Annual Report

of the

Commissioner of Conflict of Interest

The Hon. E. N. (Ted) Hughes, Q.C.

1993-94

Legislative Assembly
Province of
British Columbia

**Office of
Commissioner of
Conflict of Interest**

101, 431 Menzies Street
Victoria
British Columbia
V8V 1X4
Telephone: (604) 356-9283
Fax: (604) 356-6580

June 9, 1994

Honourable Emery O. Barnes
Speaker of the Legislative Assembly
Room 207, Parliament Buildings
Victoria, British Columbia
V8V 1X4

Dear Mr. Barnes:

In accordance with the requirements of section 11 of the Members' Conflict of Interest Act, I attach my Annual Report for submission by you to the Legislative Assembly. It covers the twelve month period from May 23, 1993 to May 23, 1994.

Section 11 directs that I report in this document upon the affairs of this office. I believe that the content of the Report meets that requirement. In addition, I have dealt with other issues and developments relating to conflict of interest matters that are of current interest in the Province.

Throughout the year I have enjoyed the cooperation of all members of the Assembly for which I am grateful and, through you, express my appreciation.

Yours truly,

E.N. (Ted) Hughes
Commissioner of
Conflict of Interest

Attachment

TABLE OF CONTENTS

I THE YEAR IN REVIEW

This is the third annual Report issued by this office. It is convenient to review the activities within the office under the three statutory functions carried out in accordance with the provisions of the Members' Conflict of Interest Act (the "Act"). For reference purposes, a copy of the Act is reproduced in this Report as Appendix A.

A. DISCLOSURE REQUIREMENTS

At the end of November, disclosure forms are sent by this office to each member. Members are asked to complete the forms and return them by December 31. The requirement resting with each member is to disclose in a confidential submission the nature of the assets, liabilities, and financial interests (including sources of income) of the member, the member's spouse and minor children, and private corporations controlled by any of them. All members complied with that requirement in a timely way.

During the month of January, I studied all the returns and prepared for my annual individual and private meeting with each member, and spouse if available. The 75 meetings were held through February and the first half of March. On March 31, I filed with the Clerk a Public Disclosure Statement with respect to each member. It contains, with two minor exceptions detailed in section 13(1) of the Act, all relevant information provided to me in written and oral form. The Public Disclosure Statement is available for inspection by members of the public in the Office of the Clerk of the Legislative Assembly. The Public Disclosure Statement also contains information of any gifts and benefits received by the member, as an incident of the protocol or social obligations that normally accompany the responsibilities of office, that have been disclosed to me by the member as is required when the value of the gift or benefit exceeds $250.00.

During the year, members are required to report to this office any material change by way of acquisition or disposition of assets, liabilities and financial interests. A

notice of the change is then immediately prepared by this office and filed with the Clerk of the Legislative Assembly. It is also available there for public inspection.

All members cooperated fully in meeting the disclosure requirements of the Act and any additional requests made by me of them in the course of my endeavors to ensure full compliance.

B. OPINIONS AND ADVICE

This has reference to what I describe as the "preventive medicine" provisions of the Act. It is a function that is on-going throughout the year. Members may request my advice on matters respecting their obligations under the Act or under a section of the Constitution Act. That section, with certain stipulated exceptions, prohibits members of the Legislature from accepting from the Crown money for the supply to the Province of goods, services or work. Opinions given in response to a request from a member are confidential unless released by the member. The section is generally utilized when a member is contemplating a possible course of action, involvement or participation and wants an assurance that what is contemplated would not bring him or her into a possible violation of the Act or the indicated provision of the Constitution Act. Because of the very nature of their day to day responsibilities as ministers of the Crown, it is accurate to say that ministers are the most frequent users of this service, although it is used from time to time by members from all sides of the House who do not sit in Cabinet.

I continue to be available for telephone conversations with members and their staff. Similarly, I endeavour to accommodate requests for face to face discussions with members. However, I must again emphasize that if members require a formal and thought-out opinion that affords them the assurances provided for in section 14 of the Act they must make their request for my opinion or recommendation in writing as required by section 14(1). If members wish to quote my opinion in the House, or elsewhere, as authority for a position they are taking, they must have my written opinion in their possession, prepared as I am required to do, after receipt of their written request for same.

The Legislative Assembly may itself request an opinion on any matter respecting the compliance of a member with the provisions of the Act or the section of the Constitution Act referred to above. To date, the section of the Act that so provides has not been utilized.

Cabinet, too, can make such a request respecting compliance by one of its members or a parliamentary secretary. The section that so provides is utilized from time to time. One opinion during the period covered by this Report was delivered on Sunday, May 30, 1993 and was made public by the recipient on the same day. That had reference to Bill 31, the Educational Programs Continuation Act and the issue was participation in House debate and its voting procedures by members who, or whose spouses, were employed by publicly supported school districts of the Province. The substance of the legislation was a "back to work" directive impacting immediately upon School District #39 (Vancouver) and the teachers in its employ but, potentially, also on other school districts across the Province that had not settled collective bargaining agreements with teachers in their employ. The opinion issued on that occasion further defined, beyond the limits of previous decisions, the meaning of "private interest", by holding that a majority of the teachers in the Province "do fall into the category of 'a broad class of electors' just as would farmers in instances where legislation is being considered affecting all farmers of the Province". The interpretation freed all members of the House who were either teachers or spouses of teachers to participate in the debate and vote on the legislation. It represented a significant narrowing from previous rulings of what constitutes a "broad class of electors", as that phrase is used in the interpretation section of the Act defining what is not included in a "private interest".

C. RECEIPT OF COMPLAINTS AND CONDUCT OF INQUIRIES

Activity with respect to this function of the office is sporadic. The less activity, the more likely the honouring of the spirit and intent of the legislation by those whose conduct it is intended to govern. I will discuss developments over the past year pertaining to this function under five sub-headings.

1. General discussion of allegations of non-compliance made by one member against another member

Notwithstanding the entitlement, since proclamation of the Members' Conflict of Interest Act into law in December 1990, of one member to lodge a complaint of contravention of the Act by another member and request my opinion on the matter of compliance, I reported in my two previous annual Reports that section 15(1), which provides for that procedure, had never been utilized. That changed on the 26th of April, 1994 when the member for Vancouver-Quilchena raised the matter of possible contravention by the member for Cariboo South.

My opinion on that matter was reported to the Speaker on May 18, 1994 and was filed by him in the Assembly the same day. Not only did that exercise cause utilization of some of the procedural sections of the Act for the first time, it also prompted a consideration, also for the first time, of some substantive sections of the Statute, such as section 3 (insider information) and section 6 (acceptance of a personal benefit). Consideration was also given to the ingredients necessary to prove a contravention of section 2.1 of the Act that prohibits a member from exercising an official power or performing an official duty or function if the member has a conflict of interest or an apparent conflict of interest as those terms are defined in section 2.

With reasons stated, the May 18 opinion found no violation of the Act by the member for Cariboo South who is also the Minister of Agriculture, Fisheries and Food. All members have received a copy of that opinion.

2. General discussion of allegations of non-compliance made by a member of the public against a member

This reporting period also saw the first opinion prepared as a result of the utilization of section 15 (1.1) of the Act which was proclaimed into law on November 4, 1992. It allows for a member of the public to request an opinion on alleged violation of the Act by a member - a request that, prior to November 4, 1992, could only be made by one member with respect to the conduct of another member. I reported a year ago that, up to the end of the period covered by my last Report, I had had requests for opinions under the new section, but that probing and prodding on my part to get at the facts had resulted, up to that date, in no substantiation of the initial allegations of contravention that had been brought to me. I was correct in my prediction made in that Report, that that would change in the 1993/94 reporting year.

Before addressing the circumstances that brought about that change, I pause to record that attempts to utilize section 15.(1.1) that turned out at the end of the day, following my probing and prodding, to be without substantiation of the initial allegation, continued this past year as they had done between November 1992 and May 1993. I have no problem with that because laity should not be expected on their own to appreciate and apply the niceties of the statutory terminology and the procedural requirements of the Act. I will illustrate with a few examples that are matters of public record.

3. Discussion of specific allegations of non-compliance made by members of the public that were not substantiated

In one instance it was alleged that a member had caused a Crown corporation to restrict its public tendering to selective companies, some of whose staff members had, at least indirectly, contributed to the member's election campaign expenses. I never reached a consideration of whether the allegation, if proved, could constitute a breach of the Act because the complainant was unable to substantiate that the member had even attempted to restrict the public tendering process of the Crown corporation.

In another instance, I was asked to accept a complaint and render an opinion on an alleged violation of the Act arising out of a ministry decision to restructure its office locations and functions, the result of which, according to the complainants, was an enhancement of ministry services to the public within the constituency represented by the Minister while down-grading, in the view of the complainants, services to the public in areas not within that constituency. The complainants said that the conflict of interest lies in the fact that the minister may benefit in the next election because of a move of a regional office to the major population centre of the constituency represented by the minister. This, says the complainants, constitutes the use of ministerial authority to the member's "political benefit as the MLA for the area". I advised the complainants that the location of a ministry regional office in the largest population centre of the member's riding, even if it could be demonstrated that it may be of personal benefit in a re-election bid - something I would judge most difficult to substantiate - does not give rise to a conflict of interest. I said:

> "The office of the Commissioner of Conflict of Interest is not here to tell the government where it ought to locate its offices throughout the province. The government has made this decision and the consequences that flow from it are for it to bear. Because a minister sits for a particular district is not a reason that a government office should not be located in that region if the government is of the view that that location is the best possible location for it, given the need to serve the public in the manner it decides as being the most appropriate and beneficial."

The Ministry press release at the time of restructuring of the office locations and functions stated that more efficient service to the public was the rationale for the decisions made in this regard. The Conflict of Interest office does not exist to second guess policy decisions of this kind made by government. Such decisions are for the electorate to pass judgment on at the appropriate time. I will say more on the relationship of government and conflict of interest, as distinct from a member and conflict of interest, after addressing another factual situation brought to me to adjudicate upon.

The next situation is one that the complainant identified at the outset of his communication to be one representing "a conflict of interest involving the government generally" and the minister responsible for the subject matter of the complaint, in particular. The alleged conflict arises, said the complainant, when the province, as owner of B.C. Rail, makes decisions with respect to trucking matters - decisions restrictive to the movement of freight by truck according to the complainant, the rationale for which, he says, is to promote the movement of freight on the government railway. The complainant says that the responsible minister "and the government are obviously more interested in promoting the objectives of their railway and therefore they cannot be impartial on questions of truck size". I responded by advising that the jurisdiction of this office is limited to conflict matters involving the 75 members of the Legislative Assembly of British Columbia. I referred the complainant to the definitions in the Act of conflict of interest and the provisions of section 1 relating to "private interest" and then said "I have ruled that a private interest can include any real or tangible benefit that enures to the personal benefit of the Member. I can see nothing in the facts and circumstances that you have laid before me, to indicate anything accruing to the personal benefit" of the responsible minister. I also stated that "whether a government, as distinct from its individual members, can be in a position of conflict of interest and, if so, whether the factual situation you present is an instance of such a situation, are questions over which this office has no jurisdiction to rule".

4. A digression to discuss whether a government, as distinct from a member of it, can be in a position of conflict of interest

In the concluding chapter of this report I refer to the use made of my annual Report as an educational vehicle on conflict of interest matters by a wider constituency than just the 75 members of the Legislature. In previous Reports, I have reasoned why I consider the fulfillment of an educational role to be part of the mandate of this office. For the educational value of readers of this Report beyond the 75 members of the Legislature, I digress at this juncture

to report on what I consider to be an important contribution to the jurisprudence in this province on conflict of interest matters which occurred during the reporting period covered by this Report.

I refer to the July 27, 1993 report of the late Commissioner, the Honourable Mr. Justice Peter D. Seaton who was appointed by Order in Council pursuant to the Inquiry Act of this province, to determine, *inter alia*, whether:

> "the government was in a conflict of interest related to the purchase by the Ministry of Finance and Corporate Relations of additional shares of MacMillan Bloedel Ltd. on or about February 9, 1993, and the government policy regarding Clayoquot Sound."

The issue that prompted the Commissioner being asked to make that determination is succinctly stated in the opening two paragraphs of the introduction to the Report. They read:

> "On February 9, 1993, a block of shares in MacMillan Bloedel Ltd. was purchased by the British Columbia Endowment Fund. On February 24, 1993, the Cabinet reached a decision concerning land use in Clayoquot Sound. The policy reduced but did not eliminate the area that could be logged. On March 29, 1993, the share purchase became public knowledge when it was reported in a newspaper. On April 13, 1993, the Government announced its decision respecting Clayoquot Sound.
>
> MacMillan Bloedel Ltd. was one of the companies that had logging rights in the Sound. Some who disagreed with the announced policy for the Sound said that the Government was in a conflict of interest."

The Commissioner stated that the answer to the question asked of him was "no". He said:

> "There was no conflict of interest. First, because share ownership did not influence the Clayoquot Sound policy decision; and secondly, because no member of Cabinet had a private interest, an essential ingredient of conflict of interest.

The reasoning employed in arriving at the decision of Commissioner Seaton is of interest and I quote portions of it:

> "A fundamental question is whether government can be capable of conflict of interest. If government is capable of being in conflict of interest, what are the consequences? Normally, a person who is in a conflict of interest must not make a decision or participate in the making of a decision. That person must be disqualified. If Government itself is in a conflict of interest, how can a decision be made? Is there anyone else who can make such a decision?
>
> Putting these questions in the context of the Clayoquot decision, I expect that the answer would have to be that no decision could be made. That is, if the Government is in a position of conflict of interest nothing can be done to change the status of the Sound. The logging rights granted in the mid-1950's to MacMillan Bloedel Ltd. cannot be withdrawn. The Government is unable to act.
>
> That untenable position seems to me to indicate a flaw in reasoning. Any reasoning that leads to government being unable to govern must be flawed."

After quoting section 2 of the Members' Conflict of Interest Act of British Columbia and placing emphasis on "his or her private interest" as that phrase is used in each of the subsections, the Commissioner said:

> "I have emphasized an essential ingredient of these statutory provisions, knowledge of a private interest. Almost every issue considered by members of the legislative assembly or Cabinet members involves competing public interests. It is the duty of public servants, whether legislators or administrators, to weigh competing interests. But they must not weigh interests when one of those interests affects them other than in their role as servants of the public, that is to say, when there is a private interest. Only public interests are open for consideration.
>
> When there is a private interest, a non-public interest, the person is in a conflict of interest. Whether a decision enhances or injures the private interest or is made without regard for the private interest is not relevant. It is knowledge of the existence of the private interest that constitutes the conflict.

> Competing interests are inherent in every government or legislative determination. Conflicts of interest are not.
>
> ...
>
> I would limit the use of the term conflict of interest to situations in which the person making a decision for the public has knowledge of a private interest which may be affected.
>
> There were competing interests for Cabinet to consider when deciding what was to happen in Clayoquot Sound. But, in my view, there was no conflict of interest, real or apparent.
>
> There was no real conflict of interest because there were no private interests held by any of the members of Cabinet. They were considering the various and competing interests of the province without the contaminating influence of any private interest.
>
> There was no apparent conflict of interest because a reasonably well informed person would find no private interest and therefore could not properly conclude that a conflict of interest existed.
>
> I return to the troubling proposition mentioned in the first paragraph of this Part. Choices made by Cabinet resolve competing interests. Government by an executive responsible to an elected legislative assembly is the system we have evolved to settle such questions. It is a critical component of the supremacy of parliament essential to a parliamentary democracy.
>
> To govern is to decide between competing interests. To extend the definition of conflict of interest so as to include weighing of competing public interests is to tie the hands of government and deny the parliamentary process the power to make decisions - to deny its very reason for existing.
>
> I would not extend the definition of conflict of interest. Society has sought to define and eliminate conflicts of interest to enhance responsible parliamentary democracy, not to prevent governments from governing."

The Commissioner's report is not a binding pronouncement, neither on me as Commissioner under the Members' Conflict of Interest Act, nor on the courts. It was not made in the course of the Commissioner's judicial responsibilities. It is,

however, a reasoned and learned opinion that has significant persuasive value. That is particularly so with respect to the Commissioner's discourse and conclusion that in resolving competing public interests, government is not in a conflict of interest in doing so.

5. Discussion of a specific allegation of non-compliance by a member of the public against a member

I return to address what I previously described as the first opinion prepared as a result of the utilization of section 15.(1.1) of the Act - the section that allows a member of the public to request an opinion on an alleged violation of the Act by a member. It concerned the member for Victoria-Hillside, who was then Minister of Municipal Affairs, Recreation and Housing and since a Cabinet shuffle in the fall of 1993 has been the Minister of Government Services. As in the case of the member for Cariboo South, the opinion was released publicly on the day following its completion, August 16, 1993, and all members have received a copy of it.

Besides this being the first opinion prepared in response to a citizen's complaint, it represents the first discussion and decision in the country by a Conflict of Interest Commissioner with respect to whether a particular factual situation had about it, the appearance of a conflict of interest. A prohibition against a member exercising an official power or performing an official duty or function when the member has an apparent conflict of interest became law in this province on November 4, 1992. That amendment provided that:

> "...a member has an apparent conflict of interest where there is a reasonable perception, which a reasonable person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest."

As recently as April 25, 1994, my colleague in Newfoundland and Labrador, in his first annual Report to the House of Assembly of that province noted that the legislation under which he acts requires him to address only real situations of conflict between Members' public duties and the private interests of themselves or their families, and that "no other jurisdiction in Canada deals with perceived

conflict of interest except British Columbia where there is a definition in the Statute of 'apparent conflict of interest'".

In the course of interpreting that definition, I added to the jurisprudence of what constitutes a "private interest" under the Members' Conflict of Interest Act of British Columbia. For reasons stated, I concluded, *inter alia*, firstly that "private interest" can include any real and tangible benefit that enures to the personal benefit of a member including a pecuniary interest, an economic advantage and, in some circumstances, campaign contributions and assistance, whether financial or otherwise; and secondly, that "pecuniary or other private interests" are not limited to those that are contemporaneous with or subsequent to the exercise by the member of an official power or duty or function and can be, at least insofar as an apparent conflict of interest is concerned, a past private interest.

In concluding that the facts of the case did give rise to both the potential for and the actual presence of an "apparent conflict of interest" and, because of the latter, a breach of the Act by the member, I accepted the sincerity of the member that he would only act in good faith and with only the public interest in mind and would not be influenced or motivated by what others had done for him. However, I found those factors to be beside the point in the case of an "apparent conflict of interest" where a critical factor is the perception in the mind of a reasonably well informed person. The ruling concluded with the observation that being the first use and interpretation of the "apparent conflict of interest" amendment, its significance will be its future educational value to all members and that, unlike the position of the member for Victoria-Hillside on this occasion, members henceforth will know the standards resulting from the amendment, by which their conduct will be judged.

II CONTINUING WIDESPREAD INTEREST IN CONFLICT OF INTEREST MATTERS

I addressed this subject in last year's Annual Report. All that has changed is that the volume of requests for advice, that come to this office from sources over which we have no jurisdiction, continues to grow. Inquiries from or about elected municipal officials are, by far, the greatest in number.

A. EXAMPLES OF THE PROBLEM

One citizen writes that he believes his requests to have property rezoned have been turned down by the municipal council because of the competition that his lots on the market would create for the municipality selling its own inventory of lots. Another citizen writes about his concern that a member of the municipal council in his area accepts gratuitous use of a private recreation facility and then is faced with voting on a rezoning application made to council by that facility. A municipal councillor writes about a conflict of interest perceived to exist in a zoning matter arising out of land ownership interests of a council colleague in A.L.R. lands within the boundaries of the municipality. A councillor in another municipality seeks guidance from this office about his attendance and participation at council meetings when development plans for an adjacent property to his own residence are under discussion. The instances cited in this paragraph are representative of the many inquiries relating to conflict of interest matters at the municipal level that have come to this office over the past year.

The inquiries come from other public bodies as well. Some involve school boards. Others address concerns relating to membership on health care boards and ties that some board members have to other groups that have business associations with the board.

A simple and an honest answer would be to turn these people away with the blunt response of "no jurisdiction" in this office. The fact is, no other possible source of assistance is known to these people. That being so, the nature of this office is to try to be of assistance in the most informal of ways - through a general discussion

during which the detail of the problems are aired in the hope that some generalized guidance will assist the inquirer in making a decision about the problem that has caused him or her to make contact with this office. Very often the suggestion is made here that legal assistance should be sought if the matter is of continuing concern.

This is not a situation with which I am comfortable and it is undesirable that it continue indefinitely because of misunderstandings that develop as a result of even an informal and low key involvement by this office. For example, following an unscheduled visit to my office by the councillor, referred to above, with the concerns about his attendance and participation at council meetings, the newspaper circulating in his district carried a large headline a week or two later announcing that the councillor "returns to table after Hughes gives okay". The councillor has written to me to express his regret for the misunderstanding of his position.

B. POSSIBILITIES FOR ADEQUATELY ADDRESSING THE PROBLEM

There are two possible avenues of assistance on the horizon. In early 1992 I made a study and reported to the Board of the Victoria Commonwealth Games Society on conflict of interest matters that could arise if board members also held contracts with the Society for the supply of goods or services. The Society is incorporated under the Societies Act of British Columbia which sets out duties of directors and accountability for their actions. I concluded that the standards required by the statute do not meet the needs of British Columbians in the 1990's. I recommended the matter be referred to the Law Reform Commission of British Columbia for study and the preparation of recommendations for change that the Commission thought to be appropriate.

My proposal was accepted and the reference was made by the Attorney General of British Columbia to the Law Reform Commission and the result was the issuing, in November of 1993, of a consultation paper by the Commission on "Conflict of Interest: Directors and Societies". The Commission suggests that the law should be changed so as to prevent directors being in a position of conflict of interest. The consultation paper includes a draft "Standards of Conduct Act" and "Model

Conduct Guidelines" for those involved in a society. Good public response to this excellent piece of work has come into the Commission's office over the recent months and it is anticipated that the final report of the Law Reform Commission recommending legislative action by government will be in the hands of the Attorney General before year end.

Two very positive aspects of this study by the Law Reform Commission should be noted. Firstly, the Commission anticipates that what it is proposing could be adapted to the needs of other bodies, boards and societies that have public responsibilities such as charitable foundations incorporated by private statute of the Legislature and possibly Crown corporations and other public bodies such as health care boards. The second encouraging factor is that several societies who were asked by the Commission for a response to the consultation paper have advised the Law Reform Commission that they are not waiting for legislation, but rather have proceeded to adopt the draft model conduct guidelines as part of the permanent structure of their organizations.

With respect to the second possible avenue of assistance to deal with this problem, I recorded in my last Annual Report, a June 1992 announcement by the Attorney General of a study, in his ministry, of conflict of interest legislation requirements for what he called tier 2 - municipal councils, school board, hospital boards, etc. I reported a year ago that my inquiries indicated that this second stage was at the investigative level. My most recent inquiries, as this report goes to the printer on June 9, 1994, reveal that some positive announcement on this initiative can be expected very soon. In fact, the Vancouver Sun newspaper has, apparently, some information with respect to where this matter now stands. An April 13, 1994 editorial in that paper reads:

> **"RULES FOR PUBLIC BEHAVIOUR**
>
> It's about time. The touchy subject of conflict of interest is coming our way again soon, as a sole commissioner gears up to ask who in the public sector should be covered by conflict-of-interest legislation. Everyone who works in the public sector, whether as elected officials at the municipal level or hired administrators or deliverers of professional services, will have a keen interest

in the results, as will anyone who has observed people paid by taxpayers' dollars taking advantage of their positions to help themselves and their friends financially.

Commissioner Barry Jones, an MLA and parliamentary secretary to the attorney-general, says he'll be looking at the extent to which the Members' Conflict of Interest Act, which applies to MLAs, should be extended to the rest of the public sector.

What should be the rules regarding gifts, or influence, or carrying on a business, or level of disclosure of private business interests, all of which get attention in the act? One section says former cabinet ministers have to wait two years before they can lobby the government on behalf of clients. That's the sort of prohibition that should apply to municipal politicians, who can and do depart council chambers as councillors and return weeks later as lobbyists for developers.

This is the kind of issue Mr. Jones must tackle. Fresh from his experience as the sole commissioner looking into the extension of the freedom of information and protection of privacy legislation, he plans to start consultations in a few weeks and produce a report by the end of the summer.

Out of his work, probably next spring, will come some explicit rules of behavior. If they are tough, fair and clear, they'll be welcomed by citizens and public servants alike."

C. A RECENT ONTARIO DEVELOPMENT

I also made mention last year of a proposed legislative initiative in Ontario addressing this very matter. I have learned that on May 18, 1994 legislation was introduced into the Ontario Legislature under the name of the Local Government Disclosure of Interest Act, 1994 which requires members of councils (and members of boards that have a municipal or school purpose) to file with the municipality (or board) a financial disclosure statement. There is a prohibition on

members being able to accept gifts or other benefits that are connected to the members' duties of office. The Act also provides for the creation of the office of a Commissioner who has the power to investigate contraventions of the Act and who, after carrying out an investigation, may bring an application to the Ontario Court (General Division) to determine whether a council member has contravened the Act.

III IMPROVEMENTS FOR THE FUTURE

A. GENERAL

It is three and a half years since the proclamation into law of the Members' Conflict of Interest Act. The 1992 amendments have been operational for the past year and a half. Some of the housekeeping amendments of that year were suggestions from this office, while the substantive amendments were the initiative of the government. Considerable experience has been gained with respect to the functioning of the legislation and the achievement of the goals set for it. I am positive about the record of the past and optimistic about the usefulness of the legislation for the future.

Experience working with the Act tells me, however, that there are improvements that could be made that would be beneficial to the public, for whose benefit the legislation exists, as well as for the members of the Assembly and for this office. I am anxious to dialogue about views that I have formed, with respect to further amendments to the statute. I have no doubt at all that the door of the Attorney General, who has administrative responsibility for the Members' Conflict of Interest Act insofar as liaison with the Legislature is concerned, is open to me. But like my colleagues, the Ombudsman, the Auditor General, and the Information and Privacy Commissioner, I am an Officer of the Assembly and I therefore feel my responsibility is to dialogue with a cross section representation of the Assembly, not just the governing party.

B. POSSIBLE AMENDMENTS FOR CONSIDERATION

I will enumerate some of the areas that I would like to explore.

1. Procedural aspects following an allegation of contravention and the request for an opinion under section 15:

   (a) In preparing and rendering an opinion under section 15(1) or (1.1), am I deemed to have conducted an inquiry under section 16?

   (b) The Chief Legislative Counsel for the province has given me his opinion that the requirement in section 16(3) of the Act for the delivery of an opinion under section 15(1) (where one member requests an opinion with respect to the compliance of another member) to the Speaker of the Assembly for presentation to the House by him, does not apply to an opinion under section 15(1.1) (where a member of the public requests an opinion with respect to the compliance by a member). What then am I to do with respect to delivery and distribution of an opinion prepared under section 15(1.1) and, if the option to recommend a penalty to the Assembly under section 17 is open to me in such circumstances, what is the mechanism for placing my recommendation in that regard before the House?

   (c) If I give an opinion to a member under section 14 to the effect that he/she has not contravened the Act and the facts available prior to the presentation of that opinion are accurate and complete and, therefore, pursuant to section 14(5), my determination is final for all purposes of the Act, what do I do if subsequently requested by another member or a member of the public for an opinion under Section 15 on the same factual situation? Must I decline to comply with that request?

(d) A situation somewhat akin to (c) would be if I had given an opinion to the Executive Council under section 15(2) of the Act and I subsequently receive a request for an opinion under section 15(1) or (1.1) of the Act on the same factual situation.

2. Would it be timely to move sections 25 and 26 and possibly section 27 of the Constitution Act into the Members' Conflict of Interest Act? In any event, some further exceptions to the prohibition in section 25 of the Constitution Act require consideration such as the situation where a member of the House is the only qualified and available person in a community to provide a service or goods to a ministry of government. That is a situation that presently exists and I have given advice based on common sense, but legislative change should be considered.

3. Would there be merit in empowering the Commissioner, on his own initiative, to inquire into whether a member is in breach of the Act when, in the opinion of the Commissioner, it would be in the public interest to do so? Some jurisdictions now vest that authority in the Commissioner.

4. If the Commissioner is of the view that a request for an opinion made under section 15(1) or (1.1) of the Act is frivolous or vexatious, or was not made in good faith, should he be expressly empowered under such circumstances to refuse to investigate the matter?

5. If a matter is brought to the Commissioner for an opinion which would require an inquiry by him, but it is then known or subsequently becomes known that the same subject matter is under investigation by police authorities or has become the subject of criminal proceedings, should there be authority given to the Commissioner to hold his inquiry into the matter in abeyance pending final disposition of the other investigation or proceedings?

6. Should there be a provision in the Act, as there is in some other jurisdictions, that provides that after the expiration of 12 months or some other time period from when a member ceased to be a member of the Assembly, the Commissioner may destroy all documents in his possession relating to that member, unless there are other proceedings in progress that will require their production? For instance, there remains in this office the disclosure documents filed by those members from the previous Legislature who did not return to the House after the October 1991 election.

7. Has there now been sufficient experience with the Act to consider the placement in it of a positive definition of "private interest" instead of leaving, as the sole statutory guide, the present negative provision that spells out what, under some circumstances, does not constitute a "private interest"?

The foregoing list is not a comprehensive one, but it does indicate the areas in which I would like to see some dialogue occur. How might that dialogue come about?

C. THE EXPERIENCE IN SOME OTHER JURISDICTIONS

A consideration of what occurs in some other jurisdictions may be helpful in answering the question posed immediately above.

In Alberta, there is a Standing Committee of the Legislature entitled "Legislative Offices" consisting of nine members of the House. Published guidelines about the function of the Committee provide:

> "Created in 1978, the work of the Standing Committee on Legislative Offices is ongoing and its function is authorized by the *Auditor General Act*, the *Ombudsman Act* the *Election Act* and the *Conflicts of Interest Act*.
>
> The Committee reviews the operations of the four officers of the Legislature (the Auditor General, the Chief Electoral Officer, the Ombudsman and the

> Ethics Commissioner) and approves the budgets submitted by those offices. The Committee is also involved in salary reviews for the officers and appointments to those offices."

The conflict of interest legislation in Alberta provides for my colleague in that province being known as the Ethics Commissioner. I am advised by his office that this Standing Committee is available for the kind of dialogue I would like to see occur in British Columbia.

My colleague in Ontario has taken a pro-active stance to move forward suggestions that he has for legislative change in that province. He requested that the three parties in the House each name a person to work with him in drafting amendments to the Act that he believes would strengthen the statute and that would also meet with all-party approval. Two of the three parties designated a party member with legal training but not members of caucus. One party named a member of caucus who has legal training. My information is that the committee has worked well, with the Commissioner as its chair. Each of the other three members liaise back to the party that he or she represents at the committee table. It is my understanding that substantial progress has been made in reaching agreement on a number of amendments that the Commissioner believes would be beneficial to the operation of the statute as well as to the public in whose interest the legislation exists. I believe that some public unveiling of those amendments is likely to occur during this year.

In Newfoundland and Labrador, my colleague identified for members of the House of Assembly of that province eight areas where he believed, based upon his experience over the previous year, legislative change would be beneficial. He amplified on each of those areas in his annual Report as filed in the Assembly in April of 1994. He introduced the subject by saying:

> "During the course of the year a number of issues emerged where current legislation is inadequate or ambiguous to cover specific situations. These are summarized in this Annual Report so that Legislators may determine whether amendments are necessary."

D. WHAT COULD OCCUR IN BRITISH COLUMBIA

In a sense, I have done something similar in this Report to what my colleague in Newfoundland and Labrador has done in his annual Report, although, I have endeavored not to be definitive and, clearly, I favor a method of all-party dialogue. In proposing that that occur in British Columbia, I am perhaps breaking new ground. Vancouver Sun political columnist, Vaughn Palmer, was quite correct when earlier this month he described the "independent officers of the house" (of whom the Commissioner of Conflict of Interest is one) as being "deliberately kept at arm's length from the government and the bureaucracy in order to insulate them from political interference". Nothing I have said or suggest is intended to impair the existence of that laudable state of affairs in this province.

I certainly do not suggest, for instance, that the dialogue should be accompanied by the assumption of any supervisory power over the independent officers of the House. Rather, I believe my suggestion makes practical sense in an environment where those who would be engaged in the dialogue share my view that this is an area for non-partisan consideration of matters that are everybody's business - the business of all members of the House and of their constituents.

An initiative will originate from this office, immediately following the summer months of 1994, directed to the leaders of the recognized parties in the House to see if a satisfactory procedure can be agreed upon whereby the dialogue can commence. Whatever procedure is arrived at will allow for a consideration of the views and suggestions of all members of the House with respect to legislative change.

IV OFFICE OPERATIONS

This office moved on November 29, 1993 to newly renovated and very adequate premises at 431 Menzies Street. This location is in immediate proximity to the Legislature and has proved to be very satisfactory, both with respect to the attendance of members at the office and vice versa. In all, this office occupies 78 1/2 square meters with the adjoining ground floor space in the building being occupied by the Legislative Comptroller's Office. I am appreciative of the efforts of B.C.B.C. in making this space available.

The second position in this office is filled under a job sharing arrangement. Ms. Jill Robinson, who has been with the office since its inception as Administrative Assistant, works half time and she has been joined by Ms. Daphne Thompson, who assumed her half-time position in March of 1994.

The 1993/94 budget for this office of $206,000 was exceeded by $16,600 for a total expenditure this past fiscal year of $222,600. Normal operations, however, consumed $137,400 of that amount. It was possible to furnish the entire office from furniture available in the government storage inventory, other than drapes which had to be acquired for the street level windows. The cost of renovating the office space was charged back to the budget of this office in the amount of $46,000; the cost of electronic equipment (computers, printer and fax machine) which represented a one-time cost to this office, was $13,700. Those will not be reoccurring items. Fees paid for professional services in carrying out the Constituency Allowance study pursuant to special assignment under section 15.1 of the Act were $25,500. This also would not be a continuing expense.

Subject to the qualification just made, and thus having, in effect, operated since inception considerably below budget, I suggested a 5% reduction for the 1994/95 fiscal year. The budget for this office was, accordingly, approved in this reduced amount at $195,000. For obvious reasons, there cannot be a reduction every year. Also, it must be appreciated that if circumstances require investigations being carried out, the amount required for office operations in a year could increase to accommodate that activity.

The Legislative Comptroller's Office carries out all the accounting procedures for this office and I am indebted to staff of that office for their year-round cooperation and assistance.

V CLOSING

The content of this report likely goes further than the responsibility I have under section 11 of the Act, to "...report annually upon the affairs of his or her office...". It covers a spectrum of conflict of interest issues that are topical in this province at the present time and which seem to find a focal point in this office because of the lack of any other repository for all that is being generated by the growing interest in this subject.

I recognize that my first obligation with respect to this Report is, through the Speaker, to the Members of the Assembly. I believe I have met that obligation. Throughout the year, many calls are made on this office for information in printed form about the general subject of conflict of interest and the operations of this office in particular. A copy of this Report is part of the material supplied to those who inquire. That explains its secondary and, I believe, quite justified use as an educational resource. Also, I distribute it to classes on political science at our universities and colleges when asked to guest lecture about the function and working of the Members' Conflict of Interest Act in our province. I believe these educational initiatives are useful contributions to the process of building and enhancing ethical standards throughout our society whether in elective office, the business community or other endeavours of human activity. It is because of contributing to that goal that I consider it to be appropriate to canvass the wider scene in this Report.