Commissioner a written report stating the nature of the assets in the trust, the trust's net income for the preceding year and the trustees' fees, if any;
5. The trustees shall also give the Member sufficient information to permit him or her to submit returns as required by the *Income Tax Act* (Canada) and shall give the same information to Revenue Canada.

In order to be truly independent, the Conflict of Interest Commissioner must have reasonable financial resources to fulfil his or her duties. These funds should be directly available to the Conflict of Interest Commissioner. The Conflict of Interest Commissioner should be directly responsible to the Legislative Assembly for the way that the funds are spent. The Conflict of Interest Commissioner should not be required to approach the Management and Services Board to obtain money for routine matters. Financial independence will avoid the perception that the Office of the Conflict of Interest Commissioner is an adjunct to the Office of the Clerk of the Legislative Assembly.

The Conflict of Interest Commissioner should be required to submit an estimate of the funds needed to fulfil his or her duties to the Legislative Assembly for approval annually. The budget of the Conflict of Interest Commissioner should include the cost of the administration of the

office, public education, and allow the Conflict of Interest Commissioner to investigate and report on complaints.

There could, of course, be circumstances where the budget allotted to the Conflict of Interest Commissioner is insufficient because of the need for an extensive investigation, or even a public inquiry. In that circumstance, the Conflict of Interest Commissioner should be able to request additional funds from the Legislative Assembly.

Recommendation #10 - The Conflict of Interest Commissioner should submit an estimated budget to the Legislative Assembly for approval annually. The funds should be supplied directly to the Office of the Conflict of Interest Commissioner.

For the Conflict of Interest Commissioner to function effectively, he or she must be readily available to Members of the Legislative Assembly and to members of the public. The Panel is of the opinion that, to increase accessibility, the Conflict of Interest Commissioner should maintain an office in Yellowknife. Particularly in this electronic age, it does not necessarily follow that the office will need to be staffed on a full-time basis. That office should be separate from the Legislative Assembly in order to stress the independence of the Conflict of Interest Commissioner, and to accommodate members of the public who may not feel comfortable going to the Legislative Assembly building to speak with the Conflict of Interest Commissioner. A permanent and separate office also ensures the privacy of Members of the Legislative Assembly and members of the public during meetings with the Conflict of Interest Commissioner, and by way of telephone calls, and facsimile transfers.

Recommendation #11 - The Conflict of Interest Commissioner should maintain a separate office which is readily accessible to Members of the Legislative Assembly and members of the public, but which is outside the Legislative Assembly building.

The conflict of interest legislation allows for the filing of a complaint by members of the public. One of the fundamental principles of democracy is that elected representatives are accountable to their constituents. However, such protections are only effective if members of the public know what their rights are, and are able to exercise them. The Panel is of the opinion that the Conflict of Interest Commissioner should work to increase the public profile of the office so that members of the public are aware of their right to file a complaint and know how to access the system.

Recommendation #12 - Public education should be a fundamental component of the Conflict of Interest Commissioner's function. The Conflict of Interest Commissioner should develop a pamphlet for public distribution informing the public of their rights under the *Act*.

The Panel recognizes that the expense of maintaining an office in a jurisdiction the size of the Northwest Territories may be prohibitive. The Panel is of the view that the volume of work of the Conflict of Interest Commissioner will not warrant a full-time position and for that reason the Legislative Assembly may consider combining the position with another Legislature office. It is the practice in a number of other jurisdictions to combine the Conflict of Interest Commissioner position with another office. For example, in Newfoundland, the Conflict of Interest Commissioner is also the Chief Electoral Officer. In Alberta and Saskatchewan, the Conflict of Interest Commissioner is also the Privacy Commissioner. This approach may allow for some cost saving possibilities.

Recommendation #13 - The Assembly may consider combining the Conflict of Interest Commissioner position with another Legislature office.

IV DEFINING CONFLICT OF INTEREST (RECOMMENDATIONS 14 - 15)

The Panel is of the opinion that the definition of conflict of interest as it appears in section 66 of the *Legislative Assembly and Executive Council Act* should be replaced by a more practical and efficient definition.

The current definition provides that the mere existence of an opportunity to benefit without taking advantage or capitalizing on that opportunity would constitute a conflict of interest. This is not only a unique definition in the country, applicable only in the Northwest Territories, but in reality amounts to an apparent conflict of interest prohibition which this Panel has found to be unnecessary as a specific stand alone provision.

We have canvassed the definitions of a conflict of interest in other jurisdictions and, while a number are suitable, we recommend the wording which is specified in the following recommendation.

Recommendation #14 - Section 66 of the *Legislative Assembly and Executive Council Act* should state that a Member has a conflict of interest when the Member exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that the performance of the duty or function or the exercise of the power might further his or her private interest or the private interest of his or her spouse or dependent child.

The Panel also debated whether apparent conflicts should be specifically included in the legislation and be subject to determination by the Conflict of Interest Commissioner. The Panel decided that it was not necessary to include apparent conflicts because of Section 67(a) of the *Legislative Assembly and Executive Council Act*.

Section 67(a) establishes an ethical duty on the Members to perform their duties of office and arrange their private affairs in such a manner as to maintain public confidence and trust in their

integrity, objectivity and impartiality. The Panel strongly endorses this section. This section is broad enough to cover situations of apparent conflict of interest which are likely to erode public confidence in the system, and flexible enough to cover other situations which may arise and which may have ethical considerations. It recognizes that the obligations of Members to their constituents go beyond the requirement that they not profit financially from their office, and that Members have positive obligations for which they may be held accountable.

Recommendation #15 - Section 67(a) of the *Legislative Assembly and Executive Council Act* imposes a high standard of ethical conduct of all Members and should be retained. With this section in place, it is not necessary to legislate with respect to the specifics of an apparent conflict of interest.

V A MODEL FOR DEALING WITH ALLEGED CONTRAVENTIONS OF THE
STATUTE
(RECOMMENDATIONS 16 TO 28)

The Panel considered a number of different alternatives for dealing with conflict of interest complaints filed with the Conflict of Interest Commissioner. It is important that the process be timely and cost-effective. In Alberta and British Columbia, it has always been possible to resolve complaints without the need for a public inquiry such as has dominated the scene in the Northwest Territories in the last few months. We recommend that the Northwest Territories retain the ability to conduct a public inquiry in situations where that is appropriate, but that there also be a less expensive and more timely alternative where circumstances indicate to the Conflict of Interest Commissioner that such an approach is preferable. We think that the model set out below is ideally suited to the needs of the Northwest Territories.

The Panel recommends that the requirements for filing a complaint set out in Section 80 of the *Legislative Assembly and Executive Council Act* be clarified by providing that a Member who has reasonable and probable grounds to believe that there has been a contravention of Part III of the *Act* may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the Conflict of Interest Commissioner give an opinion in writing respecting the compliance of the other Member with the provisions of the *Act*.

Such requirements discourage frivolous complaints, and ensure that a Member who is the subject of a complaint knows the substance of the allegations against him or her. These requirements also assist the Conflict of Interest Commissioner.

Recommendation #16 - Section 80 of the *Legislative Assembly and Executive Council Act* should state that a Member who has reasonable and probable grounds to believe that another Member is in contravention of Part III of the *Act* may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the Conflict of Interest Commissioner give an opinion respecting the compliance of the other Member with the provisions of the *Act*.

The Panel recommends that members of the public be subject to the same requirements for laying a complaint. However, the Conflict of Interest Commissioner should be available to meet with a member of the public and to receive a verbal complaint in circumstances where it is appropriate to do so. This makes the process accessible to all members of the public. In such an instance, the Conflict of Interest Commissioner should record the complaint in written form.

Recommendation #17 - Members of the public should be subject to the same requirements for laying a complaint as Members of the Legislative Assembly. However, the Conflict of Interest Commissioner should have the discretion to meet with a member of the public to receive a complaint, and to accept a verbal complaint in circumstances where it is appropriate to do so.

Once a complaint is formally before the Conflict of Interest Commissioner, his or her initial responsibility should be to conduct an investigation and determine which of three possible processes is most appropriately suited to the complaint. These processes should be:

- a. A further and more extensive investigation of the matter to be carried out and completed by the Conflict of Interest Commissioner (This would represent the alternative approach referred to in the first paragraph of this chapter);
- b. Dismissal of the complaint pursuant to Section 81 of the *Act* where the Conflict of Interest Commissioner is of the opinion that there are insufficient grounds for the complaint, or the complaint is frivolous or vexatious or is not made in good faith; or
- c. In exceptional cases, the holding of a public inquiry by an Adjudicator appointed either by the Legislature or the Management and Services Board.

Recommendation #18 - The Conflict of Interest Commissioner should investigate and determine which of these three processes is appropriate:

- a. A further and more extensive investigation of the matter to be carried out and completed by the Conflict of Interest Commissioner;
- b. Dismissal of the complaint as provided for in Section 81; or
- c. The holding of a public inquiry by an Adjudicator.

Whether the circumstances of a particular complaint best lend themselves to a further and more extensive investigation conducted by the Conflict of Interest Commissioner, or a more formal public inquiry conducted by an Adjudicator, can be a difficult decision for the Conflict of Interest Commissioner. In the interests of time and costs, we believe that the former procedure should be, in most instances, the desired procedure to be followed. Indeed, in Alberta and British Columbia, every complaint that has not been dealt with under a Section 81-like provision has been dealt with by the Conflict of Interest Commissioner without the need for a public inquiry.

However, the gravity of a complaint, the complicated nature of a complaint or an intense public interest in the detail of a complaint may point to the need for a full public inquiry. Hopefully the instances where this procedure is used will be rare, given the time and cost that could be involved in such a formal and prolonged process.

Recommendation #19 - An investigation and report by the Conflict of Interest Commissioner should be the desired process to be followed in the interests of time and costs.

In deciding which of the three procedures to adopt, the Conflict of Interest Commissioner may wish to meet informally with the complainant, the Member against whom the complaint is made, or any other person whom either the complainant or the Member believes could assist the Conflict of Interest Commissioner in this preliminary investigation.

Recommendation #20 - In making a preliminary investigation and determining how to proceed, the Conflict of Interest Commissioner may meet with the complainant, the Member against whom the complaint is made, and any other person the complainant or the Member believes could assist the Conflict of Interest Commissioner.

If the Conflict of Interest Commissioner decides that the matter should be disposed of pursuant to Section 81, he or she should dismiss the complaint with written reasons. Those reasons should be communicated to the complainant and the Member who was the subject of the

complaint. The Conflict of Interest Commissioner's decision should also be referenced in his or her annual report.

Recommendation #21 - If the Conflict of Interest Commissioner decides that the matter should be disposed of pursuant to Section 81, he or she should dismiss the complaint with written reasons and reference it in his or her annual report.

If the Conflict of Interest Commissioner determines that the matter should go to a further and more extensive investigation to be conducted by himself or herself, the procedure should be much the same as is followed in British Columbia. The Conflict of Interest Commissioner should, either himself or herself, or through his or her lawyer, examine under oath in the presence of a court reporter every person who the Conflict of Interest Commissioner believes can usefully contribute to the matter. Alternatively, the circumstances of a particular instance may more readily lend itself to the use of statutory declarations rather than examinations under oath. Any person being examined is entitled to have his or her counsel present.

This is not a public process but the public interest is preserved and protected by the Conflict of Interest Commissioner filing his or her opinion with the Speaker together with a transcript of all the evidence on which his or her decision is based. The opinion and the transcripts are tabled in the Legislative Assembly and are thereby made public.

Recommendation #22 - In a further and more extensive investigation, the Conflict of Interest Commissioner or his or her lawyer should examine under oath in the presence of a court reporter or obtain a statutory declaration from every person whom the Conflict of Interest Commissioner believes can usefully contribute to this matter. The Conflict of Interest Commissioner should then file his or her opinion with the Speaker together with a transcript of all the evidence on which his or her decision was based, and those documents should be available for public scrutiny.

There may be situations where, during the course of the Conflict of Interest Commissioner's further and more extensive investigation, circumstances come to his or her attention which indicate that the public interest would better be served by a public inquiry. The Conflict of

Interest Commissioner may, in that circumstance, terminate the investigation and have the matter moved to a public inquiry.

Recommendation #23 - If, during the course of the investigation, the Conflict of Interest Commissioner determines that the public interest would be better served by a public inquiry, he or she may terminate the investigation and have the matter moved to a public inquiry.

Where the Conflict of Interest Commissioner decides, after his or her preliminary consideration of the matter or during the course of his or her further and more extensive investigation, that a public hearing is required, then the hearing ought to be conducted by an Adjudicator appointed by the Legislative Assembly (if it is in session), or otherwise by the Management and Services Board forthwith after being informed by the Conflict of Interest Commissioner of the need for the appointment.

Recommendation #24 - If the Conflict of Interest Commissioner determines that the matter should proceed to a public hearing, he or she should inform the Legislative Assembly (if in session) or otherwise the Management and Services Board and request that an Adjudicator be appointed forthwith to conduct a public inquiry.

It is important to make sure that the person hearing the evidence at the public inquiry is independent and impartial. The Panel is of the opinion that the Conflict of Interest Commissioner is not the best person to perform this role given his or her previous involvement in the matter at the investigative stage. Given that complaints of a very serious nature proceeding to a public inquiry would be the exception rather than the rule, the Panel decided that it would be preferable to bring in an outside Adjudicator. The reasoning behind this is that the Conflict of Interest Commissioner would have been exposed to some of the information regarding the case when he or she conducted the initial interviews. It would be very difficult for the Conflict of Interest Commissioner to then step back and only consider the evidence which is brought forward at the public inquiry.

Several people who appeared before the Panel stated that they liked the old system where all public inquiries were heard by a panel of three Adjudicators. The Panel considered a return to that system, but ultimately decided that it was unnecessarily expensive. There is no reason why the matter cannot be appropriately dealt with by a sole Adjudicator.

Recommendation #25 - A public inquiry should be conducted by a sole Adjudicator, and following its conclusion the Adjudicator should file his or her report with the Speaker. That report should be made public.

The best candidate to act as Adjudicator would be someone with experience in dealing with conflict of interest matters. We recommend that the Adjudicator appointed be either a Conflict of Interest Commissioner or a former Conflict of Interest Commissioner from another jurisdiction, or a former Conflict of Interest Commissioner from the Northwest Territories. If such a person is not available, the Adjudicator should be a Judge of the Northwest Territories Supreme Court, named for that purpose by the senior Judge of the Court.

Recommendation #26 - The Adjudicator should either be a Conflict of Interest Commissioner or a former Conflict of Interest Commissioner from another jurisdiction or a former Conflict of Interest Commissioner from the Northwest Territories. If such person is not available, the Adjudicator should be a Judge of the Northwest Territories Supreme Court, named for that purpose by the senior Judge of the Court.

Both the Conflict of Interest Commissioner in conducting an investigation and the Adjudicator in conducting a public inquiry should have the powers available under the *Public Inquiries Act* for the summoning of persons and documents.

Recommendation #27 - The Conflict of Interest Commissioner and the Adjudicator should have all of the summoning powers available under the *Public Inquiries Act*.

The Panel considered carefully the question of legal costs. Regardless of whether the matter proceeds by way of expedited hearing or public inquiry, we are of the opinion that the model which we have set out for dealing with complaints is easily accessible to the parties involved

without the need for separate legal representation. If, however, any party engages a lawyer, we recommend that no legal costs be paid for any party other than the Member against whom the complaint is made, and then only if the Member is exonerated. Commission counsel will be appointed on the decision of the Conflict of Interest Commissioner or Adjudicator and costs incurred as a result of such an appointment will be paid.

Recommendation #28 - No legal costs should be paid for any party other than the Member against whom the complaint is made. That Member's legal costs should only be paid if he or she is exonerated. Costs of Commission counsel will be paid.

VI ISSUES BEARING ON THE INVESTIGATION AND PUBLIC INQUIRY
PROCESSES
(RECOMMENDATIONS 29 - 33)

The Conflict of Interest Commissioner or the Adjudicator as the case may be should have the sole responsibility for determining if there has been a contravention of the conflict of interest provisions.

The Conflict of Interest Commissioner or Adjudicator is by virtue of his or her appointment a respected person who enjoys the confidence of the legislature. He or she is someone who is experienced in the field, able to bring his or her expertise to the matter. The Conflict of Interest Commissioner or Adjudicator will be a person who is independent in every sense and not influenced by the politics of the Legislative Assembly.

Recommendation #29 - The Conflict of Interest Commissioner or Adjudicator as the case may be should have the sole responsibility for determining if there has been a contravention of the conflict of interest provisions.

The power to discipline members is part of the inherent jurisdiction of the Legislative Assembly subject to the responsibility of the Conflict of Interest Commissioner or Adjudicator to recommend a sanction within the range set forth in Section 83 of the *Legislative Assembly and Executive Council Act* where a contravention has been found to exist. It should be open to the Members to debate whether to accept or reject that sanction. It is not the role of the Legislative Assembly to inquire further into the contravention or impose some other sanction, as the Members voting did not have the benefit of hearing the presentation of the evidence.

A Member who wishes to express his or her disapproval of a finding of contravention or with the sanction recommended will do so by voting against the imposition of the recommended sanction.

Recommendation #30 - The Conflict of Interest Commissioner or Adjudicator should recommend a sanction where he or she finds that there has been a contravention of the conflict of interest provisions. The Legislative Assembly may order the imposition of the sanction, or may reject the recommendation, but the Legislative Assembly must not further inquire into the contravention or impose a sanction other than the one recommended by the Conflict of Interest Commissioner or Adjudicator.

With the foregoing safeguards in place and considering that we are dealing with disciplinary matters which are internal to the Legislative Assembly, judicial review of the Conflict of Interest Commissioner's or Adjudicator's opinion should be prohibited.

Recommendation #31 - Judicial Review of the Conflict of Interest Commissioner's or Adjudicator's decision should be prohibited.

The Panel gave consideration to the specific provision in Section 82(4) of the *Legislative Assembly and Executive Council Act* requiring that an inquiry by the Conflict of Interest Commissioner be conducted in accordance with the principles of natural justice. The Northwest Territories is the only jurisdiction in the country that has such a provision in its conflict of interest legislation. The Panel is of the view that the procedure we have recommended in this report ensures that fairness will prevail. The inclusion of the natural justice provision is redundant and its retention could be interpreted as an invitation to judicial review, which this Panel has already rejected. What is more, the separation of the legislative and judicial branches should be maintained.

Recommendation #32 - Section 82(4) of the *Legislative Assembly and Executive Council Act* requiring that an inquiry by the Conflict of interest Commissioner be conducted in accordance with the principles of natural justice should be deleted.

Section 84 of the current legislation states that a report provided by the Conflict of Interest Commissioner must be considered within 30 sitting days after the report is laid before the

Legislative Assembly. Depending on the schedule of the Assembly, this could be an unreasonably long time.

Recommendation #33 - Section 84 of the *Legislative Assembly and Executive Council Act* should be amended to state that the Conflict of Interest Commissioner's or Adjudicator's report shall be considered by the Legislative Assembly within 10 days after it is laid before the Assembly, and a determination must be made with respect to any recommended sanctions before the end of that session.

VII APPOINTED OFFICIALS (RECOMMENDATIONS 34 - 38)

The Panel was asked to consider appropriate standards for senior appointed officials. The Panel believes that this is a very important aspect of responsible government, and one which is not always monitored as closely as it should be. Senior appointed officials are not nearly as visible as elected Members of the Legislative Assembly. However, senior appointed officials can have a great deal of influence since they advise the government on new policy initiatives and on how to reform existing programs. They are responsible for administering government agencies and programs, which can include participation in the awarding of lucrative contracts, the hiring of a substantial number of employees, and the purchasing of goods and services from local businesses. Senior appointed officials often have access to much of the same confidential information as Members of the Executive Council, and often have more information than other Members of the Legislative Assembly. Consequently, senior officials are often placed in situations akin to those that represent prohibited conduct for Ministers under the *Act*.

At present, there are some restrictions on the actions of senior appointed officials to avoid conflict of interest. These restrictions are contained in the *Government of the Northwest Territories Human Resources Manual*, the *Public Service Act*, and in private contractual arrangements between the government and public servants. However, many of these restrictions are policies which do not have the same legal force as legislation. Private contractual arrangements only give rise to civil suits for damages or dismissal for breach of contract. Furthermore, there is no one source that contains a clear, concise statement of what the rules are.

Because the most senior appointed officials, that is Deputy Ministers and those functioning at an equivalent level (such as the Chief Executive Officers of government corporations and agencies, and the heads of the Secretariat of the Executive Council) hold significant power, the Panel is of the opinion that they should be held to the same ethical standards as Ministers. This should include the requirement to file annual financial disclosure forms. Additionally, there should be an annual meeting with the Conflict of Interest Commissioner to ensure that

Deputy Ministers, and those functioning at an equivalent level, understand their duties and responsibilities.

Recommendation #34 - Deputy Ministers and those functioning at an equivalent level should be subject to the same standards as Ministers. These requirements should be legislated and should include the filing of an annual financial statement, and an annual meeting with the Conflict of Interest Commissioner.

The Panel is of the opinion that the restrictions on Deputy Ministers and those functioning at an equivalent level should also apply to their spouses and dependent children, as is the case with Ministers. However, the Deputy Ministers and those functioning at an equivalent level should have a right to apply to the Conflict of Interest Commissioner for an exemption, and such exemption may be granted in situations where it would not be contrary to the public interest. Members of the Legislative Assembly are currently able to make such an application under Section 75.1 of the *Legislative Assembly and Executive Council Act*.

Recommendation #35 - The restrictions on Deputy Ministers and those functioning at an equivalent level should also apply to their spouses and dependent children. However, Deputy Ministers and those functioning at an equivalent level should have the right to apply to the Conflict of Interest Commissioner for an exemption, and such an exemption may be granted in situations where it would not be contrary to the public interest.

There should be some post-employment restrictions on Deputy Ministers and those functioning at an equivalent level. Like Ministers, Deputy Ministers and those functioning at an equivalent level should be subject to post-employment restrictions with respect to lobbying activities and assuming employment with organizations which had significant official dealings with their government department or agency.

However, the Panel is convinced that the value of any information gained by the Deputy Minister and those functioning at an equivalent level decreases rapidly over time, and does not normally have a shelf-life beyond six months. Post-employment restrictions should not be so strict as to discourage qualified people from accepting government positions by rendering

them unemployable outside the public service when their employment is finished. Deputy Ministers and those functioning at an equivalent level should not be expected to sacrifice their income earning potential. In light of the above, the Panel is of the opinion that the 12- month post-employment restriction required of Ministers is excessive and a 6-month post-employment restriction is sufficient. As outlined above, the Deputy Ministers and those functioning at an equivalent level should have the right to apply to the Conflict of Interest Commissioner for an exemption, and such an exemption may be granted in situations where it would not be contrary to the public interest.

Recommendation #36 - Deputy Ministers and those functioning at an equivalent level should be subject to post-employment restrictions with respect to lobbying activities and assuming employment with organizations which had significant dealings with their government department or agency. The period of restriction should be 6 months.

Unlike public officials, Deputy Ministers are appointed by the Premier. Senior officials functioning at an equivalent level are often appointed by the Minister responsible. The actions of a Deputy Minister or senior official functioning at an equivalent level reflect on the Premier and on the Minister he or she represents. Ultimately, the Premier and the Minister are answerable to the public for the actions of the Deputy Minister or senior official functioning at an equivalent level. Given this relationship, the Panel is of the opinion that the Conflict of Interest Commissioner should, after giving notice to the Deputy Minister or senior officer functioning at an equivalent level, report any concerns that have come to his or her attention involving a Deputy Minister or senior official functioning at an equivalent level to the Premier and the Minister responsible. It would then be up to the Premier and the Minister responsible to take the appropriate action.

Recommendation #37 - The Conflict of Interest Commissioner should, after giving notice to the Deputy Minister or senior officer functioning at an equivalent level, report any concerns that have come to his or her attention involving a Deputy Minister or senior official functioning at an equivalent level to the Premier and the Minister responsible. The Premier and the Minister responsible should be required to report the steps taken to the Conflict of Interest Commissioner within 60 days. That information should then be included in the Conflict of Interest Commissioner's annual report.

The Panel also considered the effect that conflict of interest issues can have on public servants. Neither responding to requests from the Conflict of Interest Commissioner, nor taking concerns to the Conflict of Interest Commissioner, should result in reprisals in the work place. However, public servants can be vulnerable to the actions of their superiors. Public servants should not be put in the position where they must choose between protecting their employment and fulfilling their ethical obligations. To ensure that the latter is always the first priority, it would be appropriate to introduce "whistle blower" legislation to ensure that public servants are protected as a result of either bringing matters to the attention of the Conflict of Interest Commissioner or assisting the Conflict of Interest Commissioner in the course of his or her work.

Recommendation #38 - The *Legislative Assembly and Executive Council Act* should include provisions which state that no job action may be taken against any person as a result of that person either bringing matters to the attention of the Conflict of Interest Commissioner or assisting the Conflict of Interest Commissioner in the course of his or her work.

VIII SUMMARY OF THE RECOMMENDATIONS

The Panel has proposed significant changes to the *Legislative Assembly and Executive Council Act*. Our recommendations build on past experiences, and examine the lessons to be learned from the recent public inquiry. We also benefited from the input of those who appeared at the hearings, and those who provided written submissions. Our recommendations expand the scope of the conflict of interest rules to apply to Deputy Ministers and those in equivalent positions.

Our recommendations also provide new solutions for strengthening the conflict of interest rules. This includes a model for restructuring the procedure dealing with complaints which we believe would greatly enhance the efficiency and effectiveness of the conflict of interest regime.

These recommendations, if implemented, would make the Northwest Territories a leader in establishing ethical standards and in holding accountable its elected officials and its senior appointed officials.

- ◆ Recommendation #1 - The Conflict of Interest Commissioner should be readily available so that Members of the Legislative Assembly can obtain advice in a timely manner.
- ◆ Recommendation #2 - The Conflict of Interest Commissioner should carry the responsibility as the sole source of advice to the Members of the Legislative Assembly regarding conflicts of interest.
- ◆ Recommendation #3 - The Conflict of Interest Commissioner should conduct an orientation seminar for all new Members of the Legislative Assembly after each election.
- ◆ Recommendation #4 - The Conflict of Interest Commissioner should, within the jurisdiction of his or her office, develop guidelines to assist Members of the Legislative Assembly.

- ◆ Recommendation #5 - The Members' annual disclosure statements should be filed with the Conflict of Interest Commissioner and it should be his or her responsibility to prepare the public disclosure statement pursuant to Section 78 of the *Act*.
- ◆ Recommendation #6 - Members of the Legislative Assembly should be required to meet with the Conflict of Interest Commissioner on an annual basis to review their disclosure forms.
- ◆ Recommendation #7 - Section 79.3 (1)(a) of the *Legislative Assembly and Executive Council Act* should be amended to remove the 45-day grace period for the late filing of disclosure statements.
- ◆ Recommendation #8 - The *Legislative Assembly and Executive Council Act* should be revised to state that failure to comply with the requirements for filing disclosure statements is a breach of a Member's conflict of interest obligations and may be the subject of a complaint.
- ◆ Recommendation #9 - A Member should be permitted to have an interest in a private company that is a party to a contract with the Government of the Northwest Territories if the Member has entrusted his or her interest to one or more trustees on the following terms:
 1. The provisions of the trust shall be approved by the Conflict of Interest Commissioner;
 2. The trustees shall be persons who are at arm's length with the Member and approved by the Conflict of Interest Commissioner;
 3. The trustees shall not consult with the Member with respect to managing the trust property, but may consult with the Conflict of Interest Commissioner;
 4. Annually, the trustees shall give the Conflict of Interest Commissioner a written report stating the nature of the assets in the trust, the trust's net income for the preceding year and the trustees' fees, if any;

5. The trustees shall also give the member sufficient information to permit him or her to submit returns as required by the *Income Tax Act* (Canada) and shall give the same information to Revenue Canada.
- ◆ Recommendation #10 - The Conflict of Interest Commissioner should submit an estimated budget to the Legislative Assembly for approval annually. The funds should be supplied directly to the Office of the Conflict of Interest Commissioner.
 - ◆ Recommendation #11 - The Conflict of Interest Commissioner should maintain a separate office which is readily accessible to Members of the Legislative Assembly and members of the public, but which is outside the Legislative Assembly building.
 - ◆ Recommendation #12 - Public education should be a fundamental component of the Conflict of Interest Commissioner's function. The Conflict of Interest Commissioner should develop a pamphlet for public distribution informing the public of their rights under the *Act*.
 - ◆ Recommendation #13 - The Assembly may consider combining the Conflict of Interest Commissioner position with another Legislature office.
 - ◆ Recommendation #14 - Section 66 of the *Legislative Assembly and Executive Council Act* should state that a Member has a conflict of interest when the Member exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that the performance of the duty or function or the exercise of the power might further his or her private interest or the private interest of his or her spouse or dependent child.
 - ◆ Recommendation #15 - Section 67(a) of the *Legislative Assembly and Executive Council Act* imposes a high standard of ethical conduct of all Members and should be retained. With this section in place, it is not necessary to legislate with respect to the specifics of an apparent conflict of interest.

- ◆ Recommendation #16 - Section 80 of the *Legislative Assembly and Executive Council Act* should state that a Member who has reasonable and probable grounds to believe that another Member is in contravention of Part III of the *Act* may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the Conflict of Interest Commissioner give an opinion respecting the compliance of the other Member with the provisions of the *Act*.
- ◆ Recommendation #17 - Members of the public should be subject to the same requirements for laying a complaint as Members of the Legislative Assembly. However, the Conflict of Interest Commissioner should have the discretion to meet with a member of the public to receive a complaint, and to accept a verbal complaint in circumstances where it is appropriate to do so.
- ◆ Recommendation #18 - The Conflict of Interest Commissioner should investigate and determine which of these three processes is appropriate:
 - a) A further and more extensive investigation of the matter to be carried out and completed by the Conflict of Interest Commissioner;
 - b) Dismissal of the complaint as provided for in Section 81; or
 - c) The holding of a public inquiry by an Adjudicator.
- ◆ Recommendation #19 - An investigation and report by the Conflict of Interest Commissioner should be the desired process to be followed in the interests of time and costs.
- ◆ Recommendation #20 - In making a preliminary investigation and determining how to proceed, the Conflict of Interest Commissioner may meet with the complainant, the Member against whom the complaint is made, and any other person the complainant or the Member believes could assist the Conflict of Interest Commissioner.

- ◆ Recommendation #21 - If the Conflict of Interest Commissioner decides that the matter should be disposed of pursuant to Section 81, he or she should dismiss the complaint with written reasons and reference it in his or her annual report.
- ◆ Recommendation #22 - In a further and more extensive investigation, the Conflict of Interest Commissioner or his or her lawyer should examine under oath in the presence of a court reporter or obtain a statutory declaration from every person whom the Conflict of Interest Commissioner believes can usefully contribute to this matter. The Conflict of Interest Commissioner should then file his or her opinion with the Speaker together with a transcript of all the evidence on which his or her decision was based, and those documents should be available for public scrutiny.
- ◆ Recommendation #23 - If, during the course of the investigation, the Conflict of Interest Commissioner determines that the public interest would be better served by a public inquiry, he or she may terminate the investigation and have the matter moved to a public inquiry.
- ◆ Recommendation #24 - If the Conflict of Interest Commissioner determines that the matter should proceed to a public hearing, he or she should inform the Legislative Assembly (if in session) or otherwise the Management and Services Board and request that an Adjudicator be appointed forthwith to conduct a public inquiry.
- ◆ Recommendation #25 - A public inquiry should be conducted by a sole Adjudicator, and following its conclusion the Adjudicator should file his or her report with the Speaker. That report should be made public.
- ◆ Recommendation #26 - The Adjudicator should be either a Conflict of Interest Commissioner or a former Conflict of Interest Commissioner from another jurisdiction or a former Conflict of Interest Commissioner from the Northwest Territories. If such a person is not available, the Adjudicator should be a Judge of the Northwest Territories Supreme Court, named for that purpose by the senior Judge of the Court.

- ◆ Recommendation #27 - The Conflict of Interest Commissioner and the Adjudicator should have all of the summoning powers available under the *Public Inquiries Act*.
- ◆ Recommendation #28 - No legal costs should be paid for any party other than the Member against whom the complaint is made. That Member's legal costs should only be paid if he or she is exonerated. Costs of Commission counsel will be paid.
- ◆ Recommendation #29 - The Conflict of Interest Commissioner or Adjudicator as the case may be should have the sole responsibility for determining if there has been a contravention of the conflict of interest provisions.
- ◆ Recommendation #30 - The Conflict of Interest Commissioner or Adjudicator should recommend a sanction where he or she finds that there has been a contravention of the conflict of interest provisions. The Legislative Assembly may order the imposition of the sanction, or may reject the recommendation, but the Legislative Assembly must not further inquire into the contravention or impose a sanction other than the one recommended by the Conflict of Interest Commissioner or Adjudicator.
- ◆ Recommendation #31 - Judicial Review of the Conflict of Interest Commissioner's or Adjudicator's decision should be prohibited.
- ◆ Recommendation #32 - Section 82(4) of the *Legislative Assembly and Executive Council Act* requiring that an inquiry by the Conflict of Interest Commissioner be conducted in accordance with the principles of natural justice should be deleted.
- ◆ Recommendation #33 - Section 84 of the *Legislative Assembly and Executive Council Act* should be amended to state that the Conflict of Interest Commissioner's or Adjudicator's report shall be considered by the Legislative Assembly within 10 days after it is laid before the Assembly, and a determination must be made with respect to any recommended sanctions before the end of that session.

- ◆ Recommendation #34 - Deputy Ministers and those functioning at an equivalent level should be subject to the same standards as Ministers. These requirements should be legislated and should include the filing of an annual financial statement, and an annual meeting with the Conflict of Interest Commissioner.
- ◆ Recommendation #35 - The restrictions on Deputy Ministers and those functioning at an equivalent level should also apply to their spouses and dependent children. However, Deputy Ministers and those functioning at an equivalent level should have the right to apply to the Conflict of Interest Commissioner for an exemption, and such an exemption may be granted in situations where it would not be contrary to the public interest.
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- ◆ Recommendation #38 - The *Legislative Assembly and Executive Council Act* should include provisions which state that no job action may be taken against any person as a result of that person either bringing matters to the attention of the Conflict of Interest Commissioner or assisting the Conflict of Interest Commissioner in the course of his or her work.

IX PANEL MEMBERS

SUE HERON-HERBERT is a well known northerner who has extensive experience as a consultant in the Northwest Territories working in various fields including justice, constitutional development, aboriginal self-government, and women's issues. She is currently the Acting Executive Director for the MacKenzie Court Workers.

E.N. (TED) HUGHES, Q.C. is a former Justice of the Court of Queen's Bench in Saskatchewan. Mr. Hughes served as the Deputy Attorney General of British Columbia from 1983 to 1990, as the Conflict of Interest Commissioner for that province from 1991 to 1996 and has chaired several commissions of inquiry. He is currently the Conflict of Interest Commissioner for the Yukon.

ROBERT C. CLARK is a former Member of the Alberta Legislative Assembly from 1960 to 1981, has served as a Cabinet Minister, and was leader of the Official Opposition. Mr. Clark is currently the Ethics Commissioner in Alberta as well as that province's Information and Privacy Commissioner.

