

There can be no Accountability Without Transparency: An Examination of Nova Scotia's Outdated Government Ethics Legislation

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Abstract

Government ethics legislation guides the conduct of members in every province and territory in Canada. Every jurisdiction now has an Ethics or Conflict of Interest Commissioner who is responsible for the administration of its government ethics regime. These Commissioners and their regimes can be invaluable to members. This paper looks closely at a specific complaint that was made to the Commissioner under the Nova Scotia regime in early 2015. A close look at this complaint reveals a number of ways in which Nova Scotia's *Conflict of Interest Act* is failing to meet the best practices that have otherwise been adopted throughout Canada. I explore what those best practices are and I offer a list of challenges that must be addressed by Nova Scotia's legislators if they are to move their *Conflict of Interest Act* forward. Modernizing the legislation can potentially foster greater public engagement in politics and even open new public dialogues.

Introduction

Ontario passed legislation in 1988 to create an officer of the legislature who would be responsible for advising members of parliament on conflicts of interest.¹ The 1988

¹ See the *Members' Conflict of Interest Act*, SO 1988, c 17, s 10.

legislation created a Conflict of Interest Commissioner who was appointed by the Lieutenant Governor in Council on the address of the assembly. Requiring the address of the assembly effectively ensured that the appointment would only be made with the consent of all parties, thus minimizing concerns about politics playing a role in the process. The Commissioner was responsible for meeting with, advising and investigating complaints against members of parliament. The Commissioner was also required to explain his or her activities by filing investigation reports and annual reports with the Speaker, who would in turn table those reports in the legislature.

Similar government ethics legislation now exists in almost every province and territory across the country. British Columbia passed legislation to create an independent conflict of interest commissioner in 1990.² Alberta passed its legislation in 1991.³ Newfoundland and Saskatchewan in 1993.⁴ Northwest Territories and Prince Edward Island in 1999.⁵ New Brunswick in 2000 and Nunavut in 2001.⁶ Manitoba in 2002 and Quebec in 2010.⁷ In fact, Nova Scotia and the Yukon are the only two remaining jurisdictions where the appointed commissioners are not also officers of their respective legislative assemblies.

² See *Members' Conflict of Interest Act*, SBC 1990, c 54.

³ See *Conflicts of Interest Act*, SA 1991, c C-22.1.

⁴ See *House of Assembly Act*, RSNL 1990, c H-10 and *Members' Conflict of Interest Act*, SS 1993, c M-11.11 [Sask COIA], respectively.

⁵ See *Legislative Assembly and Executive Council Act*, SNWT 1999, c 22 and *Conflict of Interest Act*, SPEI 1999, c 22 [PEICOI], respectively.

⁶ See *Members' Conflict of Interest Act*, RSNB 1973, c M-7.01 and *Integrity Act*, SNU 2001, c 7 [Nunavut], respectively.

⁷ See *Legislative Assembly and Executive Council Conflict of Interest Act*, SM 2002, c 49 and *Code of ethics and conduct of the Members of the National Assembly*, SQ 2010, c. 30, respectively.

The fact that the Conflict of Interest Commissioner is not an independent officer of Nova Scotia's house of assembly has never been cause for much concern. This lack of concern was likely a result of the fact that a judge was initially appointed to the position under the 1991 *Members and Public Employees Disclosure Act*.⁸ Section 26 of that Act specified how the Conflict of Interest Commissioner would be appointed and notably ensured that members of the Assembly would not be involved in that process:

The Governor in Council in consultation with the Chief Justice of the Supreme Court of Nova Scotia shall designate a judge of the Supreme Court of Nova Scotia or a retired or supernumerary judge of the Supreme Court to be the designated person for the purpose of this Act.⁹

This legislation was partly replaced in 2010 by the *Conflict of Interest Act* (the “Act”).¹⁰ With the sentiment emerging elsewhere in the country that a judge was no longer necessary for this role,¹¹ Nova Scotia broadened the criteria for who could be appointed Commissioner and included the members in the appointment process. Section 4(1) now orders that “[u]pon consultation with the leaders of the recognized parties and subject to the approval of the House of Assembly, the Governor in Council shall appoint a person to be the Conflict of Interest Commissioner.”¹² It is unclear whether a Commissioner has been appointed in this manner however, as the *Act* also seems to allow a Commissioner who was appointed under the *Members and Public Employees Disclosure Act* to continue to hold the post. Justice Alexander Macintosh was the first to hold the position and he

⁸ SNS 1991, c 4.

⁹ *Ibid* at s 26.

¹⁰ SNS 2010, c 35 [*NSCOIAct*].

¹¹ see Ontario, for example. In 2007, Ontario appointed career public servant Lynn Morrison as its acting Integrity Commissioner. Ms. Morrison had worked in the Ontario Commissioner's office since its creation in 1988 and held progressively more senior positions until being fully appointed as the Commissioner in 2010.

¹² *NSCOIAct*, *supra* note 10 at s 4(1).

was replaced on August 6, 1997 by Justice Merlin Nunn. Justice Nunn remains the Commissioner and there is no indication as to when, if ever, he was reappointed to the position under the 2010 legislation.

d'Entremont, Samson and Nova Star Cruises

Justice Merlin's work as Commissioner has generally not garnered too much publicity throughout his tenure. Online searches reveal that the Conflict of Interest Commissioner does not have a dedicated website or even an email address, and that the Commissioner is also not required to report publicly on the office's activity. In fact, very few reports that Justice Merlin has ever produced have even been made public.¹³ The fact that the Commissioner does not make any of his activities public has led to some confusion recently. For example, when PC member Hon. Chris d'Entremont¹⁴ filed a complaint with the Commissioner on January 23, 2015 about the actions of a Liberal member.

The PC member's complaint alleged that Economic Development Minister Michel Samson violated the *Conflict of Interest Act* when he responded to a media question on January 15, 2015, "that government had not given the operators of the Nova Star ferry

¹³ While there are very few public reports, a member of the public (or even of the Assembly) has no actual way of knowing how many reports have been written. Each and every report may have been made public so far or relatively few may have been made public. One can only speculate since that information is not made available by the Commissioner's office.

¹⁴ Currently serving his fourth term and is the opposition house leader. D'Entremont was also formerly the Minister of Agriculture and Fisheries, and Minister of Acadian Affairs. He later served as Minister of Health, Minister of Community Services, Minister responsible for the Youth Secretariat, and Chair of the Senior Citizens' Secretariat.

more than the \$26 million already disclosed.”¹⁵ The Minister would later issue a press release on January 18, 2015 to disclose that a decision had in fact been made on December 23, 2014, to give the ferry operator an additional \$2.5 million.¹⁶ Samson would have been aware of this decision when speaking to the media on January 15, 2015. In d’Entremont’s opinion, the clear decision not to disclose the additional \$2.5 when initially asked was a violation of section 18(a) of the *Act*. Section 18(a) states that:

Ministers and ministerial assistants shall be truthful and forthright and not deceive or knowingly mislead the House of Assembly or the public, or permit or encourage agents of the Government of the Province to deceive or mislead the House of Assembly or the public.¹⁷

D’Entremont sent a letter to the Conflict of Interest Commissioner asking for an investigation into whether Samson’s actions constituted a breach of the legislation. He received no immediate response. It was not until the Liberal party later published the Commissioner’s ruling on February 17, 2015, that d’Entremont even learned that an investigation into his complaint had taken place.¹⁸

The letter with Commissioner Nunn’s ruling was dated February 17, 2015 and very clearly drew attention to some of the major shortcomings of the *Conflict of Interest Act*

¹⁵ Nova Scotia, Conflict of Interest Commissioner, *Letter of response to Hon Mr d’Entremont’s re letter of complaint re Minister Samson dated 23 January 2015* (17 February 2015) [*Samson ruling*] (available online: <<https://s3.amazonaws.com/s3.documentcloud.org/documents/1672134/conflict-of-interest-office.pdf>>).

¹⁶ *Ibid* at 2.

¹⁷ *NSCOI Act*, *supra* note 10 at s 18(a).

¹⁸ See Michael Gorman, “Commissioner: Michel Samson’s false ferry figures not a violation”, *The Chronicle Herald* (17 February 2015).

and its administration. For example, the Commissioner cited section 31 in his ruling, which outlines the conditions under which the Commissioner can conduct an inquiry into a complaint that a member has acted contrary to the *Act*:

Upon resolution of the House of Assembly or the application of a person who states under oath that that person has reasonable and probable grounds to believe a member or public employee is in contravention of this Act or the regulations and who produces sufficient evidence in support of the allegation to satisfy the Commissioner that there is a reasonable probability that the contravention has occurred, the Commissioner shall inquire into the allegation.¹⁹

The Commissioner noted that d'Entremont's letter requesting an investigation did not meet the standards of either being a resolution of the House of Assembly or of being a statement sworn under oath. Therefore, the Commissioner declined to investigate the matter "for lack of jurisdiction."²⁰ This decision to not investigate technically makes sense. It speaks to the fact that the legislation is inflexible about how complaints can be received. Nunn even noted this fact in the ruling he ended up releasing. It was also this ruling that contained Nunn's conclusion that he had no jurisdiction over the subject of d'Entremont's complaint.²¹

In Commissioner Nunn's ruling he commented that an alleged violation of s.18(1) is a "most serious allegation to make."²² So serious in fact, that it will necessarily result "in a continual smear of Minister Samson's reputation." Nunn conjectured that such a smear "may serve some political purpose but destroying a reputation where there is no avenue

¹⁹ *NSCOI Act, supra* note 10 at s 31.

²⁰ *Samson ruling, supra* note 15 at 3.

²¹ *Ibid* at 2-3.

²² *Ibid* at 3.

open for him to defend is quite unfair and unjust.”²³ So what should a Commissioner do if he has no statutory authority to investigate a complaint? Nunn concluded that:

[i]f I let the matter rest without answer, there is little Minister Samson can do to give answer to the allegations made against him. Therefore I have decided to treat your letter as a complaint of wrongdoing under the Ministerial Code of Conduct Section 18(a).

It is unclear where the Commissioner’s authority comes from to allow him to conduct an investigation into a matter over which he admits he has no jurisdiction. It is also unclear why Minister Samson would not be able to defend himself against an allegation that Commissioner Nunn refuses to investigate. There is nothing in the legislation that would limit the Minister’s ability to explain himself after the fact regarding representations he made to the media about official government matters.

The Commissioner filled nearly 3 single-spaced pages explaining that he had met with Minister Samson and his Deputy Minister for 2 hours and that he was satisfied that the Minister did not violate section 18(1). The ruling then took a very interesting turn that appeared to have been a not-so-subtle call by the Commissioner for the legislation to be reformed. Before the *Conflict of Interest Act* was passed in 2010, there was a Ministerial Code of Conduct that was supplementary to the *Members and Public Employees Disclosure Act*. The code of conduct was implemented in November of 1999 and was administered by Commissioner Nunn, despite not having the force of law.²⁴ In 2010, the Code became the guidelines under section 18 of the new *Act*. Commissioner Nunn seems to disagree that they should have formed part of the *Act* and that he should have

²³ *Ibid.*

²⁴ Nova Scotia Premier’s Office, News Release, “Premier John Hamm Introduces Ministerial Code of Conduct” (18 November 1999), online: <<http://novascotia.ca/news/release/?id=20000217016>>.

jurisdiction over those guidelines:

Section 18, in its entirety, impresses upon Ministers and Ministerial Assistants certain behaviours but makes no provision regarding a breach of one or other. It seems to me that an allegation of a breach should be made to the Premier of the House of Assembly, both of who would have all the background knowledge necessary to deal with the matter and is a breach was determined, pursue whatever remedial action that would be appropriate.²⁵

After issuing his “ruling” on d’Entremont’s complaint, the commissioner further clarified his position by noting that “this is the first time that a Section 18(a) matter was referred to me and I suggest it would be preferable for it to be the last.”²⁶

The Value of Transparency

One need look no further than the confusing ruling issued by Commissioner Nunn in February of 2015 to understand that Nova Scotia’s *Conflict of Interest* regime is in need of some attention. The Commissioner is not required to make public reports and he is not required to acknowledge complaints. Without asking, a member would not even know if general policy or process decisions had been made by the Commissioner in regards to how complaints will be handled.²⁷ A member most certainly cannot know then how the Commissioner will interpret the legislation without first asking for an opinion. A question about government decisions that opposition members know nothing about should not then be characterized, however subtly, as something that smears the government member complained of.

²⁵ *Samson ruling, supra* note 15 at 5.

²⁶ *Ibid.*

²⁷ In Ontario, for example, the policies and process for handling a complaint (also called a request for an opinion) are published on the Commissioner’s website. See online <<http://www.oico.on.ca/home/mpp-integrity/section-30-complaint-procedure>>.

In interviews conducted subsequent to the ruling being made public, Chris d'Entremont admitted to not being able to make sense of Commissioner Nunn's ruling.²⁸ In fact, the CBC published an article on February 20, 2015 entitled "Nova Scotia's conflict of interest commissioner: What does he do?"²⁹ One of the questions posed by the article's author, Jean Laroche, was "[i]s it as secretive in other provinces?"³⁰ The answer, according to Mr. Laroche, is that the Commissioner's secrecy in Nova Scotia is an anomaly when compared to the other provinces and he provided several examples to justify his conclusion.

Interestingly, section 2(a) of the *Act* states that its purpose is "to ensure that members and public employees perform their duties and functions of office and arrange their private affairs in a manner that promotes public confidence and trust in the integrity of each member and public employee."³¹ It is unclear how the public can be expected to trust their parliamentarians more based on rules that are not explained to them. How does the public know what behaviours they can expect from their parliamentarians? The only way that government ethics legislation can meet its goal of boosting public confidence is to eagerly inform the public about the rules to which their representatives are bound. The rules must be informed by public expectations and the application of those rules must be open to public scrutiny. The important role that transparency plays in government

²⁸ "N.S. Tory questions legislation for conflict of interest commissioner", *The Canadian Press* (18 February 2015), online: <<http://atlantic.ctvnews.ca/n-s-tory-questions-legislation-for-conflict-of-interest-commissioner-1.2241910>>.

²⁹ Jean Laroche, "Nova Scotia's conflict of interest commissioner: What does he do?" CBC News (20 February 2015), online: <<http://www.cbc.ca/news/canada/nova-scotia/nova-scotia-s-conflict-of-interest-commissioner-what-does-he-do-1.2964549>>.

³⁰ *Ibid.*

³¹ *NSCOI Act*, *supra* note 10 at s 2(a).

accountability has also been noted by Ian Greene and David Shugarman in their seminal book, *Honest Politics*. Greene and Shugarman write that “[o]ne of the safeguards of democratic government is the principle of openness and transparency.”³² The value of transparency has also been noted by Greg Levine in his book on government ethics laws when he said that “[i]t is commonplace, even trite, to say that democratic governments should be open and transparent.”³³

Bill No. 77 and the Issue of Accountability

Bill 77³⁴ was introduced for first reading by Chris d’Entremont on April 2, 2015,³⁵ in the wake of the confusion that surrounded Commissioner Nunn’s ruling on Minister Samson. The bill seeks two simple amendments to the *Act*, including that the Commissioner become an officer of the House of Assembly and that the Commissioner be required to report on his or her activities by filing annual reports with the Speaker.

The bill was not well received in second reading by the governing Liberals. Liberal member Gordon Wilson spoke to the bill and noted his cynicism about d’Entremont’s motives. He commented that the PC party had recently spent more than enough time in office to be able to fix this legislation and questioned why it was only now inadequate to the PCs:

³² Ian Greene & David P Shugarman, *Honest Politics: Seeking Integrity in Canadian Public Life* (Toronto: James Lorimer & Company Ltd, 1997) at 14 [*Honest Politics*].

³³ Greg Levine, *The Law of Government Ethics: Federal, Ontario and British Columbia* (Aurora: Canada Law Book, 2007) at 102.

³⁴ Bill 77, *An Act to Amend Chapter 35 of the Acts of 2010*,^[L]_{SEP} *the Conflict of Interest Act*, 2nd Sess, 62nd Parl, Nova Scotia, 2015 (second reading 8 April 2015).

³⁵ Nova Scotia, House of Assembly, Debates and Proceedings (Hansard), 62nd Parl, 2nd Sess, No 15-41 (8 April 2015) at 3427 (Hon Chris d’Entremont) [*2nd debate*].

I think the previous government that was in power from 1999 to 2009 certainly had a chance to bring it forward at that point in time. It even raises more questions of, why are we talking about this here today? Is it because we had an issue brought before the Conflict of Interest Commissioner that maybe they just didn't like? I'm curious about that.³⁶

Wilson then proceeded to speak about the Liberals' plans to increase government accountability and effectively implied that if a change was going to be made to the *Conflict of Interest Act* then it would be made by the governing party.³⁷ This inevitability was acknowledged by d'Entremont when he subsequently spoke to the bill. Specifically, d'Entremont explained that he was using opposition day to simply bring forth an idea to help make things better and he then thanked the other members of the Assembly for their attention while noting that he would be happy if his bill merely got the ball rolling in the right direction:

I am very happy that many people sat and listened to what I did have to offer - an idea, at least, that maybe later on, if someone wants to grab hold of and copy it, I'm happy with that as well.³⁸

He finished his remarks by drawing attention to some examples of legislation in other Canadian jurisdictions that clearly demonstrate how far behind Nova Scotia is with its conflict of interest legislation.

Best practices across Canada

Government ethics regimes across Canada have been closely modeled after Ontario's landmark 1988 legislation.³⁹ Aside from Commissioners generally being officers of the legislature, there are also a few other commonalities that run throughout the country.

³⁶ *Ibid* at 3429-30 (Gordon Wilson).

³⁷ *Ibid* at 3430-31 (Gordon Wilson).

³⁸ *Ibid* at 3437 (Hon Chris d'Entremont).

³⁹ Ontario's *Conflict of Interest Act* was amended in 1994 and renamed the *Members' Integrity Act, 1994*, SO 1994, c 38 [*MIA*].

These commonalities all breathe life into government ethics legislation and ensure that it is important and useful for the hundreds of members of parliament who are subject thereto.

Perhaps the two most fundamental characteristics of any government ethics regime are that the Commissioner is charged with providing advice to members and that he or she is charged with investigating complaints that are made against members.⁴⁰ Advice can be given to members about any aspect of the legislation. For example, members may seek clarity from their commissioner with respect to the provision that prohibits the use of public office in a manner that may benefit a member's own private interest(s).⁴¹

Similarly, they may seek advice about the prohibition against members using their public office to improperly further the private interests of others (e.g. family members or friends).⁴² There is also a more general rule that prohibits members from improperly using their influence or confidential information that they have access to.⁴³ Determining what is improper and what is confidential is an interpretive exercise that must be undertaken by a Commissioner who has been provided all the relevant facts.

⁴⁰ See *Honest Politics*, *supra* note 32 at ch 6 (for a discussion of these two important components of government ethics legislation).

⁴¹ Restrictions of this nature are found in every jurisdiction across Canada.

⁴² See e.g. *Conflicts of Interest Act*, RSA 2000, c C-23, s 3 (for an example of this type of provision).

⁴³ See e.g. *Sask COIA*, *supra* note 4 (for an example of this type of provision).

Further to providing advice to members, Commissioners across the country must meet yearly with each member to review his or her annual disclosure filing.⁴⁴ These disclosure filings provide the Commissioner with specific information about the member's assets, liabilities, income streams, board memberships and any other personal interests or engagements that may potentially give rise to a conflict of interest with their public duties.⁴⁵ After these meetings, every Commissioner is responsible for producing public disclosure statements that provide certain information to the public. These statements are filed with the Clerk of the respective Assemblies and are then made available to the public.⁴⁶

In some jurisdictions the public disclosure statements contain information about what gifts and benefits, if any, a member has received within the past year. In other jurisdictions there are rules about what gifts and benefits can be received, but the public disclosure of those items is ongoing and is therefore kept fairly current. In every case however, the Commissioner is expected to provide members with advice about what it is appropriate to accept or receive.

Given that members of executive councils have a particularly privileged position within government, the rules across the country also include restrictions that apply specifically

⁴⁴ With the sole exception being the Federal Conflict of Interest and Ethics Commissioner's regime for MPs.

⁴⁵ Exactly what is required differs slightly in every jurisdiction, but it is always listed in the applicable legislation. See *Nunavut*, *supra* note 6 at s 5, for example.

⁴⁶ Historically they were made available at the Clerk's office upon request (and this is still the case in Nunavut, for example), but they are now generally made available online by Commissioners across the country.

to ministers of the Crown. These rules limit what investments a minister can have and make⁴⁷ and they also limit what jobs (paid or volunteer) that a minister can accept after they leave their ministerial position.⁴⁸ Members of the executive council were the only ones who were originally believed to have the ability to exercise their powers in a potentially improper manner, so it was these members who were historically the ones subject to the highest standards of conduct.⁴⁹ Public expectations have changed over time and all government ethics legislation in Canada now applies to all members, including ministers.

Finally, government ethics legislation always includes the right for the Assembly or a member to request an investigation into the conduct of another member. Some legislation even allows members of the public to file a complaint⁵⁰ or for the Commissioner to conduct an investigation of his or her own initiative.⁵¹ When a Commissioner has the appropriate jurisdiction to accept a complaint, he or she will then conduct an investigation and table a report with the Assembly that contains an opinion and a recommendation.⁵²

⁴⁷ See e.g. *Members' Conflict of Interest Act*, SNB 1999, c M-7.01, s 14(1) (for an example of this type of provision).

⁴⁸ These are called post-employment rules. See e.g. *MIA*, *supra* note 39 at 18.

⁴⁹ See e.g. *Honest Politics*, *supra* note 32 (for a discussion of the history of conflict of interest rules).

⁵⁰ The language used in the legislation is generally “request an investigation” rather than “file a complaint,” but I have chosen to use the language of complaint because I believe it is a more accurate description of what is taking place.

⁵¹ See e.g. *Conflict of Interest Act*, SC 2006, c 9, s 2 at s 45(1) and *Code of Ethics and Conduct of the Members of the National Assembly*, CQLR c C-23.1 at s 92 (for examples of this legislation where own initiative investigation rights are granted).

⁵² See *Members' Conflict of Interest Act*, RSBC 1996, c 287, ss 21-22 [BCCOI] (for an example of this type of provision).

These substantive rules that I have outlined above are generally complemented by further rules that ensure the legislation is transparent and has value for members of the public. These further rules are more organizational or functional in nature. The most clear and widely-adopted example of a legislative requirement that serves the public's interest is the requirement that Commissioners publish annual reports that include information about their activities and their office budgets. These annual reports inform the public and they inform the members as well. Perhaps most importantly however, those who work with and for the members can use these annual reports as a resource to help them identify ethical issues and guide members away from difficult ethical situations, especially when there is not sufficient time for the member to contact the Commissioner for advice.⁵³

Other typical ways in which these regimes strive for transparency include: a requirement that investigation reports be made public by being tabled in the legislature, and the requirement (mentioned above) that an edited version of members' disclosure statements be made public. The public can search these disclosure statements to ensure that members are not voting on matters in the Assembly that they may also personally benefit from financially. With the exception of Nova Scotia, Commissioners' publications are easily found on their websites that are publicly accessible and in many cases the information is digitally searchable and/or sortable. Almost in defiance of this clear best

⁵³ In Ontario, for example, the Integrity Commissioner provides sample answers to ethical questions she has received and comments that they are provided in order "to raise awareness" (See e.g. Ontario, Commission on Conflicts of Interest, *Annual Report, 2010-2011* (Toronto: Publications Ontario, 2011) at 8.

practice, Nova Scotia does not publish investigation reports publicly and posts a single large scanned (.pdf) copy of hand written disclosure statements that are extremely difficult to locate online and cannot easily be searched using typical computer search functions.⁵⁴ Despite the fact that public disclosure statements must clearly have been adopted to address perceived public concerns about transparency, the manner of disclosure that has been chosen in Nova Scotia strongly discourages the public from engaging with the materials.

Further to the above, best practices have also been established by Commissioners across Canada that go above and beyond the bare requirements of their legislative regimes. For example, making information regarding members' financial affairs searchable, sortable and downloadable;⁵⁵ publishing pamphlets and guidelines that summarize advice the Commissioner feels all members should be aware of;⁵⁶ meeting with members who are appointed to their executive council, or removed therefrom, as those changes happen; and recommending clear amendments to the legislation, whether solicited by the assembly or not.⁵⁷ One of the obvious reasons that Commissioners must be independent of parliament is so that they can establish best practices that reach beyond minimal legislative

⁵⁴ See untitled, online:

<<http://nslegislature.ca/pdfs/committees/hamc/MLADisclosureStatements.pdf>>

⁵⁵ This is being done in response to best practices that are emerging from the United States.

⁵⁶ See e.g. the British Columbia Commissioner's website, online: <<http://www.coibc.ca>>

⁵⁷ *Ibid.*

requirements in order to drive government accountability forward to the greatest extent that their legislation will allow them to do so.⁵⁸

Nova Scotia's Challenge

Nova Scotia's *Conflict of Interest Act* does include the typical rules that make it useful for members seeking advice about conflicts of interest and the improper use of influence and information.⁵⁹ The *Act* does not however concern itself in any significant or useful way with engaging the public or striving to improve public confidence in the rules that govern the ethical conduct of elected officials. The d'Entremont – Samson affair made it clear that the *Act* is limited in its utility and that a request for an opinion or investigation is treated very confidentially by the Commissioner. This is not the case in other jurisdictions throughout Canada. While Commissioners generally do not disclose to the press that an investigation is underway, they do engage with the parties throughout an investigation and they do eventually file a public report.⁶⁰

The challenge for Nova Scotia's government is to put politics aside and to accept that the *Act* once again needs improvement. Government ethics laws only came into existence in Nova Scotia because Premier Donald Cameron seemed to have picked up on a broken

⁵⁸ A good question for a future paper might be to explore what exactly we mean by independent when we speak of legislative officers? It is clear that budgets must in some way be set and overseen by parliamentarians and that these officers must be held accountable for their actions and capable of losing their positions if they are incompetent. What is it that makes them independent then, and is it a true independence or a relative independence?

⁵⁹ See *NSCOI Act*, *supra* note 10 at ss 12, 14.

⁶⁰ See *supra* note 27, for an example of an investigation process.

election promise that was made by his predecessor, John Buchanan.⁶¹ Buchanan had often pledged to the public that he would introduce a code of conduct while he was Premier, but he never did.⁶² It is surprising then that the current legislation, which was passed in 2010, still has not also picked up on the importance of serving the public interest by providing access to more of the information that is being collected and generated by the Commissioner. At a minimum, Nova Scotia's *Conflict of Interest Act* must be amended to include the following:

1. The Commissioner must be required to produce annual reports the legislation should specify some expectations for what those reports ought to contain;⁶³
2. The Commissioner's office must be required to have an online presence;⁶⁴
3. The Commissioner must be required to post all reports online (i.e. annual, investigation, refusal to investigate, etc.) as well as any other information about the office that could be useful to members and members of the public, including the Commissioner's biography;⁶⁵

⁶¹ Ian Stewart, "Despoiling the public sector?: The case of Nova Scotia" in John W Langford & Allan Tupper, eds, *Corruption Character & Conduct: Essay on Canadian Government Ethics* (Toronto: Oxford University Press, 1994) 90 at 102-3.

⁶² *Ibid* at 102.

⁶³ See e.g. MIA, *supra* note 39 at s 24(2) (for an example of legislation that specifies what the Commissioner's annual reports should include).

⁶⁴ Although this practice has not been mandated, it has been clearly adopted with slight variations in every other Canadian jurisdiction.

⁶⁵ Although very few jurisdictions have legislation that requires their Commissioners to post information online, in actual practice it is uncommon for a Commissioner to not make every document they publish available on their website, as well as through the Office of the Clerk of their Assembly.

4. Members' public disclosure statements must be published online in a format that is conducive to being searched by members of the public;⁶⁶
5. The Commissioner must be responsible for receiving complaints from the public⁶⁷ and must be empowered to be able to conduct investigation of his or her own initiative;⁶⁸
6. The Commissioner must be required to clarify how investigations will be conducted, taking into account the basic requirements of fairness and natural justice,⁶⁹ and,
7. The Commissioner must become an independent officer of the Assembly in order to make clear to members of the public and to members of the Assembly that the Commissioner's role is important and respected.

These amendments are necessary if the Commissioner's work is going to be able to make an impact on the public's confidence in the ethical conduct of the members of Nova Scotia's Assembly. It is crucial that the *Conflict of Interest Act* be updated so as to reflect the best practices that have been adopted throughout Canada.

Conclusion

It may be correct that Minister Samson did not violate the *Conflict of Interest Act* when he chose to withhold information from the media in January of 2015. The

⁶⁶ See e.g. MIA, *supra* note 39 at s 21(7) (for an example of a jurisdiction that specifically requires members' public statements to be made available online).

⁶⁷ See e.g. BCCOI, *supra* note 52 at s 18 (for an example of a jurisdiction where the Commissioner is required to receive complaints from members of the public).

⁶⁸ See *supra*, note 51.

⁶⁹ See *supra*, note 27 (for an example of a jurisdiction where the Commissioner has published a helpful process document in order to clarify what parties to a complaint can expect).

Commissioner's ruling, wherein he denied having jurisdiction over Chris d'Entremont's complaint yet still proceeded to conduct an investigation, did nothing but confuse the matter however. In this confusion there emerged a reminder that the *Conflict of Interest Act* is missing a few components that would allow it to be more effective at meeting its goal of promoting public confidence and trust in members of Nova Scotia's Assembly. By taking a closer look at the rest of the legislation, we can see that there are many best practices that have been widely adopted throughout Canada yet have not been adopted in Nova Scotia. It is therefore important for the House of Assembly to focus on improving the aspects of the *Act* that promote transparency and public engagement. Without a greater focus on transparency, the legislation does nothing more than create a personal ethics advisor for members who has no responsibility to report to anyone about his or her work. Much more can be done with this legislation that would cost little money, if any, and could bring great benefit to Nova Scotians by possibly opening healthy new public dialogues.