



Standing Committee of *Ajauqtiit*

**Report on the Appointment of the
Conflict of Interest Commissioner of Nunavut**

Third Session
First Legislative Assembly

Legislative Assembly of Nunavut

March 22, 2000

Hunter Tootoo, MLA
Chair

Ovide Alakannuark, MLA
Co-Chair

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Honourable Levi Barnabas, MLA
Speaker of the Legislative Assembly of Nunavut

Mr. Speaker,

Report on the Appointment of the Conflict of Interest Commissioner of Nunavut

Your Standing Committee of *Ajauqtiit* has the honour of presenting its Report on the Appointment of the Conflict of Interest Commissioner of Nunavut.

Respectfully submitted on behalf of the Committee, for consideration by the Legislative Assembly.

Hunter Tootoo, MLA
Chair

Ovide Alakannuark, MLA
Co-Chair

Members of the Standing Committee of
Ajauqtiit

Hunter Tootoo, MLA
Iqaluit Centre
Chair

Ovide Alakannuark, MLA.
Akulliq
Co-chair

Olayuk Akesuk, MLA.
South Baffin

David Iqaqrialu, MLA
Uqqummiut

Peter Kattuk, MLA
Hudson Bay

Alternate Members

Jobie Nutarak, MLA
Tunnuniq

Kevin O'Brien, MLA
Arviat

Uriash Puqiqnak, MLA
Nattilik

Staff Members

Rhoda Perkison
Committee Clerk

Patricia File
Committee Researcher

Standing Committee of *Ajauqtiit*

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TERMS OF REFERENCE

The mandate of the Standing Committee of *Ajauqtiit* is to:

- Consider issues related to the Government of Nunavut's obligations with respect to the implementation of the Nunavut Land Claims Agreement (NLCA), including the activities of the Government of Nunavut in relation to the operations of the Boards, Commissions and other bodies established by the provisions of the NLCA;
- Review the budget of the Office of the Legislative Assembly;
- Recommend the appointment of positions that, by statutory authority, are made by the Legislative Assembly; and
- Consider any other matter referred by the House.

Introduction

During the summer and early fall of 1999, Members of the Standing Committee of *Ajauqtiit* were involved in the appointments process for three positions that, by statutory authority, are made by the Legislative Assembly:

- Languages Commissioner of Nunavut
- Information and Privacy Commissioner of Nunavut
- Conflict of Interest Commissioner of Nunavut

During Full Caucus deliberations in June of 1999, it was agreed that the Standing Committee of *Ajauqtiit* would bring forward recommendations for these three positions for consideration by the Legislative Assembly of Nunavut at the next Session, or as soon as possible thereafter, as per the terms of reference of the Committee. This report details the process and the recommendation for the position of Conflict of Interest Commissioner of Nunavut.

The Conflict of Interest Commissioner has the primary mandate to advise Members of the Legislative Assembly regarding conflict of interest and conduct reviews of allegations of conflict of interest by Members of the Legislative Assembly, as outlined in the *Legislative Assembly and Executive Council Act*.

Acknowledgements

The Committee received 26 applications for the position of Conflict of Interest Commissioner from individuals from across Canada, with a variety of professional experience. The Committee was pleased with the high caliber of the applicants, and would like to thank everyone who expressed an interest in the position and submitted an application.

The Committee would also like to express its appreciation to the Office of the Clerk of the Legislative Assembly for the administrative, research and procedural support it provided. The Committee also thanks Members for their support in encouraging qualified constituents to apply for the position.

The Standing Committee also wishes to note that all written materials reviewed by the Members, including résumés, questions, procedural documents and drafts of reports were translated and reviewed by Members in both English and Inuktitut. In addition, all meetings of the Committee had the assistance of simultaneous interpretation. We thank the Interpreter/Translator of the Legislative Assembly for her superior service, and we also acknowledge the dedication and the staff of Nunavut Tusaavut Inc.

Process

In keeping with the Government of Nunavut's commitment to consultation and to open and transparent selection processes, the Standing Committee decided to approach it in a manner similar to that used by the Department of Human Resources in the hiring of senior public service positions.

In this regard, at the end of August, advertisements in English and Inuktitut, for the position of Conflict of Interest Commissioner were placed in the northern newspapers, *Nunatsiaq News* and *News North*; and in the *Globe and Mail* in English. An application deadline was set for September 17, 1999. All MLAs also received two letters from the Chair of the Standing Committee encouraging them to bring the position to the attention of interested and qualified constituents. Some additional outreach was also done by the Chair and Assembly staff to encourage people in Nunavut to apply for the position.

As the Standing Committee was involved in the selection process for three separate Commissioners, it was agreed that they would use three subcommittees to conduct the interviews and preliminary selection process for the candidates. The following Members conducted all of the interviews for the position of Conflict of Interest Commissioner and made the preliminary recommendation to the Committee: Hunter Tootoo, Chair; Ovide Alakannuark, Co-chair; and Olayuk Akesuk, Member.

It was agreed that applicants would be pre-screened for interviews according to criteria set by the Committee. The prescreening identified 11 applicants who had northern experience at some point in their careers, 7 of whom had more experience in administrative law or conflict of interest matters. Of these candidates, one was a current resident of Nunavut. In addition, there were two southern candidates who had no northern experience, but extensive experience in a broad range of financial and conflict of interest matters. After reviewing these 13 candidates, the Members of the Subcommittee selected three for face-to-face interviews.

A list of 32 oral questions was developed by the Committee, to be asked of all candidates in a two-hour interview. In addition, seven written questions were given to candidates following the interviews and candidates were given 48 hours to return their written answers to the Committee. The Committee developed a point system to be used to evaluate the quality of the answers and other information provided by the candidates. MLAs on the subcommittee assigned points to each answer and other materials of the candidates. The candidates were then ranked in their overall results and the subcommittee discussed the final results of this process.

The Committee tried to select for two strengths - legal expertise, particularly with respect to conflict of interest provisions; and business expertise, particularly with respect to advising people on matters such as blind trusts, etc. The Committee sought advice from Full Caucus as to where the Members felt the emphasis should be placed.

Reference checks were performed and reviewed by the Members. The recommendation was brought forward to the whole Standing Committee for discussion and a motion, as well as a draft report for their review. As the Legislative Assembly was not in session, the report and recommendation were subsequently brought to the Management and Services Board for discussion. The Management and Services Board agreed to appoint an Acting Conflict of Interest Commissioner under their authority described in Section 79.01.(4) of the *Legislative Assembly and Executive Council Act*, with the expectation that the Full Caucus would review the final selection at the first opportunity and the appointment would be formally made during the next Session of the Assembly.

The Standing Committee wishes to emphasize that all of the candidates interviewed were very committed and qualified for the position. The decision of the Members was difficult and the Members approached it in an unbiased manner and in the spirit of collegiality. It

is the hope of the Members that all candidates will continue to make contributions to public life in Nunavut.

Committee Meetings Conducted

The Committee and subcommittee met in Iqaluit or by conference call on the following dates, for the purposes described below:

August 17, 1999	Conference call to discuss process and review draft advertisements.
September 9, 1999	Review of hiring process; Presentation by Human Resources on hiring procedures.
September 14, 1999	Review of draft pre-screening criteria and draft list of oral questions.
September 24, 1999	Review of names of 26 applications received by this date; Selection of candidates to interview.
September 29, 1999	Review of Interim Report to Full Caucus
October 16, 1999	Interview
October 18, 1999	Interview
October 18, 1999	Interview
October 25/26/27, 1999	Review of answers to written questions, analysis of results of oral interview, written questions, résumé review for all three candidates interviewed.
October 29, 1999	Discussion of presentation to Full Caucus
November 2, 1999	Discussion with Full Caucus regarding priority expertise of Conflict of Interest Commissioner
November 1999	Discussion of reference check; Discussion of Draft Report to Full Caucus and to Management and Services Board and Motion
December 14, 1999	Presentation to Management and Services Board
February 2, 2000	Final discussion at Full Caucus

Position of the Conflict of Interest Commissioner

The position of the Conflict of Interest Commissioner and their duties are laid out in the *Legislative Assembly and Executive Council Act*. On March 31, 1999, as per the *Nunavut Act*, and except as otherwise amended, all legislation currently in effect in the NWT became the law in effect for Nunavut on April 1, 1999.

The legislation in the NWT has undergone a number of changes over the years. For example, the amendments of 1994 made it possible for a member to seek the advice of the Commissioner and to receive, under s.79.2, a binding opinion as to the conflicts issues raised by a proposed action or economic activity. The amendments in 1996 switched to a single Commissioner system, instead of a five-member panel. Ms. Anne Crawford, a lawyer in private practice in Iqaluit, was appointed as the Conflict of Interest Commissioner in February 1997. Other substantive amendments in 1996 moved from a two-tiered process to a more flexible inquiry by the Commissioner intended to respond to the variable nature of conflicts complaints. The 1996-97 Annual Report of the Conflict of Interest Commissioner also recommended further changes to the legislation.

However, the most recent changes to the NWT legislation were made by the Legislative Assembly of the NWT in the summer of 1999, following an inquiry in the NWT. These amendments give the Conflict of Interest Commissioner a greater role in providing preventative advice to Members and it is thereby hoped that the need for an expensive inquiry in the future will be minimized. As well, a separate adjudicator would be appointed in the event an inquiry was needed. As these amendments were made following division, they are not included in the legislation which was duplicated for Nunavut. Nevertheless, it will be instructive for the Legislative Assembly of Nunavut to review them and decide if any would be appropriate for Nunavut.

Prior to division, the Office of the Interim Commissioner established an Ethics and Accountability Panel to which John Amagoalik and Roger Tassé were appointed. The Panel assisted candidates in the first Nunavut election and the elected Members prior to April 1, 1999. Following division, the Management and Services Board arranged for Robert Clark to be appointed as the Acting Conflict of Interest Commissioner, if a matter arose, until the Legislative Assembly conducted its own selection process. Mr. Clark has a full-time position performing the duties of the Conflict of Interest Commissioner of Alberta.

The Conflict of Interest Commissioner is an independent Officer of the Legislative Assembly. On the recommendation of the Legislative Assembly, the Commissioner of Nunavut appoints a person who has been recommended for the position. The Conflict of Interest Commissioner is accountable to the Legislative Assembly and must report annually to the Assembly on the work of the office and any complaints that have been received by the Commissioner.

The annual report is required by statute to include a number of categories of information, such as:

- Filing of Disclosure Statements by Members
- Late Filing of Disclosure Statements by Name of Member
- Failure to File Disclosure Statements by Name of Member
- Extensions Granted to Members to File their Disclosure Statements
- Contract approvals to any Members who are given authorization to accept a contract under s. 75.1 (3) of the Act
- Contracts entered into by the Government and a corporation which is a Member's controlled corporation or a controlled subsidiary.

The Conflict of Interest Commissioner also provides opinions and advice to Members and comments on the operation of the Act. For example, in the 1997-98 Annual Report, the Conflict of Interest Commissioner of the NWT issued two general guidelines on "Budget Voting" and on "Question Period"; three opinions on "Participation in NWT Home Ownership Programs"; "Legal Expense Funds"; and "Ownership of Shares in Publicly Traded Companies"; and included a discussion paper on the issue of "Blind and Management Trusts".

The budget for the Conflict of Interest Commissioner has been allocated to the Legislative Assembly budget based on the experience of the NWT. It has not been a full-time position, but rather is part-time, on an as-needed basis. This budget will need further review in Nunavut, once the position is in place.

Observations

The Conflict of Interest Commissioner plays a key role in ensuring the successful application of the conflict provisions of the *Legislative Assembly and Executive Council Act*, an Act that we inherited from the NWT.

As noted in the Annual Report for 1997-98 of the Conflict of Interest Commissioner of the NWT:

"The Commissioner is in a position to advise and instruct as to the appropriate arrangements which will meet the Conflicts requirements. The legislation does not set out the methods or means which the Commissioner is entitled to use or recommend. The discretion and judgment of the Commissioner are the primary factors in making these decisions. The solutions crafted for each Member will reflect the Commissioner's understanding of public concern and acceptance in this jurisdiction, and the likelihood and extent of risk of conflict."

As noted above, the Commissioner also attached a number of guidelines, opinions and a discussion paper in the 1997-98 Annual Report. While these are not binding on the Legislative Assembly of Nunavut, they are nonetheless instructive of the kinds of issues on which the Conflict of Interest Commissioner must provide advice to Members and it is vital that the Conflict of Interest Commissioner of Nunavut has the skills and credibility to do so. These skills will also be necessary for the Commissioner to assist in the review of the legislation to ensure it is appropriate for Nunavut.

There are many challenges ahead. The lack of adequate funding for providing all important services across Nunavut and the competition for government finances to meet many other important needs in Nunavut means that vigilance and preventative advice will be needed in ensuring Members live up to the highest standards of integrity and are not in conflict. We cannot afford costly legal proceedings. At the same time, Nunavut is a small jurisdiction, with a relatively small private sector. We want to encourage Members in private business to run for office, without undue penalty to their entrepreneurial initiative or family's livelihood. A balance must be struck. And, as with other legislation inherited from the NWT, we need to review the whole Act to ensure it is appropriate for and meets the needs of Nunavummiut.

The Conflict of Interest Commissioner must recognize and be able to meet these challenges. The Commissioner must be a strong, committed voice for an open government, which makes unbiased decisions that do not personally benefit the Members or their families. The Commissioner must have diplomacy and grace to mediate solutions, sensitivity to the needs of government decision processes, ability to assist different language groups within Nunavut, and the integrity and administrative competence to deal with complaints in a fair and timely manner. And although this Commissioner is resident elsewhere in Canada, as with all public offices in Nunavut, they must be a leader in the Inuit tradition, able to hold the respect and confidence of all Inuit, Elders and youth, as well as French- and English-speaking residents of Nunavut.

The Standing Committee of *Ajauqtiit* has taken its responsibilities in this selection process very seriously. The selection process was fair and thorough, and the Committee is confident that it has selected an outstanding candidate for the position.

Recommendation

The Standing Committee of *Ajauqtiit* unanimously recommends to the Legislative Assembly that Robert Stanbury be appointed Conflict of Interest Commissioner of Nunavut, pursuant to Section 61 of the *Legislative Assembly and Executive Council Act*.

Appendix 1 - Candidate's biography

Appendix 2 - Job posting