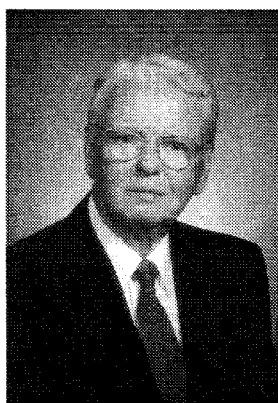

The New Conflict of Interest Act in New Brunswick

by Hon. Stuart G. Stratton, Q.C.

In 1978, the New Brunswick Government enacted one of the first Conflict of Interest Acts in Canada. The purpose of that Act was to assist legislative members, and others, to avoid an actual or apparent conflict of interest. In addition to Members of the Legislature and Cabinet Ministers, the Act applied as well to Deputy Ministers, executive staff members and heads of Crown Corporations. That Act required all of these people to make full disclosure of assets and liabilities by filing a sworn declaration with a designated Judge of the Court of Queen's Bench. In March 1999, following a review by the Legislative Administration Committee, a new Members' Conflict of Interest Act was adopted. This article is a slightly edited version of the first Bulletin of the new Commissioner appointed under that Act. The article was sent to all members of the New Brunswick Legislative Assembly in May 2000 and is available on the web site of the New Brunswick Legislative Assembly.



In response to what has been described as an unprecedented level of cynicism and lack of trust in politicians, revisions have been made to most of the Conflict of Interest Acts in Canada in an effort to put into place a regime that will better avoid conflict of interest situations. Several of the revised acts, like the one in New Brunswick, now have application to Members only and provide for the appointment of an independent Commissioner from outside government or the courts (in

some instances referred to as Ethics Commissioners) to administer the Act.

The events leading up to the enactment of the new *Members' Conflict of Interest Act* are of some interest. In 1997, the Government of New Brunswick retained the Honourable William L.M. Creaghan, a retired Judge of the Court of Queen's Bench, to review comparable conflict legislation in other provinces and to consult with those affected by the provisions of our legislation. In June of 1997, Justice Creaghan produced a report entitled "Review and Recommendations of William L.M. Creaghan on the New Brunswick Conflict of Interest Act."

Following receipt of Justice Creaghan's Report, the Legislative Assembly referred the report to the Legislative Administration Committee. After a year of meetings and discussions, that Committee produced a report of its own dated December 18, 1998, which recommended that a new *Conflict of Interest Act* be enacted. Following receipt of this latter report, the Legislative Assembly of New Brunswick enacted the *Members' Conflict of Interest Act* on March 12, 1999. The Act has since been proclaimed to be in effect as of May 1, 2000.

Stuart G. Stratton was appointed Conflict of Interest Commissioner of New Brunswick in February 2000.

When introducing the new *Members' Conflict of Interest Act* in the New Brunswick Legislature on March 9, 1999 the then Minister of Justice said:

"The proposed new *Members' Conflict of Interest Act* provides a set of guidelines to govern the conduct of Members of the Legislative Assembly in conflict of interest situations. Processes related to compliance with the standards include the appointment of a Conflict of Interest Commissioner, the provision of advice by the Commissioner, private disclosure statements, and enforcement by the Legislative Assembly. The Act also prohibits former ministers from engaging in certain activities related to contracts and benefits during the 12-month period after leaving office; this is enforceable through the courts.

The proposal implements the recommendations of the Legislative Administration Committee of the Legislative Assembly resulting from the Committee's consideration of Justice William Creaghan's 1997 review of the Act."

Since my appointment to the Office of Commissioner, I have read several statements concerning the purpose behind the enactment of *Conflict of Interest Acts* and Conflict Codes. Let me quote what some authors have said about the purpose of the new legislation.

"The purpose of conflict of interest statutes is to set out acceptable standards of conduct for elected officials in order to ensure that the private interests of these individuals do not come into conflict with the performance of their public duties."

"The basic principle of [the New Brunswick] Act is that Members of the Legislative Assembly must not allow their private financial interests to influence the conduct of public business."

"The primary purpose of integrity legislation is not to promote high ethical standards among Members, all of whom we expect, having chosen to aspire to public office, possess the necessary moral qualities which entitles them to be referred to as the "Honourable Member" in the Legislature. Rather, it is a standard against which an ever-increasingly cynical and suspicious press and public may measure their behaviour in office. It may not appease the more rabid critics, but it will serve as a source of satisfaction to the Member whose conduct is under attack to know that it meets the standard by which his peers are also judged."

There are Conflict of Interest Statutes in nine of the provinces of Canada, the Yukon, and the Northwest Territories. A *Conflict of Interest Act* for the new territory of Nunavut is under study. In addition, many of the provisions contained in the New Brunswick legislation are patterned upon the Revised Acts in Ontario, Alberta and British Columbia.

The Office of Conflict of Interest Commissioner

The Office of the Conflict of Interest Commissioner opened on May 1, 2000. The Commission is located in the former Office of the Lieutenant-Governor in Edgecombe House at 736 King Street. The office has been established as a part-time position with part-time clerical assistance provided by the staff in the Legislative Assembly Office. One of the most important functions assigned to the Commissioner under the Act relates to the provision of advice. Section 29 of the Act authorizes the Commissioner to give advice and recommendations of general application to Members or former Members respecting their obligations under the Act.

Section 30 of the Act goes even further. That section permits a Member or former Member to seek the written advice of the Commissioner on any matter respecting the Member's obligations under the Act. If a Member provides all relevant details to the Commissioner and follows the advice of the Commissioner, that Member is protected from any actions under the Act relating to the matter in question.

Please note too that, pursuant to subsection 30(3), the advice and recommendations of the Commissioner are confidential until released by the Member or former Member or with his or her consent.

Selected Sections of the Act

To comply with the requirements of the Act, Members should learn all of its provisions. I would, however, highlight the following provisions:

Section 4 sets out the general intent of the Act. That intent is to *prevent* conflicts from arising between the execution of a Member's official duties and responsibilities and his or her private interests.

Section 8 pertains to gifts. Subsection 8(1) states that a Member shall not accept a fee, gift or personal benefit that is "connected directly or indirectly with the performance of the Member's duties of office." But note that this restriction does not apply in respect of gifts or personal benefits that are received "as an incident of the protocol or social obligation that normally accompany the responsibilities of office." When, however, these latter types of gifts or benefits exceed \$250.00 in value, or the total received from any one source exceed this value, the Member must file a "Gift Disclosure Statement" with me without delay indicating "the nature of the gift or personal benefit, its source and the circumstances under which it was given and accepted."

Section 13 sets out what must be done when a Member has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the Assembly

or the Executive Council or a Committee of either of them. The Member must disclose the general nature of the conflict of interest and withdraw from the meeting without voting or participating in consideration of the matter.

Section 18 requires each Member of the Legislature to file an annual "Private Disclosure Statement." The disclosure statement must contain a statement of the nature of the assets, liabilities and financial and business interests of the Member, the Member's spouse and minor children and of private corporations controlled by any of them. A Member must also disclose "any salary, financial assistance or other benefit the Member has received from a Registered Political Party or Registered District Association."

Under subsection 18(5) of the Act, certain items need not be disclosed in the Private Disclosure Statement. These items include the Member's primary residence, primary recreational property, automobiles owned or controlled, items of domestic, household or personal use or ownership, including cash, non-convertible bonds, trust and bank certificates, registered retirement savings plans which are not self-administered and any property placed in a blind trust.

Subsection 18(6) mandates that after a Private Disclosure Statement has been filed with me, I must consult with the Member and the Member's spouse, if available, to ensure that adequate disclosure has been made and to provide advice on the Member's obligations under the Act.

Subsection 18(7) should also be noted. If there is a change in the assets, liabilities or financial or business interests of a Member of his or her spouse and minor children, or any private corporation controlled by any of them which would reasonably be expected to have a significant effect on the information previously disclosed, the Member must file with me a "Statement of Material Change" within thirty (30) days of any such change.

Another section of the Act that I would like to bring to your attention is section 20. That section requires me to prepare a "Public Disclosure Statement" which shall, subject to some exceptions, "state the source and nature, but not the value of the assets, liabilities, and financial and business interests" of each Member as well as "any salary, financial assistance or other benefit the Member has received from a registered political party or a registered district association during the preceding twelve months" and any gift or benefit that has been disclosed.

But as I noted, there are exceptions to what must be disclosed in the Commissioner's "Public Disclosure Statement." These include:

- any asset or liability worth less than \$2500.00;

- any interest in a pension plan, employee benefit plan, annuity or life insurance policy;
- any interest in an open-ended mutual fund that has broadly based investments not limited to one industry or one sector of the economy;
- any other asset, liability or financial or business interest that the Commissioner approves for exclusion.

The Act requires each Member to file a Private Disclosure Statement with the Commissioner within sixty days after becoming a member of the Assembly, and in each subsequent year at the time specified by the Commissioner. Should a Member fail to file a Private Disclosure Statement within the period of time prescribed by the Act, I must, subsequent to one written reminder, inform the Speaker of the Member's default. The Speaker must then table my report before the Assembly.

Subsection 41(1) provides that the failure to file a Private Disclosure Statement, a Gift Disclosure Statement or a Statement of Material Change within the time provided by the Act can lead to serious consequences including a reprimand, a monetary penalty, suspension from the Assembly or expulsion.

Other provisions of the Act provide that Members may not:

- (i) use insider information to their benefit;
- (ii) use the influence of their office to obtain a decision to further their private interests;
- (iii) be a party to a contract with the Crown under which the Member receives a benefit;
- (iv) be employed by the Crown in right of Canada or in right of New Brunswick.

In addition, Members of the Executive Council must not:

- (i) engage in any employment or in the practice of a profession;
- (ii) carry on a business;
- (iii) hold or trade in securities, stocks, futures or commodities;
- (iv) hold an office or directorship, unless holding the office or directorship is one of the Member's duties as a member of the Executive Council.

Investigation and Inquiries

Under section 36 of the Act "Any Person" may request an investigation into allegations of a breach of the Act. Such requests must be in the form of an affidavit setting out the grounds and the nature of the alleged breach. In addition, the Assembly may, by resolution, request that I investigate an alleged breach of the Act by a Member.