MODERNIZING MANITOBA'S CONFLICT OF INTEREST LEGISLATION

RECOMMENDATIONS OF THE CONFLICT OF INTEREST COMMISSIONER

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EXECUTIVE SUMMARY

Manitoba has the oldest and arguably the weakest conflict of interest legislation in Canada. This report proposes a framework to modernize the legislation. It was prepared by Manitoba's Conflict of Interest Commissioner, Jeffrey Schnoor, Q.C., at the request of the Government House Leader, the Honourable Cliff Cullen.

The current Act (*The Legislative Assembly and Executive Council Conflict of Interest Act*) sets out the obligations of members of the Manitoba Legislative Assembly when they find themselves in a conflict of interest and sets out their obligation to disclose to the public certain of their assets and interests. However, the Act has many anomalies and deficiencies. In broad terms, the current Act defines conflict of interest too narrowly, requires inadequate disclosure of assets and liabilities and provides an ineffective method of enforcement of obligations.

This report recommends that conflict of interest should not be restricted to pecuniary matters and should be more broadly defined. A conflict of interest would arise when a member exercises an official power, duty or function that provides an opportunity to further his or her private interests, or those of his or her family, or to improperly further another person's private interests. In light of the greater potential for conflicts of interest, additional restrictions would apply to Cabinet Ministers. Unless the Conflict of Interest Commissioner authorizes it (with or without conditions), a Minister would not be allowed to engage in employment or self-employment or the management or ownership of a business, to own securities that are not publicly traded or to be an officer or director of an organization.

The current Act has no restrictions on members and their families receiving gifts and other such benefits. Their only obligation is to disclose gifts with a value over $250. The report recommends that members and their immediate family not be permitted to accept a gift that is connected with the performance of their duties of office, unless it is received as an incident of the protocol, customs or social obligations that normally accompany the responsibilities of office. Permitted gifts with a value over $250 would still have to be disclosed. The report also proposes that travel on non-commercial or private aircraft not be allowed except with the prior approval of the Commissioner. With minor exceptions, lobbyists would be prohibited from giving gifts to public officials. A member should also not knowingly be party to a contract with the Government of Manitoba under which the member receives a benefit.

This report recommends a major expansion of the public disclosure that members must make. Members would have to disclose all their assets and liabilities and those of their immediate family members, as well as of any private corporations in which they have an interest. They would also disclose their sources of income and those of their immediate family. Exceptions

would be made for assets and liabilities with little likelihood of giving rise to a conflict of interest. Disclosure statements would be filed with the Conflict of Interest Commissioner, who would then make them available for online public inspection. Cabinet Ministers would be required to disclose additional information to the Commissioner and to meet with him or her to discuss how to arrange their affairs so as to avoid or minimize conflicts of interest.

This report also recommends restrictions on the employment and activities of members and Ministers after they leave office. These restrictions would apply for one year, in the case of members, and for two years in the case of Ministers.

The Conflict of Interest Commissioner would continue to provide advice to members and would be empowered to provide confidential written advice. This would also be available to former members.

Every jurisdiction in Canada – except Manitoba – empowers its Commissioner to receive and investigate complaints where it is felt a member may not have complied with the conflict of interest requirements. The current Act places the onus on individual voters to take such complaints to court. This report recommends that this process be changed. Complaints should go to the Commissioner, who should have full powers to investigate, including the power to compel testimony and the production of documents. If the Commissioner finds that a member has breached the conflict of interest rules, he or she should be able to recommend an appropriate sanction. These could include a reprimand, a fine, the suspension of the member without pay or a declaration that the member's seat is vacant. Once in receipt of such a report from the Commissioner, the Legislative Assembly should be required to vote to either accept or reject all of the Commissioner's recommendations.

The Commissioner provides advice to members of all parties and, when dealing with complaints, will have to make difficult and potentially controversial decisions about people who hold political power. As a result, this report also recommends additional measures to better assure the independence of the Commissioner.

Finally, it is recommended that new legislation based on this report's recommendations should come into force immediately following the next provincial election or 12 months after it is passed, whichever comes last. The new legislation should be subject to a mandatory review by the Commissioner and the Legislative Assembly every five years.

RÉSUMÉ

Le Manitoba possède la législation la plus ancienne et, on pourrait dire, la plus faible du Canada sur les conflits d'intérêts. Le présent rapport propose un cadre de travail pour la moderniser. Il a été préparé par le commissaire aux conflits d'intérêts du Manitoba, M. Jeffrey Schnoor, c.r., à la demande du leader du gouvernement à l'Assemblée, M. Cliff Cullen.

La Loi actuelle (Loi sur les conflits d'intérêts au sein de l'Assemblée législative et du Conseil exécutif) énonce les obligations des membres de l'Assemblée législative du Manitoba lorsqu'ils se trouvent en situation de conflit d'intérêts et elle prévoit pour eux l'obligation de divulguer publiquement certains des biens et intérêts qu'ils possèdent. Cependant, elle renferme beaucoup d'anomalies et de déficiences. En termes généraux, la Loi actuelle donne une définition trop restreinte du conflit d'intérêts, exige la divulgation inadéquate de l'actif et du passif des députés, et prévoit une méthode inefficace à l'égard du respect des obligations.

Le présent rapport recommande qu'on ne limite pas le conflit d'intérêts aux questions pécuniaires et qu'on en élargisse la définition. Il devrait y avoir conflit d'intérêts lorsqu'un député exerce un pouvoir officiel ou s'acquitte d'une fonction ou d'un devoir officiel qui lui donne la possibilité de favoriser les intérêts privés d'une autre personne. Étant donné le risque accru de conflits d'intérêts, des restrictions supplémentaires devraient s'appliquer aux ministres. Sauf si le commissaire aux conflits d'intérêts l'autorise (avec ou sans conditions), un ministre ne devrait pas pouvoir occuper un emploi ou effectuer un travail autonome, être gérant ou propriétaire d'une entreprise, détenir des valeurs qui ne sont pas cotées en bourse, ni être dirigeant ou administrateur d'une organisation.

La Loi actuelle n'empêche aucunement les députés et leurs familles de recevoir des dons ou autres avantages semblables. Elle les oblige seulement à déclarer les dons de plus de 250 $. Le rapport recommande que les députés et les membres de leur famille immédiate ne soient pas autorisés à accepter des dons qui sont liés à l'exercice de leurs attributions, sauf s'ils les reçoivent dans le cadre normal du protocole, des coutumes ou des obligations sociales qui accompagnent habituellement les charges de leur fonction. Les dons autorisés d'une valeur de plus de 250 $ devraient quand même être déclarés. Le rapport propose aussi que les déplacements en avion non commercial ou privé soient interdits sauf sur autorisation préalable du commissaire. À quelques exceptions près, il devrait être interdit aux lobbyistes de faire des dons aux fonctionnaires. Un député ne devrait pas non plus être sciemment partie à un contrat avec le gouvernement du Manitoba en vertu duquel il reçoit un avantage.

Ce rapport recommande que la divulgation publique que les députés sont tenus de faire soit beaucoup plus étendue. Les députés devraient déclarer tout leur actif et leur passif, ceux des

membres de leur famille immédiate, ainsi que ceux de toute société privée dans laquelle ils ont un intérêt. Ils devraient également être tenus de déclarer leurs sources de revenus et celles des membres de leur famille immédiate. Des exceptions pourraient s'appliquer pour les actifs et les passifs peu susceptibles de donner lieu à un conflit d'intérêts. Les états de divulgation devraient être déposés auprès du commissaire aux conflits d'intérêts, qui les mettrait ensuite à la disposition du public en ligne. Les ministres devraient être tenus de déclarer des renseignements supplémentaires au commissaire et de se réunir avec lui pour parler de la façon dont ils peuvent organiser leurs affaires de manière à éviter ou à limiter les conflits d'intérêts.

Ce rapport recommande aussi l'application de certaines restrictions sur le travail et les activités des députés et des ministres lorsqu'ils quittent leurs fonctions. Ces restrictions devraient s'appliquer pendant un an pour les députés et pendant deux ans pour les ministres.

Le commissaire aux conflits d'intérêts devrait continuer de conseiller les députés et être habilité à fournir des conseils confidentiels par écrit. Cela devrait également être offert aux anciens députés.

Contrairement au Manitoba, chaque province et territoire du Canada autorise son commissaire à recevoir des plaintes et à enquêter lorsqu'on estime qu'un député n'a peut-être pas respecté les exigences en matière de conflits d'intérêts. Selon la Loi actuelle, il incombe à l'électeur de porter ce genre de plainte devant le tribunal. Ce rapport recommande que le processus soit modifié. Les plaintes devraient être adressées au commissaire, qui devrait disposer de tous les pouvoirs nécessaires pour enquêter, y compris celui d'obliger à témoigner et à produire des documents. Si le commissaire découvre qu'un député a enfreint les règles sur les conflits d'intérêts, il devrait pouvoir recommander une sanction appropriée. Il pourrait s'agir d'une réprimande, d'une amende, d'une suspension du député sans traitement ou d'une déclaration selon laquelle le siège du député est vacant. Lorsque l'Assemblée législative reçoit le rapport du commissaire, elle devrait procéder à un vote pour accepter ou rejeter les recommandations du commissaire.

Le commissaire fournit des conseils aux députés de tous les partis et, lorsqu'il traitera les plaintes, il lui faudra prendre des décisions difficiles et peut-être controversées à l'égard de personnes qui détiennent le pouvoir politique. Par conséquent, le présent rapport recommande des mesures supplémentaires pour mieux assurer l'indépendance du commissaire.

Enfin, il est recommandé qu'une nouvelle loi fondée sur les recommandations formulées dans ce rapport entre en vigueur immédiatement après les prochaines élections provinciales ou dans l'année qui suit son adoption, selon l'échéance qui arrive en dernier. En outre, la nouvelle loi

devrait obligatoirement faire l'objet d'un examen du commissaire et de l'Assemblée législative tous les cinq ans.

CHAPTER 1

INTRODUCTION

1. Background

Public confidence is the essential foundation of our democratic institutions. One of the key components of that confidence is the assurance that elected representatives will always act in the public interest and not in their private interest – that they will work for the betterment of all and not for their personal enrichment. Conflict of interest legislation helps to provide that assurance.

As I have noted in my last two annual reports, Manitoba's conflict of interest legislation is out of date and in serious need of reform. I was therefore pleased to be asked to provide my recommendations for modernization. The recommendations in this report are based on my experience as Conflict of Interest Commissioner: I have had the unique opportunity to see where the current legislation works well and – more commonly – where it does not. They are also based on my review of the legislation in other Canadian jurisdictions and the recommendations for reform by other bodies. This report will explain the reasons for my recommendations but will not delve into the academic writings on this subject. My focus will be on articulating a set of clear and pragmatic recommendations that can guide the development of legislation in Manitoba.

The Legislative Assembly and Executive Council Conflict of Interest Act ("the current Act") is the main statute that deals with conflict of interest for members of the Manitoba Legislative Assembly. It was enacted in 1983 and came into force in 1985. It is now the oldest such Act still in force in Canada.

The current Act sets out the obligations of members of the Legislative Assembly when they find themselves in a conflict of interest and sets out their obligation to publicly disclose certain of their assets and interests. However, the Act has many anomalies and deficiencies that will be discussed over the course of this report. In broad terms, the current Act defines "conflict of interest" too narrowly, focusing on financial gain and ignoring other ways in which a member of the Legislative Assembly might place his or her interests over the public interest. The current Act requires the disclosure of assets of members that have little likelihood of giving rise to a conflict of interest and does not require the disclosure of other assets (and liabilities) that may have a high likelihood. Virtually no limits are placed on the receipt of gifts by members. The current Act does not encourage members to seek advice and does not provide an adequate method of enforcement. It deals with matters not related to conflicts of interest of members of

the Legislative Assembly (notably, the post-employment obligations of senior civil servants) and leaves certain issues that it should deal with to other statutes (notably, sections of *The Legislative Assembly Act* that forbid MLAs from certain dealings with the provincial government). These – and other issues within the current Act – require it to be replaced.

Recommendation 1

***The Legislative Assembly and Executive Council Conflict of Interest Act* should be repealed and replaced with new legislation ("the new Act") that provides a comprehensive code respecting conflicts of interest of members (and former members) of the Manitoba Legislative Assembly.**

Recommendation 2

Provisions not dealing with conflicts of interest of members of the Legislative Assembly (such as conflicts of interest relating to senior civil servants) should be moved to other legislation.

2. Principles

In keeping with the objectives of conflict of interest legislation, recommendations for modernization will be based upon the following key principles:

- **Integrity.** Members of the Legislative Assembly should be held to a rigorous standard of conduct that promotes public confidence and trust in their integrity.
- **Transparency.** Members should be required to disclose sufficient information about their assets and liabilities to allow the public to judge whether members are placing the public interest ahead of any private interest.
- **Clarity.** The obligations imposed by the new Act should be clear and understandable for members and citizens. Provisions allowing for the exercise of discretion should have clear criteria and independent non-partisan advice should be available to assist members in meeting their obligations.
- **Effectiveness.** The Act should focus on gaining voluntary compliance by members. However, the new Act should also have an effective and transparent method of enforcement with meaningful consequences for breaches.
- **Efficiency and Economy.** Meeting the requirements of the new Act, especially the disclosure requirements, should be as simple as possible. While the expanded requirements that will be recommended – especially the advice and enforcement provisions – will inevitably result in a need for more administrative resources, every effort should be made to keep that need as modest as possible.

- **Value of Public Service.** Our democratic system needs good people willing to run for office and serve the public. Care should be taken to ensure that, to the extent possible, the requirements of the new Act are not so onerous as to unduly discourage this.

3. A few definitions

It will be helpful to define or qualify a few terms that will appear throughout this document.

"Member" means a member of the Legislative Assembly, commonly known as an MLA, and "Minister" means a Cabinet Minister, including the Premier (formally known as a member of the Executive Council). This report will recommend certain additional obligations for Ministers. As a result of a recent amendment to *The Financial Administration Act*[1], the membership of Treasury Board can now include MLAs who are not Cabinet Ministers. Given the importance of Treasury Board in making decisions about government expenditures, all of its members should be deemed to be Cabinet Ministers for the purposes of their obligations under the new Act.

Recommendation 3

"Minister" should include all members of Treasury Board.

Some obligations in the current Act, and in the new proposed Act, apply to a member's immediate family. The current Act restricts the meaning of family to spouses, common-law partners and children under 18. These obligations should also be extended to financially dependent adults.

Recommendation 4

"Family" should mean the member's spouse or common-law partner, the member's minor children and any other person who is related to the member or his or her spouse or common-law partner, shares a residence with the member and is primarily dependent on the member, spouse or common-law partner for financial support. "Spouse" and "common-law partner" should not include a person from whom the member is separated.

"Commissioner" means the independent non-partisan officer of the Legislative Assembly appointed under the new Act to perform the duties described in this report. This is the position which the author holds under the current Act. The expanded duties that will be proposed for the Commissioner will be described over the course of this report, and a later chapter will set out additional provisions to safeguard the independence of the office.

[1] *The Financial Administration Amendment Act*, S.M.2016, c. 15.

CHAPTER 2

MEMBERS' OBLIGATIONS

1. Defining Conflict of Interest

The current Act defines conflict of interest indirectly. It does this by stating what a member must do when faced with a matter in which he or she has "a direct or indirect pecuniary interest". These terms are never specifically defined. However, several sections are spent setting out, in rather complex terms, presumptions of when these interests may exist (it is not clear if the presumptions are rebuttable or not). If a "conflict" occurs during a meeting, the member must:

- disclose the general nature of the direct or indirect pecuniary interest or liability;
- withdraw from the meeting without voting or participating in the discussion; and
- refrain at all times from attempting to influence the matter.[2]

A Minister has similar obligations if a "conflict" arises "during the exercise of any official power or the performance of any official duty or function" (and he or she must delegate the matter back to Cabinet), but these obligations do not apply to non-Ministers.[3]

The current Act restricts conflicts of interest to situations in which the member has a financial ("pecuniary") interest in the matter. This is a narrow definition that leaves out situations in which a member has a non-financial or private interest. Most other Canadian jurisdictions have much clearer statements of what constitutes a conflict of interest and when it can arise. Manitoba's new Act should do this as well, with clear prohibitions on the improper use of inside information and attempts to improperly influence others.

Recommendation 5

The new Act should have a clear statement of what constitutes a conflict of interest, and it should not be restricted to pecuniary interests. A conflict of interest would arise when a member exercises an official power, duty or function that provides an opportunity to further his or her private interests, or those of his or her family, or to improperly further another person's private interests.

[2] *The Legislative Assembly and Executive Council Conflict of Interest Act* (Manitoba), s. 4(1).
[3] *The Legislative Assembly and Executive Council Conflict of Interest Act* (Manitoba), s. 8.

Recommendation 6

A member should not make a decision, or participate in making a decision, related to the exercise of an official power, duty or function if the member knows or reasonably should know that, in making the decision, he or she would be in a conflict of interest.

Recommendation 7

A member should not use or communicate information that is obtained in his or her position, and is not available to the public, to further, or seek to further, the member's private interests or those of his or her family, or to improperly further, or seek to further, another person's private interests. This obligation should continue to apply after the member leaves office.

Recommendation 8

A member should not use his or her position to seek to influence a decision of another person so as to further the member's private interests, or those of his or her family, or to improperly further another person's private interests.

Despite the foregoing, most jurisdictions recognize that there are circumstances in which a member can, and indeed should, attempt to influence decisions, as long as those decisions do not fall into any of the above categories. It is recognized that members have a legitimate role in advocating for their constituents.

Recommendation 9

The new Act should not prohibit the activities that members normally engage in on behalf of their constituents.

Most jurisdictions also recognize that private interests should not include the sorts of matters that are common to all citizens. For example, a member should not be excluded from making decisions about automobile insurance because he or she is having a car repaired under a policy of insurance from Manitoba Public Insurance. Furthermore, conflict of interest legislation should not be engaged when a member makes a decision respecting the salary or benefits of members.

Recommendation 10

"Private interest" should not include an interest in a matter:

- **that is of general application;**
- **that affects an individual as one of a broad class of persons;**
- **that is trivial; or**

- **that concerns the remuneration or benefits of the member.**

2. Procedure Where a Conflict of Interest Arises

As previously noted, the current Act requires a member to disclose a conflict of interest that arises in the course of a meeting and to refrain from participating in any discussion or decision. This requirement should be continued.

Recommendation 11

A member who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the Legislative Assembly, Cabinet or a committee of either should, at the first opportunity:

- **disclose the general nature of the conflict of interest;**
- **withdraw from the meeting without voting or participating in consideration of the matter; and**
- **refrain at all times from attempting to influence the matter.**

Recommendation 12

Where a member has taken these actions in the course of a meeting of the Legislative Assembly or a committee of it, the Clerk of the Legislative Assembly or the secretary of the meeting should file with the Commissioner, as soon as possible, information concerning the member's actions. The Commissioner should make this information available to the public.

Recommendation 13

Where a Minister has taken these actions in the course of a meeting of Cabinet or a committee of it, the secretary of the meeting should record the Minister's declaration, the general nature of the conflict of interest declared and the withdrawal of the Minister from the meeting and should file the information with the Commissioner as soon as possible. The Commissioner should keep this information confidential except if it is material to an investigation to determine if the Minister has breached the Act.

Recommendation 14

A Minister who has reasonable grounds to believe that he or she has a conflict of interest in a matter requiring the Minister's decision should ask the Premier to appoint another Minister to perform the Minister's duties in the matter, for the purpose of making the decision.

3. Additional Obligations for Ministers

The possibility of a conflict of interest arising is significantly greater for a Cabinet Minister than it is for a member not in Cabinet. As a result, a number of Canadian jurisdictions place additional restrictions on the activities of Ministers. Generally, they prohibit Ministers from engaging in outside employment or the practice of a profession, carrying on a business or being an officer or director of a corporation or other entity. In some cases, social clubs, service clubs, religious organizations or political parties are excluded from these restrictions. Some jurisdictions go even further and prohibit Ministers from holding or trading in securities, stocks, futures or commodities.

Some of these prohibitions have qualifications or exceptions. For example, some of the prohibitions apply only if the Commissioner is of the view that the activity will create or appear to create a conflict between a private interest of the Minister and the performance of the Minister's public duty. Some of the prohibitions do not apply if the Minister places the asset into a blind trust (usually in the case of securities) or enters into a blind management arrangement in the case of an actively managed business. These blind trusts or management arrangements must be approved by the Commissioner and their cost, including the trustee's fees, are paid by the government. Once approved, the Minister is not required to disclose the asset or business in his or her public disclosure statement.

However, the problem with blind trusts is that they are often not blind at all. They may take the Minister out of the day-to-day management of a business, but the Minister still knows that he or she is the beneficial owner of the business and therefore, the possibility of a conflict of interest can still arise. Worse, once the business is placed in a blind trust, it is excluded from the Minister's disclosure statement. This results in the public not being informed of the Minister's continued interest in the business and means they are not in a position to judge whether the Minister is acting in the public interest or in a private interest.

A blind trust can work for a portfolio of publicly traded securities. Once given to a trustee, the Minister would not know which securities have been sold, replaced or purchased. However, the likelihood of a conflict of interest arising from the ownership of publicly traded securities seems low and does not justify the complexity and cost of setting up a blind trust. I believe the public interest is adequately served by simply requiring the public disclosure of those securities.

In my view, Ministers should be subject to additional restrictions on their activities and investments in order to reduce the likelihood of a conflict of interest. However, the Commissioner should have the discretion to determine that a particular restriction can be waived or can be managed adequately with conditions.

Recommendation 15

Subject to the exceptions listed in Recommendation 16, Ministers should be prohibited from:

- **engaging in any trade, occupation or employment, or in the practice of any profession;**
- **carrying on business or engaging in the management of a business, directly or indirectly;**
- **owning securities, stocks, futures or commodities that are not publicly traded; and**
- **holding an office or directorship, unless doing so is one of the member's duties as a member of Cabinet.**

Recommendation 16

A Minister should be allowed to engage in a prohibited activity in the following circumstances:

- **the Minister has disclosed all material facts to the Commissioner;**
- **the Commissioner is satisfied that the activity will not create a conflict between the Minister's private interest and public duty, or will not do so if carried on in a specified manner;**
- **the Commissioner has given the Minister written approval and, if appropriate, has specified the manner in which the activity may be carried out; and**
- **the Minister carries out the activity in the specified manner.**

The Commissioner's approval and the conditions that have been imposed should be made public by the Commissioner.

Recommendation 17

A person who becomes a Minister should be required to meet with the Commissioner to discuss any measures that may be required in order to meet the additional restrictions on the activities of Ministers and should comply with these requirements within 60 days of appointment.

Recommendation 18

Ministers should not be prohibited from holding or trading in publicly-traded securities, stocks, futures or commodities.

4. Contracts with the Government of Manitoba

Members of the Legislative Assembly should not benefit from contracts with the Government of Manitoba. Such contracts would inevitably and understandably create suspicion of favouritism and inappropriate use of influence and inside information. The current Act requires such contracts to be disclosed, whether they are with the member or with the member's spouse or minor child. However, the prohibitions against members entering into such contracts are in another statute: *The Legislative Assembly Act*.[4] The prohibitions are stated in complex terms that are often difficult to understand. For this reason, they should be simplified and moved to the new Act.

Recommendation 19

The new Act should prohibit any member from knowingly being a party to a contract with the Government of Manitoba under which the member receives a benefit. The prohibition should extend to any partnership or private corporation in which the member has an interest.

As is now the case, it is proposed that the prohibition should continue to apply to the member but not to members of his or her family. Nonetheless, any contracts involving the member's family should continue to be disclosed by the member, so they are visible to the public. Certain exceptions to the blanket prohibition for members should also be allowed. Most importantly, the prohibition should not prevent the member from accessing government programs available to all Manitobans, or to broad segments of the population.

Recommendation 20

The prohibition on contracts with the Government of Manitoba should not apply to a contract that existed before the member's election but should apply to its renewal or extension.

Recommendation 21

The prohibition on contracts with the Government of Manitoba should not apply if the Commissioner approves the contract on the basis that it is unlikely to affect the member's performance of his or her duties of office. The Commissioner should give approval with such conditions as he or she deems appropriate. Any such approval should be made public.

[4] *The Legislative Assembly Act* (Manitoba), s. 12 to 17.

Recommendation 22

The prohibition on contracts with the Government of Manitoba should not apply to the receipt of retirement benefits or to a contract or benefit that is available to the general public or to a broad class of the general public where no special benefit or preference is enjoyed by the member.

5. Gifts and other benefits

A recent editorial in the Winnipeg Free Press contained the following statement:

> It goes without saying that politicians aren't supposed to take freebies . . .[5]

This should indeed go without saying, but it is not what is currently permitted. Under the current Act, there are no restrictions on members accepting gifts. The only requirement of the current Act is that gifts with a value exceeding $250 must be disclosed within 30 days of receipt, in a statement filed in the office of the Clerk of the Legislative Assembly. This requirement applies to gifts to the member, the member's spouse or common-law partner and the member's minor children.

Oddly, the current Act requires all gifts over $250 to be disclosed, whether or not they are in some way connected to the member's role. For example, a member who gets married or a member's child celebrating a special event must disclose gifts over the $250 threshold received from friends. This is an undue intrusion into the private lives of members that is inconsistent with the objectives of the legislation.

Manitoba's lack of restrictions regarding the acceptance of gifts is inconsistent with the situation across the rest of Canada and with the objective of assuring the public that members are not using their office to enrich themselves. Legislation across Canada generally prohibits the acceptance of gifts, other than those associated with protocol or social custom – for example, a small token given to a member as an expression of appreciation for speaking at an event. In other jurisdictions, if the value of a permitted gift exceeds a monetary threshold – ranging from $150 to $500 – it must be disclosed. This monetary threshold needs to strike a balance between the objectives of transparency and efficiency. It should be low enough to capture significant gifts but not so low as to burden members with the need to report trivial gifts. Coupled with the almost complete ban on gifts from lobbyists that is proposed in Recommendation 28, I believe the current threshold of $250 strikes the right balance.

[5] "Trudeau oblivious to ethical concerns", *Winnipeg Free Press*, Saturday, December 23, 2017, p. A14

Recommendation 23

A member and his or her family should not be permitted to accept a gift that is connected directly or indirectly with the performance of his or her duties of office, unless it is received as an incident of the protocol, customs or social obligations that normally accompany the responsibilities of office.

Recommendation 24

Where a gift is permitted and its value exceeds $250 (or multiple gifts from a single source have a cumulative value exceeding $250 over a 12-month period), the nature of the gift, its source and the circumstances under which it was given should be disclosed to the Commissioner within 30 days. The Commissioner should then make that disclosure available to the public.

Recommendation 25

Where a member or his or her family is offered or given a gift that is not permitted, the member should refuse it or, at the earliest opportunity, return it to the donor or turn it over to the Government of Manitoba, without making any personal use of the gift. Where a gift is returned or forfeited to the Government of Manitoba, the member should inform the Commissioner in writing and the Commissioner should make that information available to the public.

Recommendation 26

"Gift" should be defined broadly to include an amount of money if there is no obligation to repay it and a service or property, or the use of property or money, that is provided without charge or at less than its commercial value. "Gift" should not include compensation authorized by law or a benefit received from a riding association or a political party.

Although most do not, a few Canadian jurisdictions provide for an exception to the general prohibition on the acceptance of gifts. They give the Commissioner the discretion to allow a member to accept a gift if, for example, "the Commissioner is of the opinion it is unlikely that receipt of the gift or benefit gives rise to a reasonable presumption that the gift or benefit was given in order to influence the member in the performance of his or her duties"[6] or the Commissioner is satisfied that "there is no reasonable possibility that retention of the fee, gift or other benefit will create a conflict between a private interest and the public duty of the

[6] *Members' Integrity Act* (Ontario), s. 6(2)(d).

Member".[7] However, I am not convinced of the need for such a provision, especially since gifts not related to the member's duties and office would already be permitted. Such a subjective discretion would increase uncertainty in the new Act, both for members and for the public. It would also likely give rise to many requests to the Commissioner for advice on whether a gift can be accepted. This would likely result in the need to increase the resources of the Commissioner's office to handle this increased workload and would not, in my view, be offset by a sufficient public benefit.

Recommendation 27

The new Act should not grant the Commissioner discretion to permit a member to accept a gift that would otherwise not be permitted.

The Lobbyists Registration Act was enacted in 2008 and came into force in 2012. It can be seen as a companion piece to conflict of interest legislation, with a similar goal of building public confidence in democratic institutions. In addition to my duties as Conflict of Interest Commissioner, I am also the Registrar under that Act. The Act recognizes that lobbying of public officials is a legitimate activity but one that should be done in a transparent way.[8]

The very essence of lobbying public officials is to persuade and to influence public policy. It is therefore reasonable to assume that any gifts from lobbyists are in support of those objectives. Even if token in value, gifts from lobbyists inevitably create a negative public perception and should not be permitted.

Recommendation 28

***The Lobbyists Registration Act* should be amended to prohibit lobbyists from giving gifts to public officials. An exception to permit light refreshments in the course of a meeting could be considered. The Lobbyist Registrar should be empowered to impose sanctions for a breach, including an administrative monetary penalty and the suspension of a lobbyist's registration.**

At the federal level, sponsored travel is subject to a special exception.[9] Members of Parliament, Senators and their guests are allowed to accept travel that is paid by someone else. If the cost exceeds $500, the MP or Senator must file a statement disclosing who paid for the travel, who accompanied them, the destination or destinations, the purpose and length of the trip, the nature of the benefits received and the value. Newfoundland and Labrador allows for the "reimbursement of reasonable travel and associated expenses incurred in performing services

[7] *Conflicts of Interest Act* (Alberta), s. 7(4).
[8] *The Lobbyists Registration Act* (Manitoba), s. 2.
[9] *Conflict of Interest Code for Members of the House of Commons*, s. 15; *Conflict of Interest Code for Senators*, s. 18.

that are in the public interest, provided that the amount and source of the reimbursement, as well as a description of the services performed, are immediately set out by the member in a disclosure statement filed with the Commissioner."[10] Nunavut allows for "transportation, accommodation, hospitality or the reimbursement of reasonable travel and associated expenses if [its] receipt . . . is unlikely to affect the member's performance of his or her duties of office".[11]

Every other Canadian jurisdiction handles sponsored travel within their usual gift rules. In practice, this would prevent the acceptance of most sponsored travel. The argument for allowing the acceptance of sponsored travel is that it allows members to gain knowledge, at no cost to the taxpayer, that they can apply in their work. This can be especially useful for government backbenchers and Opposition members who do not have access to the resources of a department or to large research budgets. The argument against allowing this practice is that these trips can often be perceived as junkets, with little or no benefit to the public. In my view, if these trips are truly valuable, then their cost should be borne by the government or reflected in members' allowances.

Recommendation 29

There should be no special rules for sponsored travel. Such travel should be governed by the usual rules applying to gifts.

Two jurisdictions have special provisions for non-commercial travel. Federal Cabinet Ministers may not accept travel "on non-commercial chartered or private aircraft for any purpose unless required in his or her capacity as a public officer holder or in exceptional circumstances or with the prior approval of the Commissioner.[12] Alberta has a similar provision that applies to all members and indicates that the Commissioner may give approval only if the Commissioner is of the opinion that the acceptance will not create a conflict between a private interest and the public duty of the member.[13] These rules recognize that, while generally inappropriate to take a flight on a private airplane, there may be times where a member must legitimately travel to a remote location that is not served by commercial flights and where a government airplane is not available. This seems to be a rare, but appropriate, circumstance for the exercise of the Commissioner's discretion.

[10] *House of Assembly Act* (Newfoundland and Labrador), s. 26(5).
[11] *Integrity Act* (Nunavut), s. 13(2)(c).
[12] *Conflict of Interest Act* (Canada), s. 12.
[13] *Conflicts of Interest Act* (Alberta), s. 7.1.

Recommendation 30

A member should not be permitted to accept an offer of travel on a non-commercial chartered or private aircraft (other than one owned or leased by the Crown) that is connected, directly or indirectly, with the performance of the member's office, unless:

- **the travel is required for the performance of the member's office; and**
- **the member receives approval from the Commissioner before accepting the travel.**

Recommendation 31

In determining whether to approve travel as outlined in Recommendation 30, the Commissioner should consider whether alternative methods of travel are available, whether such travel will create a conflict or the perception of a conflict between a private interest and the public duty of the member and, if so, whether the public benefit of the travel outweighs such a conflict or perception of conflict. The Commissioner should make public any such approval.

CHAPTER 3

DISCLOSURE

1. What Should Be Disclosed?

To allow voters to judge whether a member is acting in the public interest, rather than to advance a private interest, conflict of interest legislation requires members to publicly disclose certain aspects of their personal finances. The disclosure should be closely related to the objectives of conflict of interest legislation and should be sufficiently comprehensive to allow voters to make an informed judgment. It cannot be said that the current Act achieves this objective. Its list of "assets and interests" that must be disclosed is outdated, incomplete and inconsistent. For example, members must disclose mutual funds that they own, but not if they're held in an RRSP. The name of any corporation in which the member has more than 5% ownership must be disclosed, but no information need be given about what that corporation does and what assets it owns. The current Act also does not require information about significant debts. In my view, the new Act must require significantly more detail.

Recommendation 32

Subject to the exceptions described below, each member should file a disclosure statement that identifies the following:

- **the assets and liabilities of the member and the member's family;**
- **the assets and liabilities, and a description of the activities or nature of business, of any private corporation in which the member or the member's family has an interest;**
- **the source and nature of any income the member or anyone in the member's family received during the preceding 12 months, or is entitled to receive during the next 12 months;**
- **every trust known to the member from which he or she could, currently or in the future, either directly or indirectly, derive a benefit or income;**
- **the subject matter and nature of any contracts the member, the member's family, or any private corporation in which they have an interest, has with the provincial government;**
- **the names of all corporations or other organizations in which the member or anyone in the member's family is an officer or director (or similar position);**
- **all partnerships in which the member or anyone in the member's family is a partner;**

- **any legal proceedings the member knows could be brought against them;**
- **whether the member is in arrears of any support payments; and**
- **any other information that the Commissioner requires.**

There is no need to disclose the value of assets and liabilities – it is their existence that provides the information needed by voters. Anything more would be an unnecessary invasion of privacy. Furthermore, some assets or liabilities do not generally create a reasonable possibility of a conflict of interest and they should be excluded from disclosure. Examples include assets of relatively little value and fixed income investments with large financial institutions.

Recommendation 33

Members should not be required to disclose the value of their assets or liabilities.

Recommendation 34

Members should not be required to disclose assets and liabilities with little likelihood of giving rise to a conflict of interest. These could include:

- **an asset or liability worth less than a specified amount (such as $5,000);**
- **a source of income that yielded less than a specified amount (such as $5,000) during the preceding 12 months;**
- **cash on hand or on deposit with a Canadian financial institution;**
- **the principal residence of the member and real property that the member or the member's family uses for recreational purposes;**
- **personal property that the member or the member's family uses primarily for transportation, household, educational, recreational, social or aesthetic purposes (in other words, family vehicles, furniture and the like);**
- **fixed value securities issued or guaranteed by a government in Canada or by an agency of any such government;**
- **an interest in a pension plan, employee benefit plan, annuity or life insurance policy;**
- **an investment in an open-ended mutual fund, exchange-traded fund or similar investment that has broadly-based investments not limited to one industry or one sector of the economy;**
- **a guaranteed investment certificate or similar financial instrument;**
- **support payments not in arrears;**
- **a liability to a Canadian government or a Canadian financial institution related to an excluded asset;**
- **a debt that is a current and ordinary household and personal living expense;**

- **a debt owed by the member to someone in his or her family or owed to the member by someone in his or her family; and**
- **any other asset, liability or source of income that the Commissioner approves for exclusion.**

2. Process for Disclosure

Manitoba's current Act requires that members file a disclosure statement within 15 days of the beginning of a session of the Legislative Assembly. The statements are filed in the office of the Clerk of the Legislative Assembly, where they are available for public inspection. A supplementary statement must be filed within 30 days of the acquisition or disposition of an asset.

Unlike Manitoba, most Canadian jurisdictions use a two-step process for disclosure.[14] First, each member prepares a private disclosure statement and submits it to the Commissioner. This document is confidential and is not shared with the public. The Commissioner reviews the private disclosure statement with the member and then prepares a public disclosure statement that is made available to the public. This statement is essentially an edited version of the private disclosure statement that excludes the sorts of information I have recommended for exclusion above, such as the dollar value of assets and liabilities and the existence of certain personal assets such as a principal residence and cash deposits at a financial institution.

This two-step disclosure process seems unnecessarily cumbersome. Unless the Commissioner has the power to begin an investigation on his or her own initiative (which I recommend against elsewhere in this report), the additional information given to the Commissioner in the private disclosure statement is of little value (unless the member is also a Minister). Furthermore, I believe the responsibility for the accurate disclosure of assets and liabilities should lie with members. Having the Commissioner prepare the public disclosure statement tends to shift that responsibility (and accountability) away from members. For these reasons, I prefer a simplified, one-step process for the disclosure of assets and liabilities.

Recommendation 35

Each member should file a disclosure statement with the Commissioner within 60 days of being elected. Each member should then file a disclosure statement once in every subsequent calendar year by a date specified by the Commissioner. If there have been

[14] Nova Scotia, Nunavut and Yukon are also exceptions.

no changes since the previous disclosure statement, the member should have the option to indicate this to the Commissioner.

Recommendation 36

After reviewing a member's disclosure statement, the Commissioner should be empowered to require the member to meet with the Commissioner and to request the attendance of the member's family, to ensure that adequate disclosure has been made and to discuss the member's obligations under the Act.

As noted above, the current Act makes disclosure statements available for inspection by members of the public at the office of the Clerk of the Legislative Assembly. The information is currently not available online. This means that any interested member of the public must come to the Legislative Building in Winnipeg and ask to see the file of a specific member or members. This practice does not serve the interests of Manitobans outside of Winnipeg – modern technology allows us to do better.

Recommendation 37

At the completion of the disclosure process, the Commissioner should make the disclosure statements available for online inspection by the public.

Where a change occurs in the course of the year, the current Act requires that a member file an amendment to his or her disclosure statement within 30 days of the change. This requirement should continue.

Recommendation 38

The member should file a supplementary disclosure statement with the Commissioner within 30 days of any change. The Commissioner should then make the supplementary statement available to the public.

3. Additional Disclosure for Ministers

As discussed earlier in this report, the potential for a conflict of interest is significantly greater for Cabinet Ministers. This is why I previously proposed additional restrictions on Ministers' activities. In keeping with this theme, it would be useful if Ministers disclosed to the Commissioner, on a confidential basis, the information about their assets, liabilities and income that would otherwise be excluded from disclosure in the new Act. This would allow the Commissioner to advise Ministers on how to arrange their affairs so as to avoid, or minimize, conflicts of interest.

Recommendation 39

Within 60 days of their appointment, Ministers should disclose to the Commissioner the information that would otherwise be excluded from disclosure and should be required to meet with the Commissioner to discuss how to arrange their affairs so as to avoid, or minimize, conflicts of interest. The Commissioner should keep this additional disclosure confidential.

4. Penalties

The current Act provides for a significant penalty if a member does not file a disclosure statement within the specified time (15 days from the start of a session) and then a further 30 days after receiving a warning notification from the Clerk of the Legislative Assembly. At that point, the member is suspended until he or she files the statement. This suspension means the member cannot participate in the work of the House and does not get paid. If, at the end of the session, the statement still has not been filed, the member is disqualified from office and the seat is vacated. However, no specific penalty is provided for the failure to update the disclosure statement within 30 days of a change. This may be appropriate for an inadvertent filing that is late but is certainly not appropriate for a more wilful failure to report the change.

I expect that members will comply with the disclosure process that is proposed. Nonetheless, there should continue to be significant penalties for the rare instances of non-compliance.

Recommendation 40

Where a member fails to file a disclosure statement by the required date or fails to meet with the Commissioner as required, the Commissioner should advise the member of the steps he or she will take if the statement is not filed within a further 30 days. At the end of the 30 days, the Commissioner should advise the Speaker and the Clerk of the Legislative Assembly of the member's failure, whereupon the member should be suspended from office without pay. When the member thereafter complies with the required action, the Commissioner should advise the Speaker and the Clerk of the Legislative Assembly, whereupon the member's suspension should end. If the member has not complied with the required action by the end of the session during which the suspension took place, the member's seat should be declared vacant.

Recommendation 41

Where a member has failed to file a supplementary statement within the required 30 days of a change, the Commissioner should be empowered to impose an

administrative monetary penalty not exceeding $5,000 if, in the opinion of the Commissioner, it is in the public interest to do so. In determining whether to impose the penalty and the amount, the Commissioner should consider:

- **the objective of encouraging compliance;**
- **the member's history, if any, of prior breaches of his or her obligations under the Act; and**
- **any other factors that, in the opinion of the Commissioner, are relevant.**

Where such a penalty is imposed, the Commissioner should advise the Speaker and the Clerk of the Legislative Assembly who should cause the amount of the penalty to be deducted from the member's pay.

Recommendation 42

Knowingly giving false or misleading information in a disclosure statement or in a supplementary statement should be an offence punishable by a fine up to $50,000.

CHAPTER 4

OBLIGATIONS OF FORMER MEMBERS AND MINISTERS

Just as members should not benefit from their positions while in office, they similarly should not benefit from their positions after they leave office. The current Act contains a number of restrictions on the activities of former members. However, they are complex, difficult to understand and certainly can be improved upon. Furthermore, the current Act does not empower the Commissioner to provide confidential advice to members once they have left office (even so, it is sometimes provided on an informal basis). The current Act also does not empower the Commissioner to provide a written opinion to a former member respecting his or her obligations.

Earlier in this report, I proposed that former members should be prohibited from using confidential information not available to the public that they gained while in office. This would be a lifetime ban. This reflects a provision already in the current Act.

There is a wide range of provisions across Canada respecting the activities of former members. Some jurisdictions apply these restrictions to Ministers only and some apply them to both members and Ministers. The transition or "cooling off" periods range from six months to one year to two years to five years. Under the current Act, the transition period in Manitoba is one year and applies to both members and Ministers. Some jurisdictions give the Commissioner a discretion to shorten or waive the transition period but Manitoba does not. However, I think this would be useful and would allow the Commissioner to weigh the need for former members to continue to earn a living (hopefully without having to leave the province) against the public interest and the extent to which they had access to confidential information while in office. For example, there is a distinct difference between a member who was in Cabinet and a member who never sat on the government side of the House.

Recommendation 43

During the specified transition period, a former member or Minister should not:

- **accept a contract or benefit that is awarded, approved or granted by a government decision-maker;**
- **make representations to a government decision-maker on his or her behalf, or on behalf of another person, with respect to a contract or benefit;**
- **accept a contract or benefit from any person to make representation to a government decision-maker with respect to a contract or benefit that is to be awarded, approved or granted by a government decision-maker;**

- **accept employment (including appointment to a board of directors or similar body) with any person or organization with whom he or she had direct and significant official dealings in their government position; and**
- **lobby or assist in lobbying a public official, as those terms are defined in *The Lobbyists Registration Act*.**

These restrictions should not apply to contracts and benefits with the government available to the general public or to broad classes of the public.

Recommendation 44

The transition period for former members should be one year from the date they cease to be members. The transition period for Ministers should be two years from the date they cease to be Ministers.

Recommendation 45

The Commissioner should have the discretion to waive or shorten the transition period upon application by the former member or Minister if, in the opinion of the Commissioner:

- **the conditions on which and the manner in which the employment, appointment, contract or benefit is awarded, approved or given are the same for all persons similarly entitled;**
- **the award, approval, grant or benefit results from an impartially administered process open to a significant class of persons; or**
- **the activity, contract or benefit will not create a conflict between a private interest of the former member or Minister and the public interest.**

In these instances, the Commissioner should impose any conditions he or she believes are necessary.

Recommendation 46

Former members should be able to obtain advice from the Commissioner regarding their obligations, in the same way that members can obtain this advice while in office.

Recommendation 47

The Commissioner should be able to investigate breaches of these obligations by a former Minister, if he or she is still a member. In these cases, the provisions respecting the Commissioner's powers of investigation and enforcement should apply with such changes as are necessary. A breach of these obligations by a former

member or a former Minister who is no longer a member should be an offence punishable by a fine not exceeding $50,000. In these cases, an order of restitution should also be available.

CHAPTER 5

COMPLIANCE AND ENFORCEMENT

1. Advice

Conflict of interest legislation should make it easy for members to obtain authoritative advice about their obligations from an independent, non-partisan advisor. Appropriate advice increases the likelihood that members will arrange their affairs to ensure they avoid or minimize conflicts between their public duty and their private interests.

To ensure appropriate advice is available to members, the position of Conflict of Interest Commissioner was added to the current Act in 2003. However, the current Act effectively discourages members from seeking the Commissioner's advice. Members can seek oral advice from the Commissioner, but there are no legislated guarantees of confidentiality. They can also seek written advice from the Commissioner, but the resulting opinion must be filed with the Clerk of the Legislative Assembly and becomes available to the public. It is not surprising then that few members ask for a written opinion when considering their obligations and how to order their affairs. In the 15 years since the position of Commissioner was established, only a handful of written opinions have been sought. My recommendations are aimed at removing the disincentives to seeking advice.

Recommendation 48

Members should be able to seek confidential oral advice from the Commissioner at any time.

Recommendation 49

A member should be able to submit a written request for the Commissioner to give an opinion and recommendations on any matter respecting the member's obligations under the new Act. The Commissioner should then be empowered to make such inquiries as he or she considers appropriate and provide the member with the requested opinion and recommendations in writing.

Recommendation 50

The Commissioner's written opinion and recommendations should be confidential but may be released by the member or by the Commissioner with the member's consent.

Recommendation 51

If a member releases only part of the Commissioner's opinion and recommendations, the Commissioner should be empowered to release part or all of the opinion and recommendations without obtaining the member's consent.

Members should be able to rely on the opinion and recommendations of the Commissioner.

Recommendation 52

Where a member has received a written opinion and recommendations with respect to the member's obligations under the Act, no sanction should be imposed against the member under the Act in respect of those obligations if the member has:

- **communicated all material facts to the Commissioner; and**
- **complied with the opinion and recommendations of the Commissioner.**

2. Complaints and Investigations

Every jurisdiction in Canada – except Manitoba – empowers its Commissioner to receive and investigate complaints that a member has not complied with the requirements of the Act. In Manitoba, the Commissioner has no such powers. Instead, complaints are handled by the courts. Under the current Act, any voter may, by filing an affidavit detailing an alleged violation and paying $300 into court as security for costs, apply to a judge of the Court of Queen's Bench, without notice to the affected member (*ex parte*). The judge then decides whether to allow the matter to go forward for a full hearing by another judge of the Court of Queen's Bench.[15] If so, it would be the responsibility of the voter to "prosecute" the case against the member. The wise voter bringing such a case would likely hire a lawyer and would have to bear that expense.

This is unsatisfactory in at least three ways. First, it leaves a matter of serious public concern to the resolve and resources of a private citizen. Second, it undermines the ability of members to rely on advice they receive from the Commissioner. Although a judge must "give due regard" to a written opinion given by the Commissioner,[16] the judge is free to come to a different conclusion. Finally, it is arguably not in keeping with the separate roles of the courts and the

[15] *The Legislative Assembly and Executive Council Conflict of Interest Act* (Manitoba), s. 20.
[16] *The Legislative Assembly and Executive Council Conflict of Interest Act* (Manitoba), s. 21.1.

Legislative Assembly as it infringes on the privileges of the Legislative Assembly to regulate its own affairs.[17]

It is perhaps not surprising that, to the best of my knowledge, not a single complaint has been filed with the Court of Queen's Bench regarding a breach of the current Act. In my view, Manitobans would be better served if the new Act followed the consensus that exists across Canada, to empower the Commissioner to investigate complaints.

Half of Canada's jurisdictions allow members of the public to make a complaint to the Commissioner.[18] The other half only allow other members of the Legislative Assembly to make a complaint.[19] As previously noted, Manitoba currently allows any voter to make a complaint, although they must go to court. This presents both a philosophical and a pragmatic choice. Restricting the right to make a complaint to members means that a voter would have to persuade a member to make a complaint. This is in keeping with the philosophy of representative democracy under which the public delegates to its elected representatives decision-making powers and they are held accountable at election time for their actions. It is also the less expensive choice, no doubt resulting in fewer complaints to the Commissioner. Allowing the public to make complaints directly to the Commissioner is likely to result in more complaints, some of which may be frivolous. However, this can be addressed by giving the Commissioner a screening power. Although the Manitoba public appears not to have taken advantage of its existing right to complain, I would be loath to take it away. On balance, I think the new Act should allow any member of the public to make a complaint to the Commissioner.

There is a similar split among Canadian jurisdictions with respect to whether the Commissioner should be able to commence an investigation on his or her own initiative, without having received a complaint and based only on information that comes to the Commissioner's attention.[20] My concern is that giving this power to the Commissioner might make members less willing to consult the Commissioner and seek advice, out of fear that doing so might result in the Commissioner opening an investigation. Furthermore, my recommendation that any person be allowed to make a complaint reduces the need for the Commissioner to have this power. For these reasons, I recommend against this power.

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[17] See, for example, *McIver* v. *Alberta (Ethics Commissioner)*, 2018 ABQB 240, para. 51: ". . . the Legislative Assembly has a parliamentary privilege to regulate the conduct of its members and discipline them accordingly. . . the Ethics Commissioner exercises this privilege as an extension of the Legislative Assembly . . ."

[18] Alberta; British Columbia; New Brunswick; Nova Scotia; Nunavut; Ontario; Saskatchewan

[19] Canada (House of Commons); Canada (Senate); Newfoundland and Labrador; Northwest Territories; Prince Edward Island; Quebec; Yukon

[20] Yes: Alberta; Canada (House of Commons); Canada (Senate); Newfoundland and Labrador; Nova Scotia; Nunavut; Quebec; Saskatchewan.
No: British Columbia; New Brunswick; Northwest Territories; Ontario; Prince Edward Island; Yukon.

Recommendation 53

Any person, including a member, who believes on reasonable grounds that a member has contravened the new Act should be able to request that the Commissioner investigate the matter.

Recommendation 54

The request for an investigation should be in writing in a form specified by the Commissioner, identify the complainant, set out the alleged contravention and set out the grounds for believing the contravention occurred.

Recommendation 55

The Commissioner should not be able to commence an investigation on his or her own initiative.

Recommendation 56

In addition to submitting it to the Commissioner, an investigation request from a member should be tabled in the Legislative Assembly.

Recommendation 57

Unless the Commissioner decides not to investigate a complaint from a person other than a member, the Commissioner should advise the Speaker of the complaint and the Speaker should table the information in the Legislative Assembly.

Recommendation 59

The Commissioner should have the power to refuse to commence, or continue to investigate, a complaint from a non-member if the Commissioner is of the opinion that the complaint is frivolous, vexatious or not made in good faith, or that there are insufficient grounds to warrant commencing or continuing an investigation. If the Commissioner so refuses, he or she should provide written reasons for that decision.

Recommendation 58

The Legislative Assembly or any committee of the Legislative Assembly should not inquire into any matter regarding a complaint that has been submitted to the Commissioner.

Recommendation 60

The Commissioner should have the powers under Part V of *The Manitoba Evidence Act*. This would include the power to compel testimony and the production of documents.

Recommendation 61

The Commissioner should have the discretion to conduct the investigation in private or in public.

The new Act should contemplate situations in which an investigation should be suspended. These would include situations where the possibility of criminal conduct exists, where a member resigns or where an election intervenes.

Recommendation 62

If the Commissioner, when conducting an investigation, determines that there are reasonable grounds to believe that a contravention of any other Act (including the *Criminal Code*) has occurred, the Commissioner should immediately refer the matter to the appropriate authorities and should have the discretion to suspend the investigation until any resulting police investigation and charges have been finally disposed of. The Commissioner should report any such suspension to the Speaker.

Recommendation 63

If the Commissioner, when conducting an investigation, discovers that the member is being investigated by police or that a charge has been laid, the Commissioner should have the discretion to suspend his or her investigation until the police investigation or charges have been finally disposed of. The Commissioner should report any such suspension to the Speaker.

Recommendation 64

The Commissioner should suspend an investigation if the member who is its subject resigns his or her seat or if a writ for a general election is issued. The Commissioner should resume the investigation if, within 30 days of the resignation or the issuance of the writ, the former member or the person who requested the investigation submits a written request to the Commissioner that the investigation be continued. In any event, investigations should be suspended during an election period.

Accountability requires consequences and the new Act will only be meaningful if the Commissioner can recommend penalties to address a breach. At the conclusion of an

investigation, the Commissioner should submit his or her final report to the Speaker and it should be tabled in the Legislative Assembly. If the Commissioner finds that the Act was indeed contravened, he or she should recommend the sanctions that should be imposed. However, in keeping with its parliamentary privileges, the Legislative Assembly should make the final decision about accepting or rejecting the Commissioner's report. This means the Legislative Assembly will ultimately be accountable to voters for these decisions.

Recommendation 65

If it appears to the Commissioner that the report into a matter may adversely affect the member about whom the complaint was made, the Commissioner should inform the member of the particulars and give the member the opportunity to make representations, either orally or in writing (at the discretion of the Commissioner), before the report is finalized.

Recommendation 66

Upon completion, the Commissioner should submit the report to the member whose conduct was investigated and to the Speaker. The Speaker should cause the report to be tabled in the Legislative Assembly as soon as possible. If the Legislative Assembly is not sitting, the Speaker should cause it to be tabled within the first 10 sitting days of the next sitting. The Commissioner should also give a copy to the Clerk of the Legislative Assembly, who should provide a copy to all members.

Recommendation 67

If, after an investigation, the Commissioner finds that a member has contravened the new Act, the Commissioner should, in the report, recommend one or more of the following:

- **that no sanction be imposed;**
- **that the member be reprimanded;**
- **that the member publicly acknowledge his or her conduct;**
- **that the member undertake such remedial action as may be directed, including paying compensation to any person or paying to the government the amount of any gain realized by the member or any other person;**
- **that the member be ordered to pay a fine not exceeding $50,000;**
- **that the member be removed from Cabinet for a specified period or until a specified condition is fulfilled;**

- **that the member's right to sit and vote in the Legislative Assembly be suspended, with or without pay, for a specified period or until a specified condition is fulfilled;**
- **that the member's seat be declared vacant; and**
- **any other sanction the Commissioner considers appropriate.**

Recommendation 68

The Commissioner should recommend that no sanction be imposed if the Commissioner finds that there has been a contravention of the Act but:

- **the member took all reasonable measures to prevent the contravention;**
- **the contravention was trivial, committed through inadvertence or an error of judgment made in good faith; or**
- **the member acted in accordance with the Commissioner's advice and had, before receiving that advice, disclosed all material facts that were known to the member.**

Recommendation 69

The Legislative Assembly should promptly consider the Commissioner's report and do one of the following before the end of the session:

- **accept all of the Commissioner's recommendations; or**
- **reject all of the Commissioner's recommendations.**

The decision of the Legislative Assembly should be final and conclusive.

Recommendation 70

If the Legislative Assembly accepts the Commissioner's recommendations and their enforcement requires it, they should be filed in the Court of Queen's Bench and should be enforceable as an order of the Court.

Recommendation 71

The Commissioner should conduct a further investigation of a matter that has been concluded only if new evidence is presented that, in the opinion of the Commissioner, justifies a new investigation.

CHAPTER 6

THE COMMISSIONER

All Canadian jurisdictions, including Manitoba, have a Commissioner who provides advice to members about their obligations under conflict of interest legislation. This is an essential function that helps guide members through the sometimes complex situations in which they find themselves. As previously noted, the Commissioner in all other Canadian jurisdictions also receives and investigates alleged breaches.

Various titles for the position are used across Canada. The most common title is Conflict of Interest Commissioner, but others include Ethics Commissioner, Integrity Commissioner and Commissioner for Legislative Standards. The title should be descriptive of the position's scope and responsibilities and so I recommend the title of Conflict of Interest Commissioner or the increasingly popular title of Integrity Commissioner.

Recommendation 72

An independent, non-partisan officer of the Legislative Assembly (the "Commissioner") should continue to be available to provide advice to members and assist them in complying with their obligations under the new Act. The Commissioner should also perform the additional duties set out in this report.

The Commissioner must offer advice to members of all parties and, to the extent that he or she has enforcement powers, must be able to make difficult and controversial decisions about people who hold political power. This makes it essential for the Commissioner's independence to be assured.

The current Act does not specify a term of appointment for the Commissioner. The term of office is specified in the Order in Council that appoints the Commissioner. This means that it is Cabinet that currently specifies the term of office. In practice, Commissioners in Manitoba have been appointed for three-year terms which have been renewed whenever the Commissioner has indicated a willingness to continue in office. However, an independent officer's term of office should not be subject to the discretion of Cabinet. It should be clearly stated in legislation to assure the position's independence. The Commissioner should also only be subject to removal by a vote of the Legislative Assembly.

Recommendation 73

The Commissioner should be appointed for renewable terms of five years.

Recommendation 74

The Commissioner should be subject to removal from office only by a two-thirds vote of the Legislative Assembly.

It is essential to the work of the Commissioner that conversations and other communications with members are confidential. The new Act should contain appropriate protections to ensure this occurs. The Commissioner should also have the protection from liability normally accorded to an independent officer of the Legislative Assembly. Decisions of the Commissioner, other than those subject to consideration by the Legislative Assembly, should be final.

Recommendation 75

The Commissioner should continue to be excluded from the application of *The Freedom of Information and Protection of Privacy Act* and *The Personal Health Information Act*.

Recommendation 76

The Commissioner should not be a competent or compellable witness regarding any knowledge he or she has gained as a result of exercising any powers or performing any duties or functions as Commissioner.

Recommendation 77

The Commissioner and any person employed by, or acting on behalf of, the Commissioner should not be liable for actions taken in good faith in the performance of his or her duties or powers.

Recommendation 78

Decisions made by the Commissioner should not be subject to appeal to, or review by, any court.

CHAPTER 7

ADDITIONAL ISSUES

1. Coming into force

It will take some time to draft and pass a bill based on the recommendations in this report. Once passed, it will also take some time to prepare new forms for disclosure and complaints, develop new procedures, expand the website and so on. The new Act will also impose significant new obligations on members and, in my view, it would be unfair to impose them on current members. The new obligations should be imposed on members elected in the next provincial election, who would run with the knowledge of what will be expected of them.

Recommendation 79

The new Act should come into force on the later of:

- **12 months following its enactment; and**
- **immediately following the next provincial election.**

2. Forms

As noted above, new forms will be required under the new Act, including new disclosure statements and forms for making complaints. The Commissioner should create these new forms and should be able to require their use. Once systems are in place, the Commissioner should also be able to require that forms be filed electronically.

Recommendation 80

The Commissioner should be empowered to create any forms required by the new Act, require their use and specify the manner in which they are filed.

3. Extension of time

The new Act will have a number of time periods during which certain actions must be taken. However, circumstances may arise in which it would be reasonable to extend a time period. The new Act should give the Commissioner the discretion to grant these extensions.

Recommendation 81

The Commissioner should be empowered to extend any time limit specified in the new Act, on such conditions as the Commissioner considers appropriate.

4. Mandatory Review

Regular reviews of the new Act should take place to ensure that it is working well and is meeting evolving public expectations. This should be one of the responsibilities of the Commissioner.

Recommendation 82

The Commissioner should initiate a review of the new Act within five years after it comes into force, and subsequently within five years after each time the committee described in Recommendations 83 and 84 submits a report.

Recommendation 83

The Commissioner should prepare a report on his or her review of the Act and submit it to a committee of the Legislative Assembly that has been designated by the Assembly.

Recommendation 84

The committee that receives the Commissioner's report should review it and submit a report on its review (including any recommendations for amendments to the Act) to the Legislative Assembly within one year after the committee has received the Commissioner's report.

5. Future scope of the Act

The focus of this report has been on conflict of interest legislation for members of the Legislative Assembly. However, they are not the only individuals within the political process who may be subject to conflicts of interest. For example, some other Canadian jurisdictions also apply their legislation to political staff members and appointed members of agencies, boards and commissions.

Furthermore, acting to advance a private interest, rather than a public interest, is not the only way in which members can undermine public confidence in our democratic institutions. Many of the statutes across Canada have preambles or statements of principles that address a

broader obligation for members to act ethically. For example, the preamble to Ontario's statute contains the following statement of principle:

> Members are expected to perform their duties of office and arrange their private affairs in a manner that promotes public confidence in the integrity of each member, maintains the Assembly's dignity and justifies the respect in which society holds the Assembly and its members.[21]

A few Canadian jurisdictions go further and make ethical conduct an enforceable obligation. For example, Newfoundland and Labrador has a Code of Conduct that (together with legislation) covers the traditional prohibitions on conflict of interest but also contains the following statements that are enforceable by its Commissioner:

> 1. Members shall . . . ensure that their conduct does not bring the integrity of their office or the House of Assembly into disrepute. . . .
>
> 3. Members reject political corruption and refuse to participate in unethical political practices which tend to undermine the democratic traditions of our province and its institutions. . .
>
> 5. Members will not engage in personal conduct that exploits for private reasons their positions or authorities or that would tend to bring discredit to their offices. . . .
>
> 10. Relationships between Members and government employees should be professional and based upon mutual respect and should have regard to the duty of those employees to remain politically impartial when carrying out their duties.[22]

Both of these measures would be significant expansions of the scope of the Act (and would require more resources). Whether they are worthwhile (and workable) expansions should perhaps be the subject of public consultations when the first mandatory review of the Act takes place.

6. Next steps

Manitoba's current conflict of interest legislation is outdated and probably the weakest in Canada. The recommendations in this report are intended to be a framework to modernize Manitoba's conflict of interest legislation so it can effectively provide assurance to Manitobans that the loyalties of their elected representatives are to the public interest and not to a private interest. There will be more details to be worked out in the course of drafting a bill to give

[21] *Members' Integrity Act* (Ontario), preamble, clause 3.
[22] *Code of Conduct for Members of the House of Assembly* (Newfoundland and Labrador). The Code was passed by a resolution of the House on May 26, 2008.

effect to these recommendations. If the Legislative Assembly sees fit, I would be pleased to work with the Office of the Legislative Counsel in the drafting of a new Act.

CHAPTER 8

SUMMARY OF RECOMMENDATIONS

The following is a summary of the recommendations contained in this report:

1. *The Legislative Assembly and Executive Council Conflict of Interest Act* should be repealed and replaced with new legislation ("the new Act") that provides a comprehensive code respecting conflicts of interest of members (and former members) of the Manitoba Legislative Assembly.
2. Provisions not dealing with conflicts of interest of members of the Legislative Assembly (such as conflicts of interest relating to senior civil servants) should be moved to other legislation.
3. "Minister" should include all members of Treasury Board.
4. "Family" should mean the member's spouse or common-law partner, the member's minor children and any other person who is related to the member or his or her spouse or common-law partner, shares a residence with the member and is primarily dependent on the member, spouse or common-law partner for financial support. "Spouse" and "common-law partner" should not include a person from whom the member is separated.
5. The new Act should have a clear statement of what constitutes a conflict of interest, and it should not be restricted to pecuniary interests. A conflict of interest would arise when a member exercises an official power, duty or function that provides an opportunity to further his or her private interests, or those of his or her family, or to improperly further another person's private interests.
6. A member should not make a decision, or participate in making a decision, related to the exercise of an official power, duty or function if the member knows or reasonably should know that, in making the decision, he or she would be in a conflict of interest.
7. A member should not use or communicate information that is obtained in his or her position, and is not available to the public, to further, or seek to further, the member's private interests or those of his or her family, or to improperly further, or seek to further, another person's private interests. This obligation should continue to apply after the member leaves office.
8. A member should not use his or her position to seek to influence a decision of another person so as to further the member's private interests, or those of his or her family, or to improperly further another person's private interests.
9. The new Act should not prohibit the activities that members normally engage in on behalf of their constituents.

10. "Private interest" should not include an interest in a matter:
    - that is of general application;
    - that affects an individual as one of a broad class of persons;
    - that is trivial; or
    - that concerns the remuneration or benefits of the member.
11. A member who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the Legislative Assembly, Cabinet or a committee of either should, at the first opportunity:
    - disclose the general nature of the conflict of interest;
    - withdraw from the meeting without voting or participating in consideration of the matter; and
    - refrain at all times from attempting to influence the matter.
12. Where a member has taken these actions in the course of a meeting of the Legislative Assembly or a committee of it, the Clerk of the Legislative Assembly or the secretary of the meeting should file with the Commissioner, as soon as possible, a copy of the proceedings of the meeting from which the member withdrew.
13. Where a Minister has taken these actions in the course of a meeting of Cabinet or a committee of it, the secretary of the meeting should record the Minister's declaration, the general nature of the conflict of interest declared and the withdrawal of the Minister from the meeting and should file the information with the Commissioner as soon as possible. The Commissioner should keep this information confidential except if it is material to an investigation to determine if the Minister has breached the Act.
14. A Minister who has reasonable grounds to believe that he or she has a conflict of interest in a matter requiring the Minister's decision should ask the Premier to appoint another Minister to perform the Minister's duties in the matter, for the purpose of making the decision.
15. Subject to the exceptions listed in Recommendation 16, Ministers should be prohibited from:
    - engaging in any trade, occupation or employment, or in the practice of any profession;
    - carrying on business or engaging in the management of a business, directly or indirectly;
    - owning securities, stocks, futures or commodities that are not publicly traded; and
    - holding an office or directorship, unless doing so is one of the member's duties as a member of Cabinet.

16. A Minister should be allowed to engage in a prohibited activity in the following circumstances:
    - the Minister has disclosed all material facts to the Commissioner;
    - the Commissioner is satisfied that the activity will not create a conflict between the Minister's private interest and public duty, or will not do so if carried on in a specified manner;
    - the Commissioner has given the Minister written approval and, if appropriate, has specified the manner in which the activity may be carried out; and
    - the Minister carries out the activity in the specified manner.

    The Commissioner's approval and the conditions that have been imposed should be made public by the Commissioner.
17. A person who becomes a Minister should be required to meet with the Commissioner to discuss any measures that may be required in order to meet the additional restrictions on the activities of Ministers and should comply with these requirements within 60 days of appointment.
18. Ministers should not be prohibited from holding or trading in publicly-traded securities, stocks, futures or commodities.
19. The new Act should prohibit any member from knowingly being a party to a contract with the Government of Manitoba under which the member receives a benefit. The prohibition should extend to any partnership or private corporation in which the member has an interest.
20. The prohibition on contracts with the Government of Manitoba should not apply to a contract that existed before the member's election but should apply to its renewal or extension.
21. The prohibition on contracts with the Government of Manitoba should not apply if the Commissioner approves the contract on the basis that it is unlikely to affect the member's performance of his or her duties of office. The Commissioner should give approval with such conditions as he or she deems appropriate. Any such approval should be made public.
22. The prohibition on contracts with the Government of Manitoba should not apply to the receipt of retirement benefits or to a contract or benefit that is available to the general public or to a class of the general public where no special benefit or preference is enjoyed by the member.
23. A member and his or her family should not be permitted to accept a gift that is connected directly or indirectly with the performance of his or her duties of office, unless it is received as an incident of the protocol, customs or social obligations that normally accompany the responsibilities of office.
24. Where a gift is permitted and its value exceeds $250 (or multiple gifts from a single source have a cumulative value exceeding $250 over a 12-month period), the nature of the gift, its

source and the circumstances under which it was given should be disclosed to the Commissioner within 30 days. The Commissioner should then make that disclosure available to the public.

25. Where a member or his or her family is offered or given a gift that is not permitted, the member should refuse it or, at the earliest opportunity, return it to the donor or turn it over to the Government of Manitoba, without making any personal use of the gift. Where a gift is returned or forfeited to the Government of Manitoba, the member should inform the Commissioner in writing and the Commissioner should make that information available to the public.
26. "Gift" should be defined broadly to include an amount of money if there is no obligation to repay it and a service or property, or the use of property or money, that is provided without charge or at less than its commercial value. "Gift" should not include compensation authorized by law or a benefit received from a riding association or a political party.
27. The new Act should not grant the Commissioner discretion to permit a member to accept a gift that would otherwise not be permitted.
28. *The Lobbyists Registration Act* should be amended to prohibit lobbyists from giving gifts to public officials. An exception to permit light refreshments in the course of a meeting could be considered. The Lobbyist Registrar should be empowered to impose sanctions for a breach, including an administrative monetary penalty and the suspension of a lobbyist's registration.
29. There should be no special rules for sponsored travel. Such travel should be governed by the usual rules applying to gifts.
30. A member should not be permitted to accept an offer of travel on a non-commercial chartered or private aircraft (other than one owned or leased by the Crown) that is connected, directly or indirectly, with the performance of the member's office, unless:
    - the travel is required for the performance of the member's office; and
    - the member receives approval from the Commissioner before accepting the travel.
31. In determining whether to approve travel as outlined in Recommendation 30, the Commissioner should consider whether alternative methods of travel are available, whether such travel will create a conflict or the perception of a conflict between a private interest and the public duty of the member and, if so, whether the public benefit of the travel outweighs such a conflict or perception of conflict. The Commissioner should make public any such approval.
32. Subject to the exceptions described below, each member should file a disclosure statement that identifies the following:
    - the assets and liabilities of the member and the member's family;

- the assets and liabilities, and a description of the activities or nature of business, of any private corporation in which the member or the member's family has an interest;
- the source and nature of any income the member or anyone in the member's family received during the preceding 12 months, or is entitled to receive during the next 12 months;
- every trust known to the member from which he or she could, currently or in the future, either directly or indirectly, derive a benefit or income;
- the subject matter and nature of any contracts the member, the member's family, or any private corporation in which they have an interest, has with the provincial government;
- the names of all corporations or other organizations in which the member or anyone in the member's family is an officer or director (or similar position);
- all partnerships in which the member or anyone in the member's family is a partner;
- any legal proceedings the member knows could be brought against them;
- whether the member is in arrears of any support payments; and
- any other information that the Commissioner requires.

33. Members should not be required to disclose the value of their assets or liabilities.
34. Members should not be required to disclose assets and liabilities with little likelihood of giving rise to a conflict of interest. These could include:
    - an asset or liability worth less than a specified amount (such as $5,000);
    - a source of income that yielded less than a specified amount (such as $5,000) during the preceding 12 months;
    - cash on hand or on deposit with a Canadian financial institution;
    - the principal residence of the member and real property that the member or the member's family uses for recreational purposes;
    - personal property that the member or the member's family uses primarily for transportation, household, educational, recreational, social or aesthetic purposes (in other words, family vehicles, furniture and the like);
    - fixed value securities issued or guaranteed by a government in Canada or by an agency of any such government;
    - an interest in a pension plan, employee benefit plan, annuity or life insurance policy;
    - an investment in an open-ended mutual fund, exchange-traded fund or similar investment that has broadly-based investments not limited to one industry or one sector of the economy;

- a guaranteed investment certificate or similar financial instrument;
- support payments not in arrears;
- a liability to a Canadian government or a Canadian financial institution related to an excluded asset;
- a debt that is a current and ordinary household and personal living expense;
- a debt owed by the member to someone in his or her family or owed to the member by someone in his or her family; and
- any other asset, liability or source of income that the Commissioner approves for exclusion.

35. Each member should file a disclosure statement with the Commissioner within 60 days of being elected. Each member should then file a disclosure statement once in every subsequent calendar year by a date specified by the Commissioner. If there have been no changes since the previous disclosure statement, the member should have the option to indicate this to the Commissioner.
36. After reviewing a member's disclosure statement, the Commissioner should be empowered to require the member to meet with the Commissioner and to request the attendance of the member's family, to ensure that adequate disclosure has been made and to discuss the member's obligations under the Act.
37. At the completion of the disclosure process, the Commissioner should make the disclosure statements available for online inspection by the public.
38. The member should file a supplementary disclosure statement with the Commissioner within 30 days of any change. The Commissioner should then make the supplementary statement available to the public.
39. Within 60 days of their appointment, Ministers should disclose to the Commissioner the information that would otherwise be excluded from disclosure and should be required to meet with the Commissioner to discuss how to arrange their affairs so as to avoid, or minimize, conflicts of interest. The Commissioner should keep this additional disclosure confidential.
40. Where a member fails to file a disclosure statement by the required date or fails to meet with the Commissioner as required, the Commissioner should advise the member of the steps he or she will take if the statement is not filed within a further 30 days. At the end of the 30 days, the Commissioner should advise the Speaker and the Clerk of the Legislative Assembly of the member's failure, whereupon the member should be suspended from office without pay. When the member thereafter complies with the required action, the Commissioner should advise the Speaker and the Clerk of the Legislative Assembly, whereupon the member's suspension should end. If the member has not complied with the required action by the end of the session during which the suspension took place, the member's seat should be declared vacant.

41. Where a member has failed to file a supplementary statement within the required 30 days of a change, the Commissioner should be empowered to impose an administrative monetary penalty not exceeding $5,000 if, in the opinion of the Commissioner, it is in the public interest to do so. In determining whether to impose the penalty and the amount, the Commissioner should consider:
    - the objective of encouraging compliance;
    - the member's history, if any, of prior breaches of his or her obligations under the Act; and
    - any other factors that, in the opinion of the Commissioner, are relevant.

    Where such a penalty is imposed, the Commissioner should advise the Speaker and the Clerk of the Legislative Assembly who should cause the amount of the penalty to be deducted from the member's pay.
42. Knowingly giving false or misleading information in a disclosure statement or in a supplementary statement should be an offence punishable by a fine up to $50,000.
43. During the specified transition period, a former member or Minister should not:
    - accept a contract or benefit that is awarded, approved or granted by a government decision-maker;
    - make representations to a government decision-maker on his or her behalf, or on behalf of another person, with respect to a contract or benefit;
    - accept a contract or benefit from any person to make representation to a government decision-maker with respect to a contract or benefit that is to be awarded, approved or granted by a government decision-maker;
    - accept employment (including appointment to a board of directors or similar body) with any person or organization with whom he or she had direct and significant official dealings in their government position; and
    - lobby or assist in lobbying a public official, as those terms are defined in *The Lobbyists Registration Act*.

    These restrictions should not apply to contracts and benefits with the government available to the general public or to broad classes of the public.
44. The transition period for former members should be one year from the date they cease to be members. The transition period for Ministers should be two years from the date they cease to be Ministers.
45. The Commissioner should have the discretion to waive or shorten the transition period upon application by the former member or Minister if, in the opinion of the Commissioner:
    - the conditions on which and the manner in which the employment, appointment, contract or benefit is awarded, approved or given are the same for all persons similarly entitled;

- the award, approval, grant or benefit results from an impartially administered process open to a significant class of persons; or
- the activity, contract or benefit will not create a conflict between a private interest of the former member or Minister and the public interest.

In these instances, the Commissioner should impose any conditions he or she believes are necessary.

46. Former members should be able to obtain advice from the Commissioner regarding their obligations, in the same way that members can obtain this advice while in office.
47. The Commissioner should be able to investigate breaches of these obligations by a former Minister, if he or she is still a member. In these cases, the provisions respecting the Commissioner's powers of investigation and enforcement should apply with such changes as are necessary. A breach of these obligations by a former member or a former Minister who is no longer a member should be an offence punishable by a fine not exceeding $50,000. In these cases, an order of restitution should also be available.
48. Members should be able to seek confidential oral advice from the Commissioner at any time.
49. A member should be able to submit a written request for the Commissioner to give an opinion and recommendations on any matter respecting the member's obligations under the new Act. The Commissioner should then be empowered to make such inquiries as he or she considers appropriate and provide the member with the requested opinion and recommendations in writing.
50. The Commissioner's written opinion and recommendations should be confidential but may be released by the member or by the Commissioner with the member's consent.
51. If a member releases only part of the Commissioner's opinion and recommendations, the Commissioner should be empowered to release part or all of the opinion and recommendations without obtaining the member's consent.
52. Where a member has received a written opinion and recommendations with respect to the member's obligations under the Act, no sanction should be imposed against the member under the Act in respect of those obligations if the member has:
    - communicated all material facts to the Commissioner; and
    - complied with the opinion and recommendations of the Commissioner.
53. Any person, including a member, who believes on reasonable grounds that a member has contravened the new Act should be able to request that the Commissioner investigate the matter.
54. The request for an investigation should be in writing in a form specified by the Commissioner, identify the complainant, set out the alleged contravention and set out the grounds for believing the contravention occurred.

55. The Commissioner should not be able to commence an investigation on his or her own initiative.
56. In addition to submitting it to the Commissioner, an investigation request from a member should be tabled in the Legislative Assembly.
57. Unless the Commissioner decides not to investigate a complaint from a person other than a member, the Commissioner should advise the Speaker of the complaint and the Speaker should table the information in the Legislative Assembly.
58. The Commissioner should have the power to refuse to commence, or continue to investigate, a complaint from a non-member if the Commissioner is of the opinion that the complaint is frivolous, vexatious or not made in good faith, or that there are insufficient grounds to warrant commencing or continuing an investigation. If the Commissioner so refuses, he or she should provide written reasons for that decision.
59. The Legislative Assembly or any committee of the Legislative Assembly should not inquire into any matter regarding a complaint that has been submitted to the Commissioner.
60. The Commissioner should have the powers under Part V of *The Manitoba Evidence Act*. This would include the power to compel testimony and the production of documents.
61. The Commissioner should have the discretion to conduct the investigation in private or in public.
62. If the Commissioner, when conducting an investigation, determines that there are reasonable grounds to believe that a contravention of any other Act (including the *Criminal Code*) has occurred, the Commissioner should immediately refer the matter to the appropriate authorities and should have the discretion to suspend the investigation until any resulting police investigation and charges have been finally disposed of. The Commissioner should report any such suspension to the Speaker.
63. If the Commissioner, when conducting an investigation, discovers that the member is being investigated by police or that a charge has been laid, the Commissioner should have the discretion to suspend his or her investigation until the police investigation or charges have been finally disposed of. The Commissioner should report any such suspension to the Speaker.
64. The Commissioner should suspend an investigation if the member who is its subject resigns his or her seat or if a writ for a general election is issued. The Commissioner should resume the investigation if, within 30 days of the resignation or the issuance of the writ, the former member or the person who requested the investigation submits a written request to the Commissioner that the investigation be continued. In any event, investigations should be suspended during an election period.
65. If it appears to the Commissioner that the report into a matter may adversely affect the member about whom the complaint was made, the Commissioner should inform the member of the particulars and give the member the opportunity to make representations,

either orally or in writing (at the discretion of the Commissioner), before the report is finalized.

66. Upon completion, the Commissioner should submit the report to the member whose conduct was investigated and to the Speaker. The Speaker should cause the report to be tabled in the Legislative Assembly as soon as possible. If the Legislative Assembly is not sitting, the Speaker should cause it to be tabled within the first 10 sitting days of the next sitting. The Commissioner should also give a copy to the Clerk of the Legislative Assembly, who should provide a copy to all members.
67. If, after an investigation, the Commissioner finds that a member has contravened the new Act, the Commissioner should, in the report, recommend one or more of the following:
    - that no sanction be imposed;
    - that the member be reprimanded;
    - that the member publicly acknowledge his or her conduct;
    - that the member undertake such remedial action as may be directed, including paying compensation to any person or paying to the government the amount of any gain realized by the member or any other person;
    - that the member be ordered to pay a fine not exceeding $50,000;
    - that the member be removed from Cabinet for a specified period or until a specified condition is fulfilled;
    - that the member's right to sit and vote in the Legislative Assembly be suspended, with or without pay, for a specified period or until a specified condition is fulfilled;
    - that the member's seat be declared vacant; and
    - any other sanction the Commissioner considers appropriate.
68. The Commissioner should recommend that no sanction be imposed if the Commissioner finds that there has been a contravention of the Act but:
    - the member took all reasonable measures to prevent the contravention;
    - the contravention was trivial, committed through inadvertence or an error of judgment made in good faith; or
    - the member acted in accordance with the Commissioner's advice and had, before receiving that advice, disclosed all material facts that were known to the member.
69. The Legislative Assembly should promptly consider the Commissioner's report and do one of the following before the end of the session:
    - accept all of the Commissioner's recommendations; or
    - reject all of the Commissioner's recommendations.

    The decision of the Legislative Assembly should be final and conclusive.

70. If the Legislative Assembly accepts the Commissioner's recommendations and their enforcement requires it, they should be filed in the Court of Queen's Bench and should be enforceable as an order of the Court.
71. The Commissioner should conduct a further investigation of a matter that has been concluded only if new evidence is presented that, in the opinion of the Commissioner, justifies a new investigation.
72. An independent, non-partisan officer of the Legislative Assembly (the "Commissioner") should continue to be available to provide advice to members and assist them in complying with their obligations under the new Act. The Commissioner should also perform the additional duties set out in this report.
73. The Commissioner should be appointed for renewable terms of five years.
74. The Commissioner should be subject to removal from office only by a two-thirds vote of the Legislative Assembly.
75. The Commissioner should continue to be excluded from the application of *The Freedom of Information and Protection of Privacy Act* and *The Personal Health Information Act*.
76. The Commissioner should not be a competent or compellable witness regarding any knowledge he or she has gained as a result of exercising any powers or performing any duties or functions as Commissioner.
77. The Commissioner and any person employed by, or acting on behalf of, the Commissioner should not be liable for actions taken in good faith in the performance of his or her duties or powers.
78. Decisions made by the Commissioner should not be subject to appeal to, or review by, any court.
79. The new Act should come into force on the later of:
    - 12 months following its enactment; and
    - immediately following the next provincial election.
80. The Commissioner should be empowered to create any forms required by the new Act, require their use and specify the manner in which they are filed.
81. The Commissioner should be empowered to extend any time limit specified in the new Act, on such conditions as the Commissioner considers appropriate.
82. The Commissioner should initiate a review of the new Act within five years after it comes into force, and subsequently within five years after each time the committee described in Recommendations 83 and 84 submits a report.
83. The Commissioner should prepare a report on his or her review of the Act and submit it to a committee of the Legislative Assembly that has been designated by the Assembly.
84. The committee that receives the Commissioner's report should review it and submit a report on its review (including any recommendations for amendments to the Act) to the

Legislative Assembly within one year after the committee has received the Commissioner's report.