



**OFFICE OF THE CONFLICT OF INTEREST COMMISSIONER
PROVINCE OF NEW BRUNSWICK**

**REPORT TO THE SPEAKER
OF THE
LEGISLATIVE ASSEMBLY OF NEW BRUNSWICK
OF THE
INVESTIGATION**

**BY THE HON. ALFRED R. LANDRY, Q.C.
CONFLICT OF INTEREST COMMISSIONER**

**INTO ALLEGATIONS BY MR. DOMINIC CARDY,
LEADER OF THE NEW BRUNSWICK NEW DEMOCRATIC PARTY
OF VIOLATIONS OF THE *MEMBERS' CONFLICT OF INTEREST ACT*
BY MR. GREG DAVIS, MLA FOR CAMPBELLTON-RESTIGOUCHE
CENTRE**

Report to the Speaker
of the
Legislative Assembly of New Brunswick
of the
Investigation
by the Hon. Alfred R. Landry, Q.C.
Conflict of Interest Commissioner

Into Allegations by Mr. Dominic Cardy, Leader of the New Brunswick
New Democratic Party of Violations of the *Members' Conflict of Interest Act*
by Mr. Greg Davis, MLA for Campbellton-Restigouche Centre

Introduction

Mr. Dominic Cardy, Leader of the New Brunswick New Democratic Party, has requested, by affidavit dated March 21, 2014, an investigation pursuant to Section 36 of the *Members' Conflict of Interest Act*, SNB 1999, c M-7.01, to determine whether Mr. Greg Davis, Member of the Legislative Assembly for Campbellton-Restigouche Centre has violated section 18 of the *Act* which provides as follows:

Private disclosure statement

...

18(4) Subject to subsection (5), a private disclosure statement shall contain

(a) a statement of the nature of the assets, liabilities and financial and business interests of the member and, so far as is known by the member, of the member's spouse and minor children, and of private corporations controlled by the member, the member's spouse and minor children, or any of them, and

(b) 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, or is likely to receive during the next twelve months.

...

18(7) A member shall file a statement of material change with the Commissioner, in the form provided by the Commissioner, within thirty days

...

(b) after a change in the salary, financial assistance or benefits received by the member from a registered political party or registered district association, or

...

if the change or event would reasonably be expected to have a significant effect on the information previously disclosed.

In his affidavit, Mr. Cardy grounds his belief in MLA Davis's breach of the *Members' Conflict of Interest Act* on several key factors. First, Mr. Cardy relies on media reports of a loan in the amount of \$5,125.00 from the Progressive Conservative Party of New Brunswick (PCNB) to MLA Davis for payment of rent at the MLA's constituency office. Second, upon review of MLA Davis's Public Disclosure Statement, available for public inspection at the Office of the Clerk of the Legislative Assembly, it was determined that MLA Davis had not disclosed the loan from PCNB as required by the *Members' Conflict of Interest Act*. Finally, Mr. Cardy received an opinion from his Party Solicitor that these two factors result in a *prima facie* breach of subsections 18(4) and 18(7) of the *Members' Conflict of Interest Act*.

Provision for investigations

Section 36 of the *Members' Conflict of Interest Act* provides that any person may request in writing that the Commissioner investigate an alleged breach of the *Act* by a Member of the Legislative Assembly. The request must be made in the form of an affidavit and set out the grounds and the nature of the alleged breach. Upon receiving the request for an investigation the Commissioner may conduct an investigation with or without conducting an inquiry under s. 37. (See *Members' Conflict of Interest Act*, S.N.B. 1999, c.M-7.01, s.36 and s.37.)

The Complaint

Mr. Cardy's complaint is stated as follows in his affidavit dated March 21, 2014:

1. I am, and have been at all times relevant hereto, the Leader of the New Brunswick New Democratic Party, a party duly registered under the laws of New Brunswick.
2. On or about March 14, 2014, I became aware through media reports that Mr. Greg Davis, Member of the Legislative Assembly for Campbellton-Restigouche Centre, had received loans from the Progressive Conservative Party of New Brunswick in the amounts of \$5,125.00. for the stated purpose of assisting the Member in paying his constituency office rent when he had exceeded his allowable allowance, and that Mr. Jean-Paul Soucy, Executive Director of said Party, had confirmed this arrangement. Samples of those media reports are attached as Schedule "A".

3. On March 18, 2014, Mr. Patrick Webber of my office attended at the Office of the Clerk of the Legislative Assembly and requested a copy of Mr. Davis' Public Conflict of Interest Disclosure Form under the *Members' Conflict of Interest Act*, and was given the document attached hereto as Schedule "B".
4. I am told by my Party Solicitor, Kelly Lamrock, Q.C. and do verily believe , that Section 18(4) of the said *Act* requires the disclosure of financial assistance from political parties or registered district associations thereof, and that Members of Legislative Assembly would be routinely and explicitly asked this question as part of the disclosure process under the *Act*.
5. The Public Disclosure Form of Mr. Davis makes no reference to this loan and there is no reference to a material change filed by the Member.
6. I am aware through the media reports in Schedule "A" that the Progressive Conservative Party did not list the loan to Mr. Davis in its annual return, ostensibly due to a clerical error.
7. I believe that there are sound public policy reasons for the law to require disclosure of financial assistance of this nature, not only due to the impact upon the independence of party members and the improper strengthening of party discipline, but also because the practice of parties topping up Members' riding office budgets could allow them to avoid the rules under the *Political Process Financing Act* by enabling the purchase of excess advertising and avoidance of spending limits and disclosure rules under that *Act*.
8. I am asking for your office to take the following steps:
 - (a) To investigate the *prima facie* breach of the *Members' Conflict of Interest Act* by Mr. Greg Davis, Member for Campbellton-Restigouche Centre, specifically Sections 18(4), 18(7) and such other sections as you may deem relevant; and
 - (b) While only Mr. Davis can be sanctioned under the *Act*, I am respectfully asking the course of your investigation that the relevant conduct of the Progressive Conservative Party and its Executive Director; specifically their attempts or lack thereof) to ensure disclosure and legal compliance in this matter be reviewed and reported upon where relevant to the potential breach by Mr. Davis.
9. I make these requests pursuant to s.36 of the *Members' Conflict of Interest Act* of New Brunswick, R.S.N.B. ch.M-7.01.

Failure to respond

By priority courier letters dated April 2, 2014 and May 9, 2014 addressed to MLA Davis at his Constituency Office, 19 Aberdeen Street, Campbellton, New Brunswick, E3N 2J6, enclosing Mr. Cardy's affidavit, I asked MLA Davis for his response to the allegations but he has failed to respond.

Jurisdiction

MLA Davis did not re-offer at the September 22, 2014 general election and is no longer a Member of the Legislative Assembly. In the circumstances I am of the opinion that there is no jurisdiction for me to continue the within investigation with or without an inquiry.

My predecessor the Hon. Patrick A. A. Ryan, Q.C. shared the same opinion and addressed the question at length as follows in his Report dated February 14, 2012 into allegations by Mr. Bruce Fitch MLA for Riverview against Minister Richard Miles, MLA for Fredericton-Silverwood and Minister of Environment:

[29] A reading of the *Members' Conflict of Interest Act* does not specify any power in the Commissioner to continue an investigation after a member or member of the Executive Council is defeated in an election; there is no statutory authority conferring any power to continue with or without the consent of the person who has requested the investigation; neither can the person, the subject of the investigation, empower the Commissioner to continue with the investigation; nor can the two parties consent and give the Commissioner authority to continue. Without statutory authority I am of the opinion that the matter must end without resolving the allegation of a breach.

[30] The Definition section of the *Members' Conflict of Interest Act* defines the word "member":

1 In this Act

"member" means a member of the Legislative Assembly and includes a member of the Executive Council;

[31] The member for Fredericton-Silverwood ceased to be a Member of the Legislative Assembly of New Brunswick when Writs of Election were issued on August 26, 2010 by the Chief Electoral Officer, Michael P. Quinn for the 55 electoral districts in accordance with an Order of the Lieutenant-Governor in Council, but continued as a member of the Executive Council until the new government of Premier Alward was sworn in on October 12, 2010.

[32] The former member is entitled to various benefits and was subject to the *Members' Conflict of Interest Act* because he held a

portfolio on the Executive Council. This changed when he was defeated.

[33] The first reference to a “former member” appears in s. 16(1) prohibiting the Executive Council or a member of the Executive Council from knowingly awarding or approving a contract, grant or benefit to a “former member” until twelve months after the former member ceased to hold office. Some exceptions apply. S. 17 completes the circle, no “former member” may accept a contract or such benefits until after twelve months. Some exceptions may apply.

[34] In addition the “former member” is prohibited from making representations on his or her own behalf or on behalf of any other person with respect to a contract or benefit. Some exceptions may apply.

[35] Under s. 21 a “former” member’s records are to be destroyed 12 months after the person ceases to be a member or a member of the Executive Council unless an inquiry is being conducted or criminal charges are pending.

[36] Under ss. 29, 30 the Commissioner may give advice to a “former” member respecting his or her obligations under the *Act*.

[37] Other than the sections referring to former members, there are no references, direct or indirect, that give the Commissioner the authority to pursue an investigation and inquiry into an allegation of conflict of interest of a breach of the *Members’ Conflict of Interest Act*.

[38] In further support of my opinion that I have no jurisdiction to continue with the investigation and the matter must otherwise remain unresolved is s. 41 “Recommended sanctions”:

[39] Where the Commissioner finds that a member has breached s. 41 for example the Commissioner may recommend

(a) that the member be reprimanded,

(b) that the Assembly impose a penalty on a member in an amount recommended by the Commissioner,

(c) that the member's right to sit and vote in the Assembly be suspended for a specified period or until the fulfillment of a condition, or

(d) that the member be expelled from membership in the Assembly and the member's seat be declared vacant.

[40] It is obvious from the wording of s. 41 and the specific references elsewhere to "former members" that the intention of the legislature in the drafting of the *Act* limited the sanctions to persons who remained under the jurisdiction of the legislation and of the Legislative Assembly.

[41] The listed sanctions (c) and (d) are inappropriate. The former member is no longer in the legislature and subject to its jurisdiction except where specifically referred to in the *Act*.

...

[46] A New Brunswick conflict of interest case decided on June 5, 2003 by my predecessor, the late Hon. Stuart G. Stratton, Q.C. has some relevance. In it Bernard Richard, the leader of the Official Opposition, alleged that Michael (Tanker) Malley was involved in sending out a letter seeking donations for the Miramichi-Bay du Vin Riding Association that also linked the donations to the candidate and future government support. Before the investigation was completed an election was called.

[47] Commissioner Stratton held as follows:

I would first record that although the issue has not been raised before me, I have given consideration to the question of my jurisdiction to investigate and report with respect to this particular complaint at this particular time. The Act does not contain any specific provisions dealing with cases such as the present one where an election has been called before my investigation and Report have been concluded. In this respect, it is a well recognized principle that when the Legislative Assembly is dissolved, the Members cease to be Members. This notwithstanding I have concluded that I do have the necessary jurisdiction to conclude my investigation and make my Report to the Speaker. I have come to this conclusion because the alleged misconduct in this case

occurred while Mr. Malley was a Member and he was also a Member when I received the two requests to enquire into his alleged misconduct. In this respect, I refer as well to section 2 of the Act which provides that a re-elected Member of the Assembly is deemed to have been a Member for the period between dissolution of the House and re-election. Thus, if Mr. Malley is re-elected there can be no question as to my jurisdiction.

[48] I agree with Commissioner Stratton's opinion that he would have jurisdiction if Mr. Malley was re-elected but not otherwise.

Conclusion

In conclusion I lay my report before the Assembly with the finding that the investigation of an allegation of a breach of the *Members' Conflict of Interest Act* by MLA Greg Davis commenced on March 21, 2014 be discontinued for want of jurisdiction.

Dated at the City of Fredericton this 5th day of December, 2014.

The Hon. Alfred R. Landry, Q.C.
Conflict of Interest Commissioner

Pursuant to s. 40(2) of the *Members' Conflict of Interest Act*, I sent a letter by priority courier to MLA Davis at his residence to inform him of the particulars of my report and to give him the opportunity to make representations before completing my report. The letter was not delivered, nor claimed and therefore no representations were made.

The *ratio decidendi* of my report has not changed.

The Hon. Alfred R. Landry, Q.C.
Conflict of Interest Commissioner