Tuesday, January 8, 2002.

1 o'clock p.m.

Prayers.

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

January 8, 2002.

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.

This report contains the Committee's recommendations arising out of a detailed review of the *Members' Conflict of Interest Act*, carried out at the request of the Committee by Hon. Stuart G. Stratton, Q.C., Conflict of Interest Commissioner.

On behalf of the Committee, I would like to express our gratitude to the staff of the Office of the Conflict of Interest Commissioner for the professional work they have carried out to date and to recognize Hon. Justice Stratton for the professionalism and integrity he has shown in carrying out the important duties of his office.

Respectfully submitted on behalf of the Committee.

Hon. Bev Harrison, Chair.
M.L.A., Hampton-Belleisle.

The full report of the Committee as presented follows:

INTRODUCTION
Brief History of the *Members' Conflict of Interest Act*

In 1978 the New Brunswick Legislature enacted a *Conflict of Interest Act*, one of the first provinces in Canada to do so.

In 1998 the Legislative Administration Committee undertook a review of that Act and of the conflict of interest legislation in other provincial, territorial and federal jurisdictions. The Committee then reported the results of that review to the House on December 18, 1998. In its report to the Legislature, the Committee recommended the reform of the conflict of interest legislation then in effect with the goal of establishing and maintaining 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.

A primary recommendation of the Committee was that a new *Members' Conflict of Interest Act*, (the Act), be enacted and that a Conflict of Interest Commissioner be appointed to administer the legislation.

The Government responded to the Committee's report by introducing Bill 64, *Members' Conflict of Interest Act,* applicable only to the Members of the Legislative Assembly. This new Act addresses the issue of conflict between a Members's private interest and his or her public duties and responsibilities. The Act specifies the confines within which Members of the Legislative Assembly and members of the Executive Council are required to conduct themselves to avoid a conflict of interest. In the administration of the Act the Conflict of Interest Commissioner takes over functions previously performed by a designated judge of the Court of Queen's Bench or the Court of Appeal of New Brunswick.

The new *Members' Conflict of Interest Act* was given Royal Assent on March 12, 1999. Sections 22 and 26 of the new Act were proclaimed on February 1, 2000. On that same day, the Honourable Stuart G. Stratton, Q.C. was appointed New Brunswick's first Conflict of Interest Commissioner. The remaining provisions of the Act were proclaimed into force effective May 1, 2000.

Review of the Act

From the beginning it was acknowledged that once the *Members' Conflict of Interest Act* came into force, a period of adjustment would be necessary and that the Act would need to be revisited following a period of time in operation. Accordingly, in June, 2001, the Legislative Administration Committee requested the Conflict of Interest Commissioner, (the Commissioner), to conduct a review of the Act and report to the Committee.

In response to this request, the Commissioner carried out a detailed review of the Act and submitted a report to the Committee. The Commissioner's report is appended hereto as Schedule "A".

On September 27, 2001, the Commissioner appeared before the Committee and presented a summary of the issues and recommendations outlined in his report. In the course of doing so, the Commissioner advised the Committee that from his perspective, the Act was working to accomplish its purpose and that he had encountered no particular difficulties in its administration. He also commented that all Members of the Legislative Assembly had been pleasant and forthcoming with him. He did, however, state that some sections of the Act, in his opinion, required some amendments.

On October 31 and again on December 5, 2001, the Committee met to deliberate on the Commissioner's report.

ISSUES AND RECOMMENDATIONS

The following sections outline the areas of concern raised by the Commissioner and provide the Committee's recommendations in relation thereto.

I. Prompt Response

The Commissioner states in his report that it is sometimes a challenge when dealing with requests for investigations and inquiries to obtain a timely response from the party complained against. Although Members have many responsibilities, the Commissioner notes that it can take an inordinate amount of time for some members to respond to his correspondence or to be available to meet with him. This situation delays the Commissioner's report to the Speaker and can give the public the impression that (1) either the Member is not concerned about the complaint or (2) there has been unreasonable delay in the Commissioner's Office. To dispel that impression and to expedite the process of investigation, the Commissioner recommends the addition of a new subsection to section 37 of the Act as follows:

> *37(6) When the Commissioner elects to conduct an investigation or an inquiry under this section, the Member who is the subject of the investigation shall respond promptly and completely to the Commissioner's inquiries.*

Your Committee agrees that it would be beneficial to include a provision making it mandatory for a Member who is the subject of an investigation to respond promptly and completely to the Commissioner's inquiries. During the course of its deliberations, the Committee considered a provision which would require the Member who is the subject of an investigation to respond within a certain time frame.

However, because of the nature and complexities of individual investigations, the Committee came to the conclusion that the Commissioner must retain the necessary discretion to determine whether under the circumstances, a Member has responded promptly to the Commissioner's inquiries.

Your Committee therefore recommends that a new subsection be added to section 37 of the Act as follows:

> **37(6)** ***When the Commissioner elects to conduct an investigation or an inquiry under this section, the member who is the subject of the investigation shall respond promptly and completely to the Commissioner's inquiries.***

II. Mandatory Review

When the *Members' Conflict of Interest Act* was first introduced in the Legislature, it was suggested that the Act should be reviewed from time to time, to monitor its effectiveness and to determine whether public attitudes about standards of conduct in public life have changed.

According to the Commissioner's assessment of current attitudes and perceptions in the field of conflict legislation, the public is very concerned about the activities of politicians and is equally concerned about the steps taken by government to combat a public perception that some politicians may be attempting to put their own interests ahead of the public interest. The Commissioner therefore suggests that New Brunswick add a provision to its Act to provide for a mandatory review of the Act every 5 or 6 years.

Your Committee agrees that a provision be added to provide for a mandatory review of the Act every five years. However, such a provision should not preclude the Committee from conducting a review prior to that time.

Your Committee therefore recommends that a provision be added to the Act which would provide for a mandatory review of the Act every five years, while not precluding a review prior to this time.

III. Apparent Conflicts of Interest

The Commissioner notes that there have been comments in the media that the *Members' Conflict of Interest Act* should contain a provision dealing with "apparent conflicts of interest". As noted by the Commissioner, the purpose of the *Members' Conflict of Interest Act* is to improve and enhance the public's perception of politicians. The Commissioner states that the "inclusion of apparent conflicts of interest in the Act places the public's perception at the forefront and requires Members to always be mindful of how their actions may be perceived by a reasonably well informed person".

Presently, British Columbia is the only jurisdiction to have included an "apparent conflict of interest" provision in its legislation. Subsection 2(2) of their Act provides as follows:

> 2(2) *For the purposes of this Act, a Member has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed 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.*

The Federal Conflict of Interest Code also refers to "potential or apparent" conflicts of interest. Under the heading "public interest", subsection 3(5) of its statement of principles reads as follows:

> 3(5) *On appointment to office, and thereafter, public office holders shall arrange their private affairs in a manner that will prevent real, potential or apparent conflicts of interest from arising but if such a conflict does arise between the private interests of a public office holder and the official duties and responsibilities of that public office holder, the conflict shall be resolved in favour of the public interest.*

The Commissioner discusses in his report, the possible benefits and advantages of including a provision in the New Brunswick Act prohibiting "apparent conflicts of interest", as well as the disadvantages that may result.

The prohibition against apparent conflicts of interest, suggests the Commissioner, should result in the establishment of a higher standard of conduct to be met by Members. Presently, a Member's ethically questionable conduct is not a breach of the Act if it does not constitute an actual conflict of interest or violate any other section of the Act. By expanding the expectations placed on Members, a higher standard of conduct is achieved, which preserves the purpose and intent of the legislation to improve public confidence in Members.

In terms of the disadvantage of prohibiting "apparent conflicts of interest", the Commissioner notes that it could be unfair to punish Members based on the public's perception of their conduct. While their conduct may be appropriate, if there is a reasonable perception that the conduct is inappropriate, the Act is violated. This would seem to place a very high standard on Members, as almost any conduct could be viewed as inappropriate given the right circumstances.

At page 5 of his report, the Commissioner further states:

> *Another disadvantage is the possible ambiguity that could be created by any definition of "apparent conflict of interest". The definition of that term adopted in the British Columbia Act requires an examination of the reasonable perception of a reasonably well informed person, instead of just determining if a conflict of interest exists. In the result, the test of whether an apparent conflict of interest exists would not be whether the Member's actions will be influenced by his or her personal interest, but whether the public might reasonably think that this might be the case. This would appear to cause more confusion for Members than clarification. It would be difficult for Members to judge if their conduct amounts to an apparent conflict of interest, which, again, would seem to place a heavy burden on Members' conduct.*

Having regard to the advantages and disadvantages of including a provision in the Act prohibiting "apparent conflicts of interest", the Commissioner expresses his personal opinion that it could be benefi-

cial to require Members to take into account the public's perception of their conduct when exercising their powers. However, the Commissioner also points out that only British Columbia has thus far enacted legislation making an "apparent conflict of interest" a breach of their conflict Act.

It is the consensus of the Committee that a provision prohibiting "apparent conflicts of interest" could lead to ambiguity and place unreasonable expectations on Members. Your Committee is concerned regarding the breadth of such a provision and the potential unintended consequences and notes, as did the Commissioner, that only British Columbia has such a provision in their legislation.

However, during the course of its deliberations, Committee members expressed a desire to attempt to address the concerns raised regarding public confidence and the public's perception of politicians. The Committee requested the Clerk of the Legislative Assembly to consult with the Commissioner to determine if the issues and concerns raised with respect to apparent conflicts of interest could be addressed in the Act in some other way or through some other means, short of enacting an "apparent conflict of interest" provision.

In their meeting, the Commissioner suggested to the Clerk that the inclusion of statements of principles and purpose in the Act could be a partial solution to the issue. This suggestion is discussed on page 13 of the report. As well, the Commissioner suggested the adoption of guidelines by the Executive Council, with respect to the solicitation of funds by or on behalf of Ministers, could be another partial solution to the issue. This suggestion is discussed on page 12 of the report.

IV. Failure to Appear for Consultation

Section 19 of the Act outlines what is to be done if a Member fails to file a Private Disclosure Statement, but there is presently no provision in the Act dealing with the failure of a Member to consult with the Commissioner, as required by subsection 18(6) of the Act. The Commissioner considers such meetings to be important and suggested that the failure to appear for consultation could be dealt with by an amendment to subsection 19(2) of the Act by adding after "under subsection (1)" the words "or fails to consult with the Commissioner as required by subsection 18(6)".

Your Committee agrees that section 19 of the Act should be expanded to include a provision for the failure to appear for consultation.

Your Committee therefore recommends that amendments be made to subsection 19(2) of the Act by adding after "under subsection (1)" the words "or fails to consult with the Commissioner as required by

subsection 18(6)" and by adding after "failed to file the statement" the words "or failed to consult with the Commissioner".

V. Request by Premier

The Commissioner notes that the Saskatchewan *Members' Conflict of Interest Act* contains a provision which could be considered for addition to the New Brunswick Act. The provision in question enables the Premier to request that the Commissioner give an opinion on any matter respecting the compliance of a member of the Executive Council with the provisions of their Act. Subsection 29(4) of the Saskatchewan Act reads as follows:

> 29(4) *The President of the Executive Council may request that the Commissioner give an opinion on any matter respecting the compliance of a member of the Executive Council with the provisions of this Act.*

The Commissioner notes in his report that he is aware of one decision dealing with the application of this provision of the Saskatchewan Act. In the decision in question, the Premier had requested the opinion of the Commissioner with respect to a possible conflict of interest between a Minister to be assigned to a new portfolio who would be involved with an issue in which her father too had an interest. In that particular case, the Commissioner reported to the Premier that there would be no breach of the Act.

Your Committee agrees that a provision allowing or enabling the Premier to request the Commissioner to give an opinion on any matter respecting the compliance of a member of the Executive Council with the provisions of the Act would be beneficial.

Your Committee therefore recommends that a provision, similar to that of subsection 29(4) of the Saskatchewan *Member' Conflict of Interest Act*, be added to the New Brunswick Act to enable the Premier to request the opinion of the Commissioner on any matter respecting the compliance of a member of the Executive Council with the provisions of the Act.

VI. Memberships

The Commissioner notes that during the first year the Act has been in effect, he has been called upon to rule with respect to membership in golf clubs as well as certain religious and charitable organizations. In some cases the Commissioner ruled that the gift provisions of section 8 of the Act applied. In cases involving members of the Executive Council, he has granted exemptions under subsection 14(2) of the Act. The Commissioner inquired whether the Committee considered these issues to be strictly administrative in nature or

whether there should be specific provisions in the Act dealing with gratuitous annual memberships in golf clubs, business clubs, religious and charitable organizations, as there is in other provinces.

Your Committee considers these issues to be strictly administrative in nature. It is the Committee's opinion that it is not necessary to include specific provisions in the Act dealing with gratuitous annual memberships in golf clubs, business clubs, religious and charitable organizations.

VII. Distribution of Report

Subsection 40(1) of the *Members' Conflict of Interest Act* mandates that the Commissioner shall, upon completion of an investigation, report to the Speaker and to the Member who is the subject of the investigation. It does not require the Commissioner to deliver advance copies of the Report to anyone nor does the Act require that a copy of the Report be given to the party complaining or to the leaders of the political parties in the Assembly. The Alberta and Ontario Acts provide differently. Subsection 23(7) of the Alberta *Conflicts of Interest Act* states:

> 23(7) *The Ethics Commissioner may, before reporting his findings to the Speaker of the Legislative Assembly . . . provide a copy of the report*
>
> *(a) to the Member against whom the allegation was made, and*
>
> *(b) to the leader in the Legislative Assembly of the political party to which the Member belongs.*

In Ontario, their *Members' Integrity Act, 1994*, requires the Speaker to distribute copies of the Commissioner's Report as follows:

> 31(3) *The Speaker shall,*
>
> *(a) give a copy of the opinion to the member whose conduct is concerned and to the leader of each political party that is represented in the Assembly;*
>
> *(b) if the matter was referred by a member, give a copy of the opinion to that member; . . . .*

The British Columbia *Members' Conflict of Interest Act* does not expressly deal with the distribution of the Commissioner's Report. Their Act, like the New Brunswick Act, simply provides that the Commissioner must file his Report with the Speaker. There is, however, a provision in the British Columbia Act which provides that if the Legislature is not in session when the Commissioner's Report is filed, the Report is to be filed with the Clerk of the Legislative Assembly "who must send a copy of it to all Members of the Legislative Assembly".

The Commissioner points out in his report that there is presently a provision in the New Brunswick Act which states that in the case of an adverse Report the Commissioner may inform a Member of the particulars of the Commissioner's Report and give the Member the opportunity to make representations before the Commissioner completes the Report. The actual subsection reads as follows:

> 40(2) *Where it appears to the Commissioner that a report may adversely affect a member, the Commissioner shall inform the member of the particulars and give the member the opportunity to make representations before the Commissioner completes the report.*

The Commissioner advises that it has been his practice to date to file his Report with the Speaker and at the same time deliver a copy of the Report to the Member who complained and to the Member complained against. In the instances in question, the Commissioner did not give an advance copy to either of the parties or to anyone else.

The Commissioner suggests that the Committee may wish to consider whether the procedure presently adopted by his Office should be amended to provide for the delivery of advance copies of the Commissioner's Report to the party leaders, or to assign that responsibility to the Speaker after the Commissioner's Report is filed.

Your Committee is of the opinion that the current provisions of the Act should be expanded to require the Commissioner, upon the completion of his investigation and his filing of the report with the Speaker, to also provide a copy of the report to the leader in the Legislative Assembly of the political party to which the Member against whom a complaint has been made belongs. If a matter has been referred by a Member, the Committee agrees that the Member be given a copy of the report. The current practice followed by the Commissioner to provide a copy of the report to the Member who complained should be incorporated in the Act. The responsibility of providing copies of the report to other parties should be assigned to the Commissioner.

Section 42 of the Act provides that on receipt of a report, the Speaker shall lay the report before the Assembly as soon as is practicable if it is sitting, or if it is not sitting, "within fifteen days after the commencement of the next sitting".

There have been two reports of investigations completed by the Commissioner and filed with the Speaker since May 1, 2000, the date the *Members' Conflict of Interest Act* was proclaimed in force. The first

report was received during a period when the Assembly was in session and was subsequently tabled in the House by the Speaker. The second report was received by the Speaker during a period when the Legislative Assembly was not in session. Notwithstanding the wording of section 42 of the Act, the Speaker availed himself of section 39 of the Standing Rules of the Legislative Assembly to table the report by depositing it with the Clerk of the House and thus making it available to all Members of the Legislative Assembly. Standing Rule 39 of the Standing Rules of the Legislative Assembly provides as follows:

> *39) Any return, report or other paper required to be laid before the House in accordance with any Act or in pursuance of any resolution or Standing Rule may be deposited with the Clerk of the House on any day, and any such return, report or other paper shall be deemed for all purposes to have been presented to, or laid before, the House. A record of any such document shall be entered in the Journal on the day it is filed. When such document is filed on a day when the House is not sitting, it shall be recorded on the next sitting day.*

The tabling of documents is accomplished by either laying a document before the House or by filing the document with the Clerk of the House. Either method may be used. Tabling of a report or document by filing it with the Clerk of the House as outlined in the above rule is known as tabling by the "back door". A report deposited with the Clerk of the House in accordance with the provisions of Standing Rule 39 is deemed for all purposes to have been presented to, or laid before the Assembly. It is important for all concerned that the report once received by the Speaker is also made available to all Members of the Legislative Assembly. Section 41 of the Act makes provision for the disposition of a report if the Legislature is not in session. If the Assembly is not in session, the section states that the Speaker "shall lay the report before the Assembly ... if it is not sitting, within fifteen days after the commencement of the next sitting".

To remove any ambiguity or possible conflict between the provision of the Act and the provisions of the Standing Rules of the Legislative Assembly, the section should be amended to expressly provide for the release of the report to the Clerk of the House for distribution to all Members of the Legislative Assembly.

A provision could be added, similar to that of the British Columbia Act, which provides that if the Legislature is not in session when the Commissioner's report is filed, the report is to be deposited by the Speaker with the Clerk of the Legislative Assembly who must send a copy of it to all Members of the Legislative Assembly.

Your Committee therefore recommends that the current provisions of the Act - which require the Commissioner upon the completion of an investigation, to report to the Speaker and to the Member who is the subject of the investigation - be expanded to include the leader in the Legislative Assembly of the political party to which the Member complained against belongs.

Your Committee recommends that the Act be amended to reflect the practice currently followed by the Commissioner to provide a copy of the report to the Member who complained if the complaint was referred by a Member.

Your Committee recommends that section 42 of the Act be amended to provide that, if the Legislature is not in session when the Commissioner's report is filed, the report is to be deposited with the Clerk of the House who shall make copies available to all Members of the Legislative Assembly.

The Committee further recommends that the legislation should stipulate that the report once received, as outlined above, should remain confidential until such time as it is tabled in the House or released publicly by the Speaker (i.e., filed with the Clerk of the House pursuant to *Standing Rule 39*).

VIII. Costs

The Commissioner notes that the present Act is silent with respect to the question of costs incurred by the Members in completing their Private Disclosure Statements or the establishment and administration of any necessary blind trust. Further, the Act in its present form does not contain any reference concerning costs incurred by Members in respect of an investigation or inquiry under the Act.

In Alberta, the *Conflicts of Interest Act* has been amended to include a clause concerning the reimbursement of costs. Subsection 18.1(1) of their Act states as to costs:

> 18.1(1) *Members are entitled to be reimbursed for costs associated with the completion of their disclosure statements and the establishment and administration of their blind trusts.*

As to costs incurred as a result of an investigation, the Commissioner was aware of one case in which the party complained against retained a lawyer to assist in the preparation of a response to allegations that had been made.

The Commissioner suggests that the Committee may wish to consider whether the costs incurred by a party should be reimbursed if that party is successful and, if so, who should pay any such costs.

Your Committee has considered the matters noted by the Commissioner and believes that it is not necessary at this time for the Act to contain a provision regarding costs, such as the cost of preparing disclosure documents, blind trusts or the costs incurred by a Member as a result of an investigation. Your Committee believes that matters relating to costs would better be dealt with by the Legislative Administration Committee on a case by case basis.

IX. Legislative Action

Presently, there is no provision in the Act stipulating what action is to be taken by the Legislative Assembly when the Commissioner has filed his Report of an investigation with the Speaker and the Speaker has tabled it in the House. Subsection 43(1) of the *Members' Conflict of Interest Act* stipulates that the Assembly "may" deal with the Commissioner's report as outlined therein. The provision does not make it mandatory for the Assembly to deal with or dispose of the report as outlined in the section.

The Commissioner notes that the Alberta legislation suggests one possible answer. Subsection 26(3) of their Act provides:

> 26(3) *The Legislative Assembly shall deal with a report of the Ethics Commissioner within 60 days after tabling the report, or such other period determined by a resolution of the Legislative Assembly.*

In Ontario, the *Members' Integrity Act, 1994*, is more succinct. Subsection 34(2) of their Act simply provides:

> 34(2) *The Assembly shall consider and respond to the report within 30 days after the report is laid before it.*

The British Columbia Act also mandates action in respect of the Commissioner's Report as follows:

> 22(2) *The Legislative Assembly must consider the Commissioner's report and respond to it . . .*
>
> *(a) within 30 days after it is laid before the Legislative Assembly, or*
>
> *(b) within 30 days after the next session begins if the Legislative Assembly is not in session.*

The Commissioner suggests that the Committee consider recommending an amendment to subsection 43(1) of the New Brunswick *Members' Conflict of Interest Act* to make the section mandatory and to provide that the Legislative Assembly deal with the Commissioner's Report within 30 days after it is laid before the House.

It is the consensus of the Committee that the current wording of subsection 43(1) of the Act, which does not make it mandatory for the Legislative Assembly to consider the Commissioner's report, be

retained. The Committee did agree, however, that subsection 43(1) of the Act should be amended to provide a time frame for the consideration of the report by the Assembly as suggested by the Commissioner. The amended subsection would provide that "the Assembly may, within 30 days after the Commissioner's Report is laid before the Assembly by the Speaker, or such other period as is determined by a resolution of the Assembly...".

Therefore, your Committee recommends that subsection 43(1) of the Act be amended to read, in part, as follows:

> **43(1)** ***The Assembly may, within 30 days after the Commissioner's Report is laid before the Assembly by the Speaker, or such other period as is determined by a resolution of the Assembly, accept or reject the findings of the Commissioner, or substitute its own findings and may, if it determines that there is a breach . . . .***

X. Officer of the Assembly

In discussing revisions to the Act with the Clerk of the Legislative Assembly, the Commissioner pointed out that the Act as it presently stands does not specify his status and that an amendment to subsection 22(1) might be appropriate. This could be accomplished, in his opinion, by the addition of the words: "who shall be an officer of the Legislative Assembly".

Your Committee is in agreement with the Commissioner's proposal that an amendment to the Act may be in order to clarify his status as an officer of the Legislative Assembly.

Your Committee therefore recommends that an amendment be made to subsection 22(1) of the Act by the addition of the words "who shall be an officer of the Legislative Assembly".

XI. Solicitation of Funds by and on behalf of Ministers

The Commissioner notes in his report that an important question has arisen on two occasions involving the solicitation of funds by Ministers from companies and individuals who do substantial business with the Minister's Department. The Commissioner states that in both instances, the principal issue involved the interpretation of section 6 of the Act. Section 6 of the Act prohibits a Member from using his or her office to seek to influence a decision made by another person so as to further the Member's private interest.

In a Report to the Speaker in December 2000 concerning the investigation of a complaint involving the solicitation of funds by and on behalf of a Minister, the Commissioner concluded that the raising of funds for political purposes by a Minister from those who did substantial business with the Minister's department was not, on the

facts in that case, a breach of section 6 of the Act. The Commissioner noted that his decision turned on the question of whether what was done furthered the Minister's "private interest". The Commissioner found what was done in this instance was in furtherance of a "political interest" rather than a "private interest".

This notwithstanding, in his Report to the Speaker, the Commissioner expressed the opinion that "the solicitation of political donations by the Minister of Transportation from members and associate members of the Road Builders Association, a specific and important group doing major work for the Department, is conduct that ought not to be repeated."

Further, in his report to the Committee the Commissioner stated "[t]here is a serious question in my mind as to the propriety of a Minister, through his or her riding association, targeting a specific industry or individuals for political donations when that industry or those individuals do substantial business with the Minister's department."

Subsequent to the September 27th meeting of the Committee, the Clerk met with the Commissioner to discuss the Committee's concern regarding the possible inclusion in the Act of "an apparent conflict of interest clause" and to determine if the issues raised by the Commissioner with respect thereto could be dealt with in any other way in the Act.

The Commissioner noted that the recent difficulties encountered on this issue centred mainly on the solicitation of funds by and on behalf of Ministers. The Commissioner recommended that written guidelines be developed within the Executive Council concerning Ministers seeking political donations from companies or individuals who do substantial business with their departments. It was the Commissioner's opinion that such guidelines would be helpful and would deal with some of the issues concerning apparent conflict of interest matters as outlined in his report.

Your Committee acknowledges that it initiated and sought input from the Commissioner on how to deal with apparent conflicts of interest and considers the recommendation of the Commissioner that written guidelines be developed within the Executive Council to deal with such issues to be an important recommendation.

Your Committee is of the opinion that the above recommendation of the Commissioner [that written guidelines be developed within the Executive Council concerning Ministers seeking political donations from companies or individuals who do substantial business with

their departments] should be made directly to the government instead of the Legislative Assembly.

XII. Statement of Principles and Purpose

In a letter to Members of the Legislative Administration Committee dated October 16, 2001, the Commissioner directs the Committee's attention to the fact that the *Integrity Act* of Nunavut, which came into force July 1, 2001, begins with a Statement of the Purpose of the Act and the Principles on which it is founded. The Commissioner suggests that the Committee may wish to consider the merits of including similar statements in any revision of the New Brunswick Act.

Section 1 and 2 of the Nunavut *Integrity Act* provides as follows:

Purpose

1. *The purpose of this Act is*
   - *a) to affirm in law the commitment of the members of the Legislative Assembly to serve always the common good in keeping with traditional Nunavummiut values and democratic ideals; and*
   - *b) to establish a system of standards and accountability for fulfilling that commitment.*

Principles

2. *This Act is founded on the following principles*
   - *a) integrity is the first and highest duty of elected office;*
   - *b) the people of Nunavut are entitled to expect those they choose to govern them to perform their public duties and arrange their private affairs in a way that promotes public confidence in each member's integrity, that maintains the Legislative Assembly's dignity and that justifies the respect in which society holds the Legislative Assembly and its members;*
   - *c) the members of the Legislative Assembly are committed, in reconciling their public duties and private interests, to honour that expectation with openness, objectivity and impartiality, and to be accountable for so doing;*
   - *d) the Legislative Assembly can serve the people of Nunavut most effectively if its members come from a spectrum of occupations and continue to participate actively in the economic and social life of the community.*

In discussions with the Clerk of the Legislative Assembly concerning the inclusion of Statements of Principles and Purpose, the Commissioner noted that the conflict of interest and integrity acts of Alberta, Ontario and the Yukon contain preambles, the content of which may be of assistance should the Committee decide that a Statement of

Principles and Purpose would be a worthwhile addition to the New Brunswick Act.

Each of the Alberta, Ontario and Yukon acts contain preambles similar to the following:

WHEREAS the ethical conduct of elected officials is expected in democracies;

WHEREAS Members of the Legislative Assembly are expected to perform their duties of office and arrange their private affairs in a manner that promotes public confidence and trust in the integrity of each Member, that maintains the Assembly's dignity and that justifies the respect in which society holds the Assembly and its Members; and

WHEREAS Members of the Legislative Assembly, in reconciling their duties of office and their private interests, are expected to act with integrity and impartiality:

In addition to the Statements of Principles and Purpose adopted by the Legislative Assembly of Nunavut in their new *Integrity Act*, and the adoption of a preamble by some of the provinces, the Commissioner suggests that an adaptation of the Object and Principles contained in the Federal Conflict of Interest and Post-Employment Code could be of interest to the Committee. That adaptation, prepared by the Commissioner, is as follows:

Purpose

The purpose of the Members' Conflict of Interest Act is

a) to enhance public confidence in the integrity of the members of the Assembly and the decision-making process in government;

b) to establish clear rules of conduct respecting conflict of interest for, and post-employment practices applicable to, all members of the Assembly; and

c) to minimize the possibility of conflicts arising between the private interests and public duties of members and to provide for the resolution of such conflicts in the public interest should they arise.

Principles

This Act is founded on the following principles:

a) members shall act with honesty and uphold the highest ethical standards so that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced;

b) members have an obligation to perform their official duties and arrange their private affairs in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law;

c) members, in fulfilling their official duties and responsibilities, shall make decisions in the public interest and with regard to the merits of each case;

d) on appointment to office, and thereafter, members shall arrange their private affairs in a manner that will prevent a conflict of interest from arising but if such a conflict does arise between the private interests of a member and his or her official duties and responsibilities, the conflict shall be resolved in favour of the public interest.

Your Committee appreciates the efforts of the Commissioner in suggesting and formulating a statement of purposes and principles for possible inclusion in any review of the Act.

Your Committee is of the opinion that additional time is required to allow a thorough review of the merits of including a preamble or a statement of principles and purposes in the Act while reserving the right to discuss and consider this subject matter as part of the future development of a Code of Conduct for Members of the Legislative Assembly.

CONCLUSION

In conclusion, your Committee would like to quote from Hon. Justice Stratton, in his report to the Committee:

> "I would respectfully remind those who read this Report that the *Members' Conflict of Interest Act* 'is legislation enacted to promote public confidence in elected public officials as they conduct public business.' As one Commissioner has written, 'the heart and soul of the legislation is the restoration of public confidence in the conduct of the people's business by politicians who have achieved electoral success.'
>
> I would therefore end this Report by suggesting to you that however one might attempt to define the purpose of the *Members' Conflict of Interest Act*, it is, I think, clear that the Act has been put in place to ensure that members of the Executive Council and the Legislative Assembly should always adhere to the highest standard of ethics as they go about the people's business."

Your Committee is of the opinion that the *Members' Conflict of Interest Act* is working to achieve its original goals and purpose. Your Committee is hopeful that the proposed changes to the Act will serve to strengthen the legislation and help to guide Members of the Legislative Assembly as they carry out their duties to the people of the Province of New Brunswick.

All of which is respectfully submitted,

Hon. Bev Harrison, Chair
Speaker of the Legislative Assembly

Hon. Mr. Green, the Government House Leader, announced that with consent of the House to dispense with Private Members' Motions, it was the intention of the government that the House resolve into a Committee of the Whole forthwith to consider legislation; namely, Bills 17 and 18.

Accordingly, it was agreed by unanimous consent to dispense with the order of Private Members' Motions.

The House resolved itself into a Committee of the Whole with Mr. Ashfield in the chair.

And after some time, Mr. Bernard took the chair.

And after some further time, Mr. Steeves took the chair as Acting Chairman.

And after some time, Mr. Bernard resumed the chair.

At 6 o'clock p.m., the Chairman left the chair to resume again at 7 o'clock p.m.

7 o'clock p.m.

The Committee resumed with Mr. Ashfield in the chair.

And after some time, Hon. Mr. Betts, the Minister of Business New Brunswick, stood on a point of order and submitted that the Leader of the Opposition was not referring to him by his correct title.

The Chairman requested the Leader of the Opposition to refer to the Minister by the title of his present portfolio.

And after some further time spent in Committee of the Whole, Mr. Speaker resumed the chair and Mr. Ashfield, the Chairman, after requesting that Mr. Speaker revert to the Order of Presentations of Committee Reports, reported:

That the Committee had directed him to report progress on the following Bill:

Bill 17, *Regional Health Authorities Act.*

And the Committee asked leave to make a further report.

Pursuant to Standing Rule 78.1, Mr. Speaker 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.

And then, 10 o'clock p.m., the House adjourned.