



Annual Report

Ethics and Integrity Commissioner

April 1, 2016 – March 31, 2017



Office of the
Ethics and Integrity
Commissioner

Bureau du
commissaire à
l'éthique et à l'intégrité



PO Box 2000, Charlottetown
Prince Edward Island
Canada C1A 7N8

C.P. 2000, Charlottetown
Île-du-Prince-Édouard
Canada C1A 7N8

June 27, 2017

Hon. H. Wade MacLauchlan
Premier of Prince Edward Island
PO Box 2000
Charlottetown, PE C1A 7N8

Dear Premier MacLauchlan:

It is my honour to present the annual report of the office of the Ethics and Integrity Commissioner for the period April 1, 2016 to March 31, 2017.

Sincerely,

Shauna Sullivan Curley
Ethics and Integrity Commissioner

c: Paul Ledwell, Clerk of Executive Council
Andrew Thompson, CEO, Public Service Commission

Annual Report 2016-17

INTRODUCTION

Established on March 31, 2015, the principal responsibilities of the Ethics and Integrity Commissioner position are conflict of interest disclosure and administration for Executive Division employees of the Government of Prince Edward Island, and administration of the Public Interest Disclosure and Whistleblower Protection Policy. The fiscal year 2016-17 was the second full year of operation for the office.

PART I - GENERAL

Administration and Reporting

The Commissioner was appointed by Executive Council for a five year term, and serves on a part-time basis. For administrative purposes, the office is associated with the Public Service Commission, which provides office space, administrative support and budget. The office has a web page on the government website.

The Commissioner reports to and advises the Premier and the Clerk of Executive Council on conflict of interest and ethics matters relating to employees of the Executive Division of the Government of Prince Edward Island.

With regard to public interest disclosure, the Commissioner fulfils the roles and responsibilities assigned in the Public Interest Disclosure and Whistleblower Protection Policy. Key contacts include prospective complainants, the Public Service Commission and other public sector employers as appropriate.

Consultation and Inquiries

The office continues to receive a range of inquiries on a regular basis. In 2016-17, there were thirty documented inquiries, separate and apart from the work arising from the conflict of interest disclosure process for Executive Division employees. Inquiries ranged from single telephone conversations to lengthy meetings. Where possible, individuals making inquiries on matters outside the mandate of the Commissioner were given information on alternatives they might pursue.

This year several inquiries resulted from the Conflict of Interest Policy having been amended to name the Commissioner as a source of interpretation advice for deputy ministers in the administration of the policy within their departments. Other consultations included requests from public service employees regarding the process for conflict of interest disclosure (e.g., proposed outside employment), requests by deputy ministers for ethical advice, and requests for information regarding the Public Interest Disclosure and Whistleblower Protection Policy.

The Commissioner was consulted by Health PEI in the development of the Health PEI Ethics Framework. The new framework specifically references the Commissioner as the contact point for persons considering disclosing a wrongdoing under the Public Interest Disclosure and Whistleblower Protection Policy.

At the invitation of the Public Service Commission, the Commissioner provided input into a Question and Answer document for public service employees on the Conflict of Interest Policy.

Presentations

In September 2016 the Commissioner made a presentation on values and ethics to Executive Master of Business Administration students at the University of Prince Edward Island in the course “Managing In and Creating an Innovative Culture in the Public Sector”. The ensuing discussion provided an opportunity for an engaging dialogue with persons employed in a wide range of workplaces across the various levels of government in Prince Edward Island.

In December 2016 the Commissioner met with the Deputy Ministers Council to provide an overview of the gifts and benefits sections of the Executive Division Conflict of Interest Policy, to share several examples of decided cases across the country on this topic, and to field questions.

In January 2017 the Commissioner presented to a professional development session of the Financial Management Institute, PEI Chapter on the subject of public interest disclosure and whistleblower protection. The presentation addressed the nature and intent of whistleblower protection, as well as its common features. The Public Interest Disclosure and Whistleblower Protection Policy was reviewed in detail.

Training

In May 2016 the Commissioner participated in two days of professional training on the conduct of investigations. This included the fundamentals of effective fact-finding, as well as investigative interviewing, tailored for the public sector context.

Privacy and Security

On April 15, 2016 the Commissioner was informed by the Clerk of Executive Council of a privacy breach with respect to documents originating with the Commissioner’s office. Specifically, an envelope containing a memorandum from the Commissioner to an Executive Division employee was sent in error to the employee’s previous place of employment in the public service. The memorandum referred to the employee’s current position but an outdated mailing list was used to address the envelope, resulting in it being sent to the office at which the employee formerly worked. The envelope, marked “personal” and with the return address of the Commissioner, was opened by the employee’s successor who did not notice that it was marked “personal”. The successor did not read the contents once it was realized that

the memorandum was intended for someone else. The person who opened the envelope told the Commissioner that mail was routinely received addressed to the previous incumbent.

The enclosure to the memorandum, a Disclosure Statement to the Clerk, contained personal information, such as the name of the employee's spouse, the spouse's employer, limited asset information, as well as some details of the couple's liabilities. No values or amounts were included on the disclosure statement.

On April 15, 2016, the Commissioner sent a letter of apology to the employee and the employee's spouse, committing to have copies of future disclosure statements hand-delivered and to consider what other measures should be put in place to enhance privacy. The Commissioner consulted with the Manager of Access and Privacy Services and on her advice, decided to have a privacy impact assessment completed. In addition, the Commissioner reported the breach to the Information and Privacy Commissioner.

The administrative changes put in place include hand-delivery to Executive Division employees of copies of their Disclosure Statements to the Clerk, with double enveloping. The exterior envelopes are marked "Personal and Confidential" and the interior envelopes are marked to be opened only by the addressee. Employees are also given the option of informing the Commissioner that they do not wish to receive a copy of their Disclosure Statement to the Clerk. The Information and Privacy Commissioner has agreed that these changes are appropriate to avoid a future privacy breach.

In response to concern expressed by an employee about the security of the electronic copy of Disclosure Statements to the Clerk, the Commissioner consulted with Information Technology Shared Services about options to enhance the security of those documents. As a result, encryption software was installed by ITSS. Disclosure Statements to the Clerk are created and saved on the network within a password-protected encrypted environment.

PART II – CONFLICT OF INTEREST

The Commissioner continued with her role and responsibilities under the Executive Division Conflict of Interest Policy. This policy contains provisions which are different from, or supplementary to, the provisions of the Conflict of Interest Policy generally applicable to public service employees. Many of the substantive provisions of the general policy apply to Executive Division employees, in particular, the purpose, certain definitions, principles, financial gain, preferential treatment, community activities, and political activity sections. The Executive Division Conflict of Interest Policy effectively "layers over" the general policy.

The Commissioner conducts orientation sessions with persons new to the Executive Division. Ordinarily this is done on an individual basis but sessions have been held with more than one person depending on the timing of persons coming into new positions. These sessions include an overview of the role of the Ethics and Integrity Commissioner in conflict of interest and public interest disclosure matters, as well as

a review of the Executive Division Conflict of Interest Policy and the Conflict of Interest Policy for the public service. The availability of the Commissioner for consultation and interpretation on conflict of interest matters is always emphasized in these orientation sessions.

On an annual basis, the Commissioner circulates confidential disclosure statement forms to Executive Division employees to be completed and filed. Following receipt and review of the disclosure statements, the Commissioner meets with each employee to go through the statements and address any questions or concerns identified by the Commissioner or the employee. The early experience with this process has shown that the bulk of the questions arise from the completion of the first confidential disclosure statement; thus far, there have been few changes year-over-year for those persons who have remained in the same position. The policy's requirement for an in-person meeting at least annually plays an important part in ensuring that Executive Division employees set aside time to turn their minds to any issues which may have arisen in the past year, or are anticipated to arise.

The Executive Division Conflict of Interest Policy states that employees are responsible to file new confidential disclosure statements in the event of a change in circumstances. This includes, but is not limited to, a change in assignment. This year the Commissioner received the first disclosure statements triggered by a general change in circumstances, and at year end was awaiting receipt of four sets of disclosure statements triggered by changes in assignment.

Appendix A is a list of conflict of interest disclosure statements filed with the Commissioner in 2016-17.

While the bulk of disclosure statements continue to be due in June and July of the year, the appointment of new persons to the Executive Division, as well as changes in circumstances, have resulted in disclosure statements being filed throughout the year. A bring-forward system has been set up to trigger the sending of reminders to employees of the requirement to file their annual statements.

The Executive Division Conflict of Interest Policy includes a requirement to disclose gifts and personal benefits with a value exceeding two hundred dollars, or if the total value received from one source in a twelve month period exceeds two hundred dollars. Disclosures will be posted on the Commissioner's web page. No such disclosures have been received to date.

The Commissioner also advises employees on the post-employment provisions of the Executive Division Conflict of Interest Policy. The policy outlines restrictions applicable to employees who leave Executive Division positions.

PART III – PUBLIC INTEREST DISCLOSURE AND WHISTLEBLOWER PROTECTION

The Public Interest Disclosure and Whistleblower Protection Policy, announced on October 13, 2015, is intended to contribute to open, ethical, accountable and transparent government by providing avenues for reporting of wrongdoing and for protection from employment-related reprisals for good faith reporting of wrongdoing. The policy applies to employees of entities listed in the schedules to the

Financial Administration Act, with the exception of the Legislative Assembly, the Office of the Auditor General, the Island Regulatory and Appeals Commission and the Human Rights Commission.

Wrongdoing is defined as a violation of provincial or federal law; the gross mismanagement of public funds or governments assets; an act or omission that creates a substantial and specific danger to the life, health or safety of persons or the environment; or directing or counseling to engage in the foregoing acts. A disclosure of wrongdoing may be made by employees to their supervisor, their deputy minister or to the Commissioner. The policy also provides employees considering making a disclosure of wrongdoing with the option of seeking advice from the Commissioner.

In a report tabled in the Legislative Assembly on October 5, 2016, the Auditor General described the Public Interest Disclosure and Whistleblower Protection Policy as “an important first step in providing a mechanism for reporting wrongdoing”. Stating that “statutory protection is better protection”, the Auditor General recommended that the government consider adopting whistleblower legislation to replace the existing policy. On November 10, 2016, government announced its decision to introduce public interest disclosure and whistleblower protection legislation in the spring 2017 sitting of the Legislative Assembly.

The Commissioner appreciated the opportunity for consultation with the Department of Justice and Public Safety on an early draft of the legislation. Pending enactment and proclamation of legislation, the Public Interest Disclosure and Whistleblower Protection Policy continues to be the governing document.

To date, the Commissioner has not received any disclosures of wrongdoing or reports of reprisals under the policy. The Commissioner has fielded inquiries on the policy, and has provided advice and a copy of the reporting form.

The Commissioner is available to provide confidential advice to an employee considering making a disclosure of wrongdoing under the policy. Employees are encouraged to take advantage of this opportunity to learn more about the policy and its protections. After receiving information and advice, employees can then decide whether or not to file a disclosure under the policy.

As a result of consultation on the policy and its processes, the Commissioner is aware of a disclosure of wrongdoing having been made to a deputy minister. The policy does not spell out the procedures for investigations by deputy ministers, resulting in potential inconsistency from department to department. The policy also does not require that the Commissioner be informed of receipt of a disclosure of wrongdoing to a deputy minister or supervisor, or the outcome of the matter. These issues may be addressed in the new legislation.

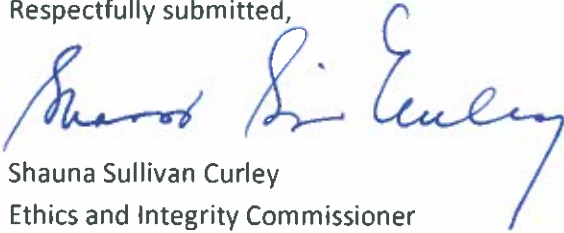
CONCLUSION

Once again, I express my appreciation to Executive Division employees for their cooperation in the conflict of interest disclosure process.

Hon. Wade MacLauchlan, Premier and Paul Ledwell, Clerk of Executive Council, continue to support the work of this office, and to make themselves available to meet with me as requested. My thanks also go to Andrew Thompson, Chief Executive Officer of the Public Service Commission, and Delma Good, Executive Assistant at the Public Service Commission, for their assistance to me in the discharge of my responsibilities.

I look forward to the continuing evolution of the office in the year to come.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Shauna Sullivan Curley". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Shauna Sullivan Curley
Ethics and Integrity Commissioner

Appendix A – Disclosure Statements Filed in 2016-17

Clerk of Executive Council and Secretary to Cabinet

Chief of Staff to the Premier

Deputy Minister, Agriculture and Fisheries

Deputy Minister, Communities, Land and Environment

Deputy Minister, Economic Development and Tourism

Deputy Minister, Education, Early Learning and Culture

Deputy Minister, Family and Human Services

Deputy Minister, Finance

Deputy Minister, Health and Wellness

Deputy Minister, Justice and Public Safety and Deputy Attorney General

Deputy Minister, Transportation, Infrastructure and Energy

Deputy Minister, Workforce and Advanced Learning

Clerk Assistant of Executive Council and Secretary to the Cabinet Committee on Priorities

Secretary to Treasury Board

Chief Executive Officer, Finance PEI

Chief Executive Officer, Innovation PEI

Chief Executive Officer, Island Waste Management Commission

Acting Chief Executive Officer, Liquor Control Commission

Chief Executive Officer, Public Service Commission

Chief Executive Officer, Tourism PEI

Acting Director of Communications, Premier's Office

Special Assistant, Premier's Office

Cabinet Liaisons (3)