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**No. 16**

Friday, December 18, 1998.

*8.30 o'clock a.m.*

Prayers.

**Petitions**

Hon. Mrs. Day laid upon the table of the House a petition on behalf of residents of New Brunswick urging the government to abolish the Household Unit Policy which no longer allows two individuals to receive full benefits if they reside in the same household. (Petition 4)

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**Standing Committee on Legislative Administration**

Hon. John McKay, Speaker, from the Legislative Administration Committee, presented the First Report of the Committee which was read and is as follows:

December 18, 1998.

To the Honourable

The Legislative Assembly of

The Province of New Brunswick

HONOURABLE MEMBERS:

I have the pleasure to present herewith the First Report of the Legislative Administration Committee mandated by a Resolution of the Assembly, dated February 20, 1998, to examine and make recommendations to the House on the matter of conflict of interest legislation.

I wish to thank the Members of the Committee for their contribution and on their behalf to express the Committee's appreciation to the legislative staff who assisted the Committee in its work.

Respectfully submitted on behalf of the Committee.

Honourable John McKay.

Chair.

M.L.A., Miramichi Centre.

The full report of the Committee as presented follows:

*INTRODUCTION*

On December 19, 1997, the then Premier, Honourable J. Raymond Frenette, tabled a document entitled *Review and Recommendations of William L.M. Creaghan on the New Brunswick Conflict of Interest Act* (hereafter referred to as "the Creaghan Report"). By resolution of the House, dated February 20, 1998, the Legislative Administration Committee was charged with the responsibility to "examine, inquire into and make recommendations to the House on the matter of conflict of interest legislation" and in particular, to examine and consider the Creaghan Report.

Committee consideration of the Creaghan Report began on June 4, 1998. Additional meetings were held on July 29, August 26, September 15, October ;8, November 5, 25, December 8 and 15, 1998.

As part of its deliberations, the Committee considered conflict of interest legislation in other provincial,

territorial and federal jurisdictions. The Committee also consulted with the federal Ethics Counsellor and the Office of the Conflict of Interest Commissioner in the Provinces of British Columbia, Alberta and Ontario, three jurisdictions where conflict of interest rules have been reformed.

The purpose of the various conflict of interest statutes is essentially the same -- to set out acceptable standards of conduct for elected officials (as well as non-elected senior public servants), in order to ensure that the private interests of these individuals do not come into conflict with the performance of their public duties.

Each of the provincial, territorial and federal statutes contains similar sections dealing with the standard of conduct expected from elected Members. Most of the statutes impose additional guidelines on public officials who hold policy-making positions, including Cabinet Ministers, deputy ministers, and parliamentary secretaries. In all cases, the onus is on the individual to ensure that he or she complies with the provisions of the relevant legislation. To this end, the promotion of information and education regarding the duties of public officials has been stressed as a key ingredient in the reform of conflict of interest statutes.

Questions have been raised about the effectiveness of New Brunswick's *Conflict of Interest Act*: Should the Act apply to non-elected officials such as deputy ministers, members of executive staff, and heads of Crown corporations? Should the public have access to Members' disclosure statements? Should there be a post-employment restriction or "cooling-off period", during which former Members and Ministers would be prohibited from engaging in certain types of activities? During the past few years, such questions prompted other provinces to conduct reviews of conflict of interest legislation and to implement significant changes. The Committee examined the reforms in the provincial jurisdictions of British Columbia, Alberta and Ontario and considered these jurisdictions as models in areas where New Brunswick's legislation might be improved.

*REVIEW OF CREAGHAN REPORT*

After examining the conflict of interest statutes currently in force in other jurisdictions, it is clear that New Brunswick's legislation needs revision. The *Conflict of Interest Act* lacks key provisions relating to the filing of disclosure statements including:

(1) public access to disclosure documents;

(2) establishment of a Commissioner to administer the Act; and

(3) guidelines for the activities of former Ministers.

Changes in the relationship between society and government over the past twenty years warrant more effective and enforceable conflict of interest rules. New Brunswick has fallen behind the times in this regard. Without a clear understanding of their obligations, Members may unwittingly put themselves in situations of real or apparent conflict, jeopardizing the integrity of the legislative process and eroding the public's confidence in elected officials.

The need to enhance public confidence and to maintain the highest degree of integrity in the political process requires the establishment of more stringent standards of conduct for elected and public office holders. At the same time, conflict of interest rules must not be so complex as to deter persons from seeking public office.

In a report dated June 1997, former Justice William L.M. Creaghan of the New Brunswick Court of Appeal made fourteen recommendations for reforming the
*Conflict of Interest Act*. The Committee has reviewed and commented briefly on each recommendation, in light of the reforms undertaken in other jurisdictions.

*NEW CONFLICT OF INTEREST ACT*

The *Conflict of Interest Act*, enacted in New Brunswick in 1978, addresses the issue of conflict between a Member's private interest and his or her public duties and responsibilities. One of the first of its kind to be enacted in Canada, the Act specifies the confines within which Members of the Legislative Assembly, Cabinet Ministers, executive staff members, deputy ministers and heads of Crown corporations are required to conduct their activities in order to avoid a conflict of interest.

In addition to identifying conflict situations, the Act sets out provisions for divestiture and enforcement as they relate to conflict situations.

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

The Creaghan Report notes that amendments to the Act following proclamation, substantially weakened the original intent of the legislation. Provisions relating to the public examination of

disclosure documents; the time limitations for filing disclosure documents; and the prescribing of offences for failure to file a disclosure statement, were later repealed or substantially amended.

The Creaghan Report recommends that the current Act be repealed and replaced with a new Members' *Conflict of Interest Act*. If non-elected public officials continue to be subject to the Act, the Creaghan Report recommends that the Act be two-tiered, one part applicable to Members only (and enforced by the Legislature), and the other part, to non-elected public officials, (and enforced by the responsible Minister or Cabinet).

The *Conflict of Interest Act* currently applies to all Members of the Legislative Assembly, Cabinet Ministers, executive staff members, deputy ministers and heads of Crown corporations. In addition, members of boards of directors of Crown corporations are subject to certain principles and standards of conduct expected of elected and non-elected public officials.

During its deliberations, the Committee considered whether non-elected officials should be subject to conflict of interest legislation, given the national trend of focusing mainly on Members or Members and Ministers. Should there be a difference in treatment between an elected office and a position of employment, and if the provisions of the Act continue to apply to the public service, at what level of seniority should they cease to apply? Should senior members of the civil service, particularly those who play major roles in policy-making, be included?

The Committee is of the opinion that non-elected public officials, namely executive staff members, deputy ministers, and heads of Crown corporations, should continue to be subject to the *Conflict of Interest Act.* Senior public officials wield power in government and this power should be subject to clear standards and rules of conduct. These standards and rules of conduct should have the force of law.

It is the Committee's opinion that a new *Conflict of Interest Act* should be enacted. A two-tiered Act (one part applying to Members and the other part to non-elected senior public officials) as recommended in the Creaghan Report would help to encourage the separation of the legislative and executive branches of government, by making both elected officials and non-elected senior public servants subject to their own individually tailored rules.

Given the complexity of administering conflict of interest legislation, however, the Committee questions whether it is feasible to have the part of the Act which would apply to non-elected public officials enforced by the responsible Minister or by Cabinet as recommended in the Creaghan Report. To ensure effective administration of the Act and consistency in application, a Conflict of Interest Commissioner should be appointed and charged with the administration of the Act. A neutral official independent of the executive branch of government could administer the new Act, investigate the conduct of both elected and non-elected officials, and recommend sanctions where necessary.

The new legislation should incorporate existing standards that govern Members' and Ministers' conduct in the performance of official duties and would preclude the furthering of private interests for themselves or their families. Provisions relating to standards of conduct, disclosure, divestment and enforcement should remain an integral part of the rules which apply to non-elected public officials.

The regulation of post-employment activities of non-elected officials was also considered by the Committee. It was the consensus of the Committee that non-elected public officials, that is, deputy ministers, executive staff members and heads of Crown corporations should be subject to the same post-employment restrictions as Ministers. These officials should operate under rigorous conflict of interest rules given their position, the nature of their work, and the potential influence they wield in policy development.

**Your Committee therefore recommends:**

**That non-elected public officials, namely executive staff members, deputy ministers and heads of Crown corporations, continue to be subject to conflict of interest legislation.**

**That a new Conflict of Interest Act be enacted.**

**That the Act be two-tiered,**

**(1) one part of the Act to apply to Members**

**(2) another part to apply to non-elected public officials.**

**That a Conflict of Interest Commissioner be responsible for the administration of the Act.**

**That the Act incorporate existing standards that govern Members' and Ministers' conduct in the performance of official duties and preclude the furthering of private interests for themselves or their families.**

**That disclosure, divestment and enforcement provisions and existing standards of conduct as they apply to non-elected public officials remain an integral part of the conflict of interest rules.**

**That executive staff members, deputy ministers and heads of Crown corporations be subject to post-employment restrictions comparable to those imposed on Members of the Executive Council.**

The remainder of this report, for the most part, deals with conflict of interest as it relates to elected Members. The report does not elaborate on a process for investigating the conduct of non-elected officials.

*APPOINTMENT OF A CONFLICT OF INTEREST COMMISSIONER*

A key recommendation in the Creaghan Report is the appointment of a Conflict of Interest Commissioner to replace the current "designated judge". The Commissioner, who would be an officer of the Legislative Assembly, would administer the *Conflict of Interest Act* and adjudicate Members' compliance with the Act.

The adoption of this recommendation would bring New Brunswick's legislation in line with other provincial jurisdictions, whose `Ethics', `Integrity' or `Conflict of Interest' Commissioners are officers of the Assembly appointed by majority resolution (often on a motion by the Premier in consultation with the Leader of the Opposition). The appointment of such an administrator would preserve the separation of judicial and legislative matters by allowing the Assembly to police its own Members and to impose its own sanctions. The independence of the judiciary would be preserved. As Nova Scotia is currently the only other province remaining with a "designated judge" to oversee the conflict of interest legislation, it would appear that the trend is to move toward an appointed Commissioner.

The Committee agrees with the recommendation in the Creaghan Report that a Commissioner be appointed by resolution of the Assembly on motion of the Premier, after consultation with the Leader of the Opposition, and a Member of any other political party with representation in the House. The legislation should also provide for the reappointment and removal of the Commissioner for cause.

**The Committee therefore recommends:**

**That the *Conflict of Interest Act* provide for the appointment of a Conflict of Interest Commissioner to administer the legislation and adjudicate the compliance of Members.**

**That the Conflict of Interest Commissioner be appointed by resolution of the Legislative Assembly, on motion of the Premier, following consultation with the Leader of the Official Opposition, and representatives of other recognized political parties having representation in the House.**

**That the Commissioner hold office for five years and that provision be made for the reappointment of the Commissioner for a further term or terms.**

**That the Act make provision for the removal of the Commissioner for cause on the recommendation of the Legislative Assembly.**

*APPLICATION OF THE ACT*

The Creaghan Report recommends that there be no right of appeal to a Court of any finding or order by the Commissioner concerning a breach of any item contemplated by the Act. If a Member fails to comply with a recommended sanction within a stipulated time frame, the Commissioner shall forward the finding of facts and the recommended sanction to the Speaker for enforcement or for consideration by the Legislature.

Justice Creaghan states at page 24 of his report that the Assembly should have the right to regulate its own internal affairs and procedures free from any interference from the courts. The right of Parliament and legislatures to regulate their own internal affairs and procedures free from any interference is fully established. This includes the right to enforce discipline on Members by suspension including expulsion, as well as the right to administer laws relating to internal procedures without interference from the courts.

The Committee agrees that there should be no right of appeal to the Courts of any finding or order of the Commissioner and as is further recommended by Justice Creaghan, the enforcement provisions of the Act contained in subsections 12(1) and (2) and the appeal provision contained in subsection 10(5) which allows an appeal of any finding or divestiture order by the designated judge should be repealed.

By adopting Justice Creaghan's aforementioned recommendations, the Legislative Assembly would become the final arbiter. There would be no appeal to the courts of determinations concerning Members. However, when the current enforcement provisions are repealed, it then becomes necessary

to design new legislation that would establish or put in place a framework to allow the investigation of breaches or potential breaches of the conflict of interest provisions by Members of the Legislative Assembly.

The requirement of divestment contained in section 10, a central feature of the current *Conflict of Interest Act*, would remain in the new legislation. The Conflict of Interest Commissioner would (a) replace the designated judge in matters relating to divestment, and (b) replace the courts in the investigation of alleged breaches under the Act.

In accordance with the recommendation in the Creaghan Report, there would be no appeal of any finding or order of the Commissioner relating to divestment. If a Member failed to comply with an order of the Commissioner, the Commissioner would report the matter to the Speaker who would, in turn table the report for consideration by the Assembly.

Under the new Act, however, with respect to investigation of alleged breaches and resulting sanctions, the Commissioner would make a recommendation to the Legislative Assembly. The final decision would rest with the Assembly.

The fact that the final decision regarding sanctions rests with the Assembly appears to be the accepted course of action in provinces where conflict of interest legislation has been reformed. Although the process differs somewhat from one jurisdiction to another, the common element is that the final decision rests with the Assembly.

a) In British Columbia and Ontario, the recommendations of the Commissioner regarding a Member's activities and the resulting sanctions may be either accepted or rejected in their entirety by resolution of the House, but may not be amended or altered in any way.

b) The Assemblies of Alberta and Saskatchewan, on the other hand, have the authority under their respective Acts to amend the Commissioner's recommendations regarding the penalties for a contravention of the Act, and can increase, reduce or eliminate sanctions as they determine. Members may face penalties which can range from reprimands or fines to suspensions or vacation of the Member's seat. The decision of the majority of the Assembly is final in such matters, and there is no right of appeal for those affected. This is consistent with the principle of parliamentary sovereignty, and the separation of judicial and legislative branches of government.

The Committee favours the process currently in use in Alberta and Saskatchewan.

*INQUIRIES OF MEMBERS*

Members find it increasingly difficult to obtain clear information on which situations are or are not potential violations of the current Act. The new legislation would provide the Commissioner with a framework to handle inquiries from Members who need direction in situations that might be perceived as breaches or possible violations of the *Conflict of Interest Act*.

The Committee recommends that the new legislation establish a framework for dealing with inquiries from Members respecting the Member's obligation under the Act and for investigating breaches or potential breaches of the conflict of interest provisions by Members of the Legislative Assembly:

**Your Committee therefore recommends:**

**1. That the new legislation make provision to allow a Member to request an opinion and recommendations of the Commissioner on any matter respecting the Member's obligation under the Act. The Commissioner's opinion and recommendation would remain confidential and could only be released by or with the Member's consent. This provision is common in most jurisdictions and it is seen as a key component of conflict of interest legislation.**

**2. That the divestment provision as outlined in section 10 of the Act remain an integral part of conflict of interest legislation with the Commissioner replacing the designated judge. As recommended in the Creaghan Report, there would be no appeal of any finding or order of the Commissioner relating to divestment. If a Member failed to comply with an order of the Commissioner, the Commissioner would report the matter to the Speaker who would, in turn, table the report for consideration by the Assembly.**

**3. That the new legislation create a process for the Commissioner to assess matters referred by any person, or by resolution of the Legislative Assembly relating to alleged breaches of the Act by Members which may include an investigation and the conduct of an inquiry into the matter.**

**4. That the new legislation establish penalties for contravention of the conflict of interest provisions recommended by the Commissioner and decided upon by resolution of the Legislative Assembly. Penalties would range from reprimands or fines, to suspensions including vacation of the Member's seat.**

**5. That a provision be added to enable the Commissioner to recommend that no penalty be imposed.**

**6. That the Assembly be given the power to accept, reject or amend the sanction recommended by the Commissioner.**

**7. That the decision of the Legislative Assembly be final and conclusive.**

*INVESTIGATIONS INTO BREACHES*

The new legislation should outline the process for initiating investigations of possible violations of the Act by Members. The Legislative Assembly should have the authority to request that the Commissioner investigate any alleged breach of the Act by a Member.

The Committee wishes to retain subsection 8(4) of the *Conflict of Interest Act* that allows any person to initiate an investigation by making application to the designated judge (who would now be the Commissioner). Under oath, the complainant states that he or she believes that a Member is in a conflict of interest situation under the Act or has not complied with the Act. Using the current wording of the section, the complainant must produce sufficient evidence in support of the allegation to satisfy the Commissioner that there is a reasonable possibility that a conflict of interest exists.

Because of the publicity that such a complaint generates, complaints should not be frivolous, vexatious, or not made in good faith. A complaint is a serious matter, and should not be unsubstantiated rumour intended solely to embarrass or discredit a Member. Since the onus of proof of the alleged violation rests upon the person filing the complaint, it follows that the evidence in support of the allegation must be relevant, legally admissible and verified by oath. This requirement protects the person who makes a complaint which later proves to be unsupported by credible evidence.

After an application has been filed, the discretion would rest with the Commissioner whether to proceed with an investigation including an inquiry. The Commissioner would have the authority to dismiss an application where in the opinion of the Commissioner, the referral of a matter is frivolous, vexatious, not made in good faith, or there are no grounds, or insufficient grounds for an inquiry.

The new legislation will set out or define the powers and duties of the Commissioner and establish a process for conducting inquiries. If the Commissioner discovers the possibility of a criminal offence, the Commissioner will be obligated under the Act to refer the matter to the authorities and the inquiry would therefore be suspended.

**Your Committee therefore recommends:**

**That the new Act outline the process for initiating investigations of possible violations of the Act by Members.**

**That the principles outlined in subsection 8(4) of the *Conflict of Interest Act* for initiating an application by any person respecting an alleged breach of the Act by a Member be retained.**

**That a provision be added to enable the Legislative Assembly to request by resolution that the Commissioner investigate an alleged breach of the Act by a Member.**

**That the Commissioner have the authority to dismiss an application where in the opinion of the Commissioner the referral of a matter is frivolous, vexatious, not made in good faith or there are no grounds, or insufficient grounds for an inquiry.**

**That the new Act establish a process for conducting inquiries and define the powers and duties of the Commissioner.**

*DISCLOSURE FORMS*

The Creaghan Report recommends that prior to enacting new legislation, the Registrar of Regulations prepare a form of disclosure document for early implementation as currently authorized under section 13 of the Act.

Justice Creaghan notes that the Disclosure Form, which is frequently updated in other jurisdictions, has not been changed or improved upon since 1979. Compared to the existing form which contains few details of the disclosure requirements, the draft proposed in the Creaghan Report sets out in detail the interests that must be disclosed pursuant to the Act including assets, financial involvements and liabilities. The current provision of the *Conflict of Interest Act* requires the disclosure of all financial involvement with, or ownership of, real and personal property of any nature or kind, and all business and financial involvement of any nature whatsoever.

For many Members, the extent of the disclosure requirement is not clear. New legislation should employ clear language to describe exactly what private interests the Members must disclose. Although the Committee agrees that disclosure forms should be updated on a regular basis, a new form should only be implemented after new conflict of interest legislation has been enacted. A number of significant changes are currently being proposed; and for this reason, a revision of the disclosure form is not desirable at this time.

Justice Creaghan notes at page 26 of his report that the Alberta review panel which recommended not only that forms used continuously be reviewed and updated, but also that forms clearly state the Members' obligations and the purpose served by the information being requested.

The Committee agrees with the aforesaid; however changes should be implemented only after appropriate amendments have been made to the *Conflict of Interest Act*.

**Your Committee therefore recommends:**

**That the Act use clearer language in describing the interests Members must disclose.**

**That new disclosure forms be developed and implemented after the new *Conflict of Interest Act* has been introduced and that these forms, once implemented, be reviewed and updated on a regular basis.**

The Creaghan Report recommends that the Clerk of the Legislative Assembly forward a copy of the Act and Disclosure Form to all Members following a general election and to new Members following a by-election. It is the Committee's understanding that this is currently the practice.

Is it appropriate to place this obligation on the Clerk when the Committee is proposing that a Conflict of Interest Commissioner be appointed to administer the Act and to adjudicate Members' compliance with the Act? Given that the role of the Commissioner is that of assisting the Members of the Legislative Assembly in understanding their obligations under the Act, the Committee is of the opinion that the obligation to forward disclosure documents should rest with the Conflict of Interest Commissioner. Therefore, once the Office of the Commissioner has been established, this responsibility, formerly administered by the Office of the Clerk, might more appropriately rest with the Commissioner rather than with the Clerk of the Assembly.

**The Committee therefore recommends:**

**That the Commissioner administer the distribution and education concerning disclosure documents.**

*PUBLIC ACCESS TO DISCLOSURE DOCUMENTS*

Public disclosure documents are unnecessary at the present time in New Brunswick according to the Creaghan Report. However, should they be required, Justice Creaghan recommends that such documents be based on forms pursuant to the regulations, and contain only a brief summary of the Member's interests and assets, excluding those of a spouse or dependant children.

The preparation of a public disclosure statement is an important step in the disclosure process; it enhances public perception of the impartiality of Members' financial and business decisions by examining their financial interests firsthand. New Brunswick and Prince Edward Island are the only two jurisdictions which do not allow public access to Members' disclosure statements. All of the provinces which have reformed conflict of interest legislation included provisions for public disclosure.

In most provinces, the Commissioner receives the private disclosure statement of a Member, meets with the Member and the Member's spouse (if applicable), and, once satisfied that adequate disclosure has been made, the Commissioner prepares a public disclosure statement (excluding dollar values of interests and certain items enumerated in the Act as irrelevant for disclosure purposes).

Nova Scotia's legislation does not provide for the creation of a public disclosure statement, however, the public is allowed to view the actual statement filed by the Member. Members are, therefore, encouraged to state the nature and significance of an interest, while avoiding the use of specific dollar amounts in a disclosure.

Failing to provide public disclosure statements can be seen by the public as an attempt to withhold information. This negative perception only serves to weaken the confidence of the electorate in their elected representatives and in the impartiality of the legislative process. Such a result would undermine the purpose of conflict of interest legislation. The Committee is of the opinion that public disclosure provisions should be a key element of any statutory reform and the new Act should make provision for public access to a Public Disclosure Document prepared from the information disclosed by a Member in the Member's private disclosure statement. The Public Disclosure Document should include the interests and assets of the Member's spouse or dependent children.

**The Committee therefore recommends:**

**That the Conflict of Interest Commissioner be required to prepare a Public Disclosure Document based on the information disclosed by a Member in the Member's private disclosure form.**

**That specific dollar values not be disclosed in the Public Disclosure Document but that such values be qualified as nominal, significant or controlling at the discretion of the Commissioner.**

**That the Commissioner be given the authority to withhold information from the public disclosure document if, in the opinion of the Commissioner, the information is not relevant for the purpose of the Act, and a departure from the general principle of public disclosure is justified.**

**That in consultation with the Member, the Public Disclosure Document be prepared by the Commissioner and filed with the Clerk of the Legislature.**

**That the Clerk of the Legislative Assembly make the Public Disclosure Document available to members of the public for examination.**

*PENALTIES FOR FAILURE TO FILE DISCLOSURE*

The Creaghan Report recommends that penalties be imposed on those Members who fail to file disclosure statements within 30 days of a written demand from the Commissioner and that persons be delegated to provide the Commissioner with an up-to-date list of those persons obliged to file.

Members need to know that failing to file disclosure statements will result in serious repercussions. Justice Creaghan recommends that anyone who fails to file, after missing the deadline and ignoring a letter from the Commissioner, be subject to sanctions imposed by the Speaker or the appropriate Minister responsible. A loophole in New Brunswick's current legislation allows Members to ignore the disclosure requirement with impunity because the provision that made failure to file an automatic offence was changed by amendment in 1979. The new Act should correct this omission and compel all Members to file disclosure statements in a timely manner.

The Committee reviewed how other jurisdictions handle the failure of disclosure or the noncompliance of filing disclosure documents. The Committee favours the method used in the province of Alberta. If a Member fails to file within the prescribed time frame, the Commissioner reports the matter to the Speaker, who then tables the report in the House. If the Member continues to disregard the filing requirements, the Legislative Assembly may by resolution, refer the matter to the Commissioner for investigation. At the conclusion of an investigation or inquiry, as the case may be, the Commissioner can recommend a sanction for the consideration of the Assembly.

**Your Committee therefore recommends:**

**That the Commissioner prepare a report to the Speaker regarding any Member who fails to file a disclosure statements within thirty days of a written demand from the Commissioner.**

**That the Speaker be required to table the report in the House.**

*RETENTION OF RECORDS*

The Creaghan Report recommends that the Commissioner destroy all records relating to any person following the (third, fourth, or fifth) anniversary of the date of the said records. However, records shall not be destroyed if the Commissioner is aware that a charge under the Criminal Code has been laid against any such person.

Many provincial conflict of interest statutes make provision for the destruction of disclosure documents after a Member leaves office, or after an established lapse of time. The legislation of several jurisdictions stipulates that documents be held for one year after a Member ceases to sit in the Assembly before destruction, while other jurisdictions set a mandatory destruction date of ten years after the date of the document's creation (regardless of whether or not the Member still holds a seat). An important additional requirement is that no documents relevant to an administrative inquiry or criminal investigation be destroyed until that process is completed.

**Your Committee recommends:**

**That private disclosure forms remain in the possession of the Commissioner for twelve months after a Member ceases to hold office. The forms shall then be destroyed unless they are relevant to a *Criminal Code* inquiry.**

*DUTIES OF THE COMMISSIONER*

The Creaghan Report recommends that the Commissioner be required to submit an annual report on the operation of his or her office within 30 days of the commencement of the first sitting of the Legislature for that calendar year.

Most jurisdictions require that the Commissioner file with the Speaker of the Assembly an annual report on the operation and activities of the Office of the Conflict of Interest Commissioner. Within a prescribed period of time the Speaker tables the report in the Assembly for the consideration of the Members. The Committee agrees with this recommendation.

**Your Committee therefore recommends**

**That, in addition to being required to report the findings of any inquiry, the Commissioner be required to file an annual report on the operation and activities of the Office of the Conflict of Interest Commissioner.**

*POST-EMPLOYMENT RESTRICTIONS*

Justice Creaghan recommends that the New Brunswick legislation *not* contain restrictions on post-employment activities and he advocates against a "cooling-off" period; however, he does not elaborate on the reasons for this particular recommendation.

It is the consensus of the Committee that neglecting to provide guidelines to the Member in this important area of the conflict of interest legislation would further weaken the legislation in an area that is already virtually unmonitored. For example, should a former Cabinet Minister with sensitive, inside knowledge of government plans and contracts be allowed to begin immediately to work for a private firm engaged in negotiations with his or her former Ministry? This is a prime example of the type of occurrence that conflict of interest legislation seeks to eliminate.

Most provinces provide for a "cooling-off" period when former Ministers are prohibited from accepting contracts or benefits from the government, or from making representations regarding a contract or benefit (either on their own behalf or that of another). Additional provisions restrict members of the Executive Council, parliamentary secretaries, or senior civil servants from awarding contracts or benefits to former Ministers during the prescribed post-employment period or "cooling-off" period. These periods range from 6 months in Nova Scotia and Alberta; 12 months in Newfoundland, Manitoba and Ontario; and 24 months in British Columbia and the federal Parliament. Currently, Prince Edward Island and New Brunswick have no post-employment restrictions.

When conflict legislation makes provision for a "cooling-off period", citizens can be more confident that former Ministers and public officials do not have, or do not appear to have, an unfair advantage over others in influencing government. Legislating a pre-determined "cooling-off" period for elected and public officials in New Brunswick would bolster the confidence of electors, and ensure that individuals do not reap unjust personal gains through the improper use of information or contacts obtained in the course of previous employment.

Restrictions on the activities of former Ministers and public officials are legitimate safeguards of the public interest. The "cooling-off" period would commence from the time a Member ceases to be a member of the Executive Council.

The Committee agrees that a "cooling-off" period in excess of one year would be too onerous in terms of future employment and earning opportunities. The restrictions should apply only to former Ministers and not to former Members or to legislative assistants.

Although the Committee considered extending the restrictions to Members and legislative assistants, it was the general consensus that while these Members may have access to information concerning government policies and decisions, the access and influence is not as great as that of the Cabinet Ministers.

Restrictions on a former Minister after he or she leaves Cabinet would not apply in the following situations:

a) contracts or benefits in respect of further duties in service of the Crown; and

b) if the conditions on which a contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.

The new legislation should place additional restrictions on the Executive Council and its members, that they not knowingly award or approve contracts or grant benefits to former Ministers during the cooling-off period established by the Act. Potential breaches of the Act by members of the Executive Council would come under the purview of the Commissioner.

**The Committee therefore recommends:**

**That provisions be included in the Act to regulate the post-employment activities of former members of the Executive Council, deputy ministers, executive staff members and heads of Crown corporations.**

**That there be a "cooling-off" period of one year during which former members of the Executive Council are prohibited from accepting contracts or benefits from the government, or from making representations regarding a contract or benefit either on their own behalf, or on another person's behalf.**

**That the "cooling-off" period commence from the time a former member of the Executive Council ceases to hold office.**

**That this "cooling-off" period be extended to deputy ministers, executive staff members, and heads of Crown corporations.**

**That the Act make it an offence for a person to contravene the provision relating to post-employment restrictions.**

**That a person who is found to have contravened the provisions relating to post-employment restrictions be subject to a fine established in the legislation at a level comparable to other Canadian jurisdictions.**

**That the legislation place additional restrictions on the Executive Council or a member of the Executive Council, that they not knowingly award or approve contracts or grant benefits to former members of the Executive Council during the post-employment or cooling-off period established by the Act.**

*GIFTS AND OTHER BENEFITS*

The *Conflict of Interest Act* currently states that it is a conflict of interest for a Minister to accept any "fees, gifts, gratuities or other benefits" that could reasonably be deemed to influence the Minister's decision [paragraph 3(b)]. A similar provision applies to executive staff members, deputy ministers and heads of Crown corporations. However, nowhere in the current Act does it state that it is a conflict of interest for a Member of the Legislature to accept any fee, gift or benefit that could reasonably be deemed to influence his or her decision. This omission should be addressed.

Conflict of Interest legislation in both British Columbia and Ontario uses clear statutory language regarding the acceptance of gifts. In these two jurisdictions, a Member cannot accept a fee, gift or personal benefit that is connected directly or indirectly with the performance of his or her duties of office. A Member may accept a gift or personal benefit that is received as an incident of the protocol, customs or social obligations that normally accompany the responsibilities of office. The onus is on the Members to seek advice from the Conflict of Interest Commissioner when they are uncertain about what constitutes a gift, fee or other benefit or about the circumstances in which a gift, fee or benefit may be accepted.

It is the consensus of the Committee that the present section providing for the receipt of gifts and benefits by Ministers is adequate. However, the provision should be extended to apply to all Members.

The proposed new Act should include disclosure requirements in relation to the receipt of gifts and benefits. In some jurisdictions, gifts over $250.00 must be disclosed while disclosure is not required for gifts under $250.00 which relate to normal social or protocol obligations. Most jurisdictions include provisions in legislation for the disclosure of income, gifts or other benefits received from a political party. Justice Creaghan is of the opinion that any financial assistance received by any elected Member from either a political party or an association should be reported in the disclosure document.

**The Committee therefore recommends:**

**That the provision dealing with the receipt of gifts by Ministers be extended to all Members.**

**That the Act require the disclosure of all gifts over $250.00 and that disclosure not be required for gifts under $250.00 related to normal social or protocol obligations.**

**That Members be required to disclose any financial assistance (income, gifts or benefits) received from either a political party or an association.**

*OTHER RECOMMENDATIONS IN CREAGHAN REPORT*

**(1)** Members of the Board of Directors of Crown Corporations should be included in the list of those who must make annual disclosure statements [s.8(1)], or else the sections dealing with them [s.6.1 and s.6.1(a)] should be repealed.

Justice Creaghan notes that members of the board of directors of Crown corporations are not required to make annual disclosure, yet section 6 of the *Conflict of Interest Act* specifies the confines within which they are required to conduct their activities to avoid a conflict of interest.

Justice Creaghan feels that if members of boards are not required to make disclosures, then they are not subject to the jurisdiction of the Commissioner. The provision should either require members of boards to disclose, or it should remove these individuals from the Act.

Given that board members have the potential to influence policy decisions involving significant amounts of public funds, the Committee feels these individuals should operate under conflict of interest rules. The Committee notes that at the federal level, the staff of federal boards, commissions and tribunals and part-time ministerial or Governor-in-Council appointees are subject to the principles and the code of conduct set out in the *Conflict of Interest and Post-Employment Code for Public Office Holders* and any other compliance measures as may be determined by the head of the organization in question, to whom these individuals report. These measures include making confidential disclosure to the chief executive officer of the commission, board or tribunal of any private interests which could be affected by a decision of the commission, board or tribunal.

The Committee acknowledges that members of boards of directors of Crown corporations should not be subject to the same rules as elected and non-elected public officials, however, it is the Committee's opinion that these persons should be subject to the same standards of conduct that govern non-elected public officials.

**Your Committee therefore recommends:**

**That members of board of directors of Crown corporations continue to be subject to the standards of conduct set out in section 6.1 of the *Conflict of Interest Act*.**

**(2)** That subsection 8(1) of the Act be amended by deleting the words "or if in office immediately prior to the coming into force of this Act then within one hundred and twenty days after the coming into force of this Act," and by adding "or The Court of Appeal of New Brunswick" after "The Court of Queen's Bench of New Brunswick".

The Committee agrees with this recommendation and, as noted in the Creaghan Report, the second part of the recommendation has already been implemented.

***(3)*** *As the Chairman of the New Brunswick Power Corporation is no longer a Member of the Legislature, paragraph 2(2)(a.2) of the Act should be repealed.*

The Committee agrees with this recommendation.

CONCLUSION

Public confidence in the integrity of the political process and in those elected to govern is an essential element in maintaining the vitality of our democratic institutions. The Committee recommends a revised set of conflict of interest rules for elected and appointed officials. The changes suggested in this report build on the past and offer new principles. The recommendations, the result of the Committee's deliberations, should serve to enhance public confidence in the integrity of public office holders and the decision-making process in government.

Ordered that the report be received.

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**Documents Tabled**

Hon. Mr. Blanchard laid upon the table of House a Memorandum dated December 15, 1998, from John Mallory, Deputy Minister of Finance, to Daryl Wilson, Auditor General whose subject was entitled Addendum to Department of Finance's Preliminary Response to the Review of Public Private Partnership Projects.

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**Bills Introduced**

The following Bills were introduced and read the first time:

By Hon. Mr. Byrne,

Bill 18, *An Act to Amend the Family Services Act*.

Bill 19, *An Act to Amend the Surveys Act.*

Ordered that the said Bills be read the second time at the next sitting.

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The following Private Bill was introduced and read the first time:

By Mrs. Barry,

Bill 20, *An Act to Incorporate the New Brunswick Purchasing Management Institute.*

Ordered referred to the Standing Committee on Private Bills.

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**Notices of Motions**

Mr. D. Graham gave Notice of Motion 91 that on Thursday, January 14, 1999 he would move the following resolution, seconded by Mr. Sherwood:

That an address be presented to Her Honour the Lieutenant-Governor praying that she cause to be laid upon the table of the House all lists of capital requests and requests for repairs from each school and school district submitted to the Department of Education for the past ten years, including projects approved, projects not approved, projects completed, projects not completed, estimated costs, and reasons for not approving unapproved projects.

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Mr. Robichaud gave Notice of Motion 92 that on Tuesday, January 26, 1999 he would move the following resolution, seconded by Mr. Sherwood:

That an address be presented to Her Honour the Lieutenant-Governor praying that she cause to be laid upon the table of the House the amount of money that the province spends on supply teacher payroll, in actual dollars and as a percentage of the total teacher payroll broken down year by year over the past five (5) years.

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Mr. Green gave Notice of Motion 93 that on Tuesday, January 26, 1999 he would move the following resolution, seconded by Mr. Mesheau:

That an address be presented to Her Honour the Lieutenant-Governor praying that she cause to be laid upon the table of the House a copy of all memos, documents correspondence, agreements, and electronic mail relating to the sale, disposal, transfer, trade or lease of any and all Crown lands in the parishes of Ludlow and Blissfield, Northumberland County in the period 1988 to present.

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Mr. Volpé gave Notice of Motion 94 that on Thursday, January 14, 1999 he would move the following resolution, seconded by Mr. D. Graham:

That an address be presented to Her Honour the Lieutenant-Governor praying that she cause to be laid upon the table of the House a copy of all memos, letters, correspondence, proposals, minutes of meetings, studies, reports, analyses, offers, negotiations, memorandums of understanding and contracts signed between the province of New Brunswick, NB Power and Tractebel Energy Marketing Inc. over the past two (2) years.

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Mr. Volpé gave Notice of Motion 95 that on Thursday, January 14, 1999 he would move the following resolution, seconded by Mr. D. Graham:

WHEREAS we support laws which protect our citizens; and

WHEREAS there is a lack of evidence to prove that Bill C-68, the *Firearms Act*, will reduce gun-related crimes; and

WHEREAS this restrictive gun law will confiscate private property, represents another nuisance tax and will make criminals out of law abiding firearms owners; and

WHEREAS many New Brunswickers have been very vocal and stern in their opposition to this federal legislation; and

WHEREAS sport hunting has a long history and tradition in our province; and

WHEREAS since the majority of New Brunswick's citizens live in rural areas;

THEREFORE BE IT RESOLVED that this Legislative Assembly consider joining with the provinces of Alberta, Ontario, Manitoba, Saskatchewan, the Yukon and Northwest Territories in mounting a court challenge against the undemocratic *Firearms Act* legislation.

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Mr. Robichaud gave Notice of Motion 96 that on Tuesday, January 26, 1999 he would move the following resolution, seconded by Mr. Sherwood:

That an address be presented to Her Honour the Lieutenant-Governor praying that she cause to be laid upon the table of the House the number of physicians allocated for each region including a breakdown by speciality, physician shortage for each region including a breakdown of the specialties.

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Mr. Mesheau gave Notice of Motion 97 that on Tuesday, January 26, 1999 he would move the following resolution, seconded by Mr. Sherwood:

That an address be presented to Her Honour the Lieutenant-Governor praying that she cause to be laid upon the table of the House a list, by region, the number of individuals enrolled in the program who have what is known as relapse-remitting Multiple Sclerosis, which covers the cost of the drugs Avonex and Rebif.

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**Private Member's Motions**

Motions 7 and 8, by Mr. Green were, by leave of the House withdrawn.

Motion 26 by Hon. Mr. Valcourt was, by leave of the House withdrawn.

Motions 32 and 33 by Mr. Mockler were, by leave of the House withdrawn.

Motions 55 and 75 by Mr. Green were, by leave of the House withdrawn.

Motion 86 by Mr. Mesheau was, by leave of the House, stood over to Tuesday, January 5, 1999.

Motion 89 by Mr. Volpé was, by leave of the House, stood over to Tuesday, January 5, 1999.

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**Government Motions re Business of House**

On motion of Hon. Mr. Byrne, seconded by Hon. Mr. C. Thériault:

RESOLVED, THAT when the Assembly adjourns at the end of this sitting day, it stand adjourned until Tuesday, January 26, 1999, provided always that if it appears to the satisfaction of Mr. Speaker, after consultation with the Government, that the public interest requires that the House should meet at an earlier time during the adjournment, Mr. Speaker may give notice that he is so satisfied and in such notice shall state a time at which the House shall meet, and thereupon the House shall meet at the time so stated and shall transact its business as if it has been duly adjourned to that time, and

THAT in the event of Mr. Speaker being unable to act owing to illness or other cause, either of the Deputy Speakers shall act in his stead for the purpose of this order.

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Hon. Mr. Byrne announced that it was the intention of the government that following third reading of Bills, the House would resolve itself into a Committee of Supply to consider the capital estimates of the Departments of Transportation and Education.

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**Third Reading**

The following Bills were read a third time:

Bill 5, *An Act to Amend the Executive Council Act*.

Bill 6, *An Act to Amend the Police Act*.

Bill 7, *An Act to Amend the Regulations Act*.

Bill 8, *An Act to Authorize the Conveyance of Land from The Canadian Red Cross Society / La Société Canadienne de la Croix-Rouge to The Canadian Blood Services / Société canadienne du sang*.

Bill 9, *An Act to Amend the Beverage Containers Act*.

Bill 10, *Plant Health Act*.

Bill 12, *An Act to Amend the Motor Vehicle Act*.

Bill 14, *An Act to Amend the Small Claims Act*.

Ordered that the said Bills do pass.

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**Committee of Supply**

The House, according to Order, resolved itself into a Committee of Supply with Ms. de Ste. Croix in the chair.

And after some time spent therein, it was agreed by unanimous consent to sit beyond the ordinary hour of adjournment.

And after some time further spent therein, Mr. Speaker resumed the Chair and Ms. de Ste. Croix, the Chairman, after requesting that Mr. Speaker revert to Presentations of Committee Reports, reported that the Committee had made some progress in the consideration of the matters referred to them, had passed several items and asked leave to sit again.

Pursuant to Standing Rule 78.1, Mr. Speaker then put the question on the motion deemed to be before the House, that the report be concurred in, and it was resolved in the affirmative.

The following are the items reported:

MAIN ESTIMATES - CAPITAL ACCOUNT

1999 - 2000 Voted

Voted, Supply in the following amounts to defray the expenses of the following programs:

DEPARTMENT OF TRANSPORTATION

40 50 Permanent Bridges 22,200,000

40 51 Permanent Highways 80,300,000

40 52 Canada / New Brunswick Highway Improvement Program 67,400,000

40 53 National and Arterial Highways Program 26,875,000

40 55 Vehicles and Equipment 2,100,000

DEPARTMENT OF EDUCATION

20 50 Public Schools - Capital Equipment 1,000,000

The said items were concurred in by the House.

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Mr. Speaker declared a recess at 2.49 o'clock p.m.

*3.07 o'clock p.m.*

Mr. Speaker resumed the chair.

**Royal Assent**

Her Honour the Lieutenant-Governor was announced, and having been bidden to enter, took her seat in the chair upon the Throne.

Mr. Speaker addressed Her Honour as follows:

May It Please Your Honour:

The Legislative Assembly of the Province of New Brunswick has passed several Bills at the present sittings of the Legislature to which, in the name and on behalf of the said Legislative Assembly, I respectfully request Your Honour's assent.

The Clerk Assistant then read the titles of the Bills as follows:

Bill 2, *An Act to Amend the Family Services Act*.

Bill 5, *An Act to Amend the Executive Council Act*.

Bill 6, *An Act to Amend the Police Act*.

Bill 7, *An Act to Amend the Regulations Act*.

Bill 8, *An Act to Authorize the Conveyance of Land from The Canadian Red Cross Society / La Société Canadienne de la Croix-Rouge to The Canadian Blood Services / Société canadienne du sang*.

Bill 9, *An Act to Amend the Beverage Containers Act*.

Bill 10, *Plant Health Act*.

Bill 12, *An Act to Amend the Motor Vehicle Act*.

Bill 14, *An Act to Amend the Small Claims Act*.

Her Honour signified Her Assent as follows:

*It is the Queen's wish. La reine le veut.*

To these Bills, Her Honour's assent was announced by the Clerk of the Legislative Assembly in the following words:

Her Honour the Lieutenant-Governor assents to these Bills, enacting the same and ordering them to be enrolled.

Her Honour then retired and Mr. Speaker resumed the chair.

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And then, 3.26 o'clock p.m., the House adjourned.

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The following documents, having been deposited with the Clerk of the House, were deemed laid upon the table of the House pursuant to Standing Rule 39:

- Documents requested in Notices of Motions 76, 77, and 79 - December 17, 1998
- Department of Natural Resources and Energy Annual Report 1997-98 - December 17, 1998
- 1997-98 Annual Report of the Chief Coroner - December 17, 1998
- 1997 Annual Report of the New Brunswick Co-operative Associations - December 17, 1998