

ANNUAL REPORT 2019-2020

INTRODUCTION

The position of Ethics and Integrity Commissioner was established and I was appointed the Commissioner effective March 31, 2015. The principal responsibilities of the Ethics and Integrity Commissioner are conflict of interest disclosure and administration for employees of the Executive Division of the Government of Prince Edward Island, and administration of the Public Interest Disclosure and Whistleblower Protection Policy. The office completed its fifth year of operation on March 31, 2020.

PART I – GENERAL

Administration and Reporting

The Commissioner's position is part-time, as required. For administrative purposes, the office is associated with the Public Service Commission, which provides office space, administrative and records management support, and budget. The office has a web page on the government site.

Over the last few years with the guidance and assistance of the Public Archives and Records Office, the office has instituted an improved file management system and developed a records management protocol. On October 8, 2019 the Public Records Committee officially approved the Records Retention and Disposition Schedule for the Office of the Ethics and Integrity Commissioner.

On conflict of interest and ethics matters relating to Executive Division employees, I report to and advise the Premier and the Clerk of Executive Council.

On public interest disclosure matters, I continue to fulfill the role and responsibilities outlined in the Public Interest Disclosure and Whistleblower Protection Policy, pending the coming into force of the *Public Interest Disclosure and Whistleblower Protection Act*, Stats. PEI 2017, Cap. 11.

Due to the COVID-19 pandemic, the office closed on March 17, 2020 and I worked from home in accordance with public health measures.

Consultation and Inquiries

I continue to receive and respond to various inquiries and requests for advice. This year there were nineteen documented inquiries on a variety of topics. These included ethical advice for Executive Division employees, inquiries about public interest disclosure and whistleblower protection, questions about permissible gifts or benefits, and requests from deputy ministers or chief executive officers for advice on the administration of the Conflict of Interest Policy within their departments or agencies.

Where an inquiry is not within the mandate of my position, if possible I offer suggestions as to where a person might turn to have their questions answered. For example, a person inquiring about the conflict of interest regime for Members of the Legislative Assembly would be referred to the Conflict of Interest Commissioner.

Presentations

As a means to build and support a culture of public sector integrity, I continue to offer presentations on public service values and ethics.

At the invitation of the Director of Legal and Policy Services at the Department of Justice and Public Safety, on October 1, 2019 I presented to Legal Services lawyers on the topic of ethics and civility for public sector lawyers. The presentation and discussion focused on the responsibilities and expectations of public sector lawyers and included a discussion of the implications of the 2018 Supreme Court of Canada decision in *Groia v. Law Society of Upper Canada*.

On November 14, 2019 I met with public sector Human Resource Managers to review Section 8 of the Conflict of Interest Policy dealing with gifts and other benefits. These provisions state that employees must decline gifts, hospitality or other benefits which could influence their judgement or the performance of their work. The policy sets out the limited circumstances under which employees may accept a gift, favour or service. The presentation emphasized the importance of consistency of approach to this matter, and recommended that advice be sought if the proper course of action is unclear.

Pathways for Learning, one of the Learning and Development offerings of the Public Service Commission, includes a half day workshop on Public Sector Values and Ethics. This year I presented the workshop on November 20, 2019 and February 5, 2020, with an excellent attendance on both days. The workshop covers the roles of the Ethics and Integrity Commissioner and an overview of public sector values and ethics, with a particular focus on the key aspects of the Conflict of Interest Policy. Case studies worked on in small groups always generate meaningful discussion, and were noted in the participant evaluations as being a valuable aspect of the workshop. Several employees told me that they were able to count their attendance as partial fulfillment of the continuing education requirements of their professional regulatory body. Plans are underway to offer the presentation twice in 2020-2021, possibly with modifications to accommodate remote learning.

The Leaders in Action Pathway is available to classified civil service employees interested in developing their leadership skills and committed to assuming a senior leadership role and position in the public service as part of their career plan. Employees apply to participate, and a diverse cohort of twenty-four employees is selected. On February 6, 2020 I spent a half day with the current cohort of Leaders in Action on the topic of Public Sector Values and Ethics. The group was highly engaged in the subject matter, which made for excellent discussion.

PART II – CONFLICT OF INTEREST

The bulk of my time as Commissioner is spent on the administration of the Executive Division Conflict of Interest Policy. This policy includes requirements which differ from, or are in addition to, the provisions of the Conflict of Interest Policy generally applicable to public service employees. Many of the 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

provisions. For this reason, I describe the Executive Division Conflict of Interest Policy as “layering over” the general policy. Executive Division employees must be knowledgeable about both policies, for their own compliance and because employees who are deputy heads are responsible for the administration of the Conflict of Interest Policy within their own departments and agencies.

Following the general election in the spring of 2019 there was considerable movement in the Executive Division. This included changes in assignment (due in part to the reorganization of some government departments), new positions added to the Executive Division (such as assistant deputy ministers), as well as persons leaving the Executive Division. Initial changes took place immediately upon the new administration taking office, and changes continued over the summer of 2019 as various positions were filled and ministerial assistants were hired.

I held an orientation meeting with each person new to the Executive Division to explain my role, outline the conflict of interest policies, and review their initial conflict of interest disclosure statements. For persons coming into the Executive Division from the private sector, the public sector conflict of interest regime tended to be new and unfamiliar. I informed new deputy ministers of my availability to provide advice to them on conflict of interest matters which may arise within their own departments.

Persons acting in deputy minister or chief executive officer positions for six months or longer are subject to the Executive Division Conflict of Interest Policy. This practice captures the longer-serving acting deputy ministers and chief executive officers, while not requiring the many persons who serve for short periods throughout the year due to the temporary absence of an incumbent to be subject to the Executive Division regime.

Special advisors and assistants to members of Executive Council are Executive Division employees. This includes the executive assistant to the Premier and the ministerial assistants (formerly called cabinet liaison officers).

It is my practice to contact Executive Division employees to remind them of their responsibility to submit annual confidential disclosure statements and to remind them of the due date. Once the statements are submitted and reviewed, I meet with each employee as required under the policy. This provides the opportunity to address any questions which may arise from the statements (particularly year-over-year changes), as well as any other ethics or conflict of interest matters which the employee may wish to bring up with me.

The requirement to file disclosure statements is also triggered by a change in circumstances, which includes a change in assignment. As noted earlier, there were several changes of assignment this year. If the change in assignment comes shortly after the filing of annual disclosure statements, I require the employee to submit a brief descriptive form for changes in circumstance. Once filed, this form enables me to decide whether to require the submission of a complete new set of disclosure statements, or to accept the change of circumstances form and annual disclosure statements as one. I always meet with each employee who has a new assignment within the Executive Division to review the documentation and discuss any conflicts of interest or ethics issues which could arise in their new assignment.

To complete the process, for each Executive Division employee I prepare and file a disclosure statement for the Clerk containing the information outlined in the policy. In the case of the Clerk, the statement is provided to the Premier.

Appendix A is a list of positions for which 2019-2020 conflict of interest disclosure statements were filed.

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 website. No such disclosures have been received to date.

This year I reviewed the post employment restrictions with various employees transitioning out of the Executive Division, whether for retirement or other reasons. Employees leaving the Executive Division are subject to post employment restrictions as outlined in the policy, including a six month cooling-off period. The purposes of these post employment restrictions are to safeguard confidential government information and to protect against departing employees receiving preferential treatment from their former colleagues within government. Section 17 of the *Lobbyist Registration Act* also includes post employment restrictions applicable to certain positions within the Executive Division.

PART III – PUBLIC INTEREST DISCLOSURE AND WHISTLEBLOWER PROTECTION

The Public Interest Disclosure and Whistleblower Protection Policy, announced on October 13, 2015, remains in effect until the *Public Interest Disclosure and Whistleblower Protection Act*, Stats. PEI 2017, Cap. 11 is proclaimed. The policy 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.

I did not receive any disclosures of wrongdoing or reports of reprisal in 2019-2020. The disclosure of wrongdoing which was outstanding at the end of 2018-2019 was withdrawn by the employee early in 2019-2020.

CONCLUSION

In conclusion, I thank the Executive Division employees for their cooperation in the conflict of interest disclosure process. For several employees, this was their first experience with the process and they showed a willingness and openness to learning about their new responsibilities relating to conflict of interest.

Andrew Thompson retired as Chief Executive Officer of the Public Service Commission in 2019-2020, and I extend my thanks to him for his steadfast support of the work of this office since its inception.

Thanks also go to the Hon. Dennis King, Premier; Paul Ledwell, Clerk of Executive Council; Tanya Rowell, Chief Executive Officer of the Public Service Commission; and Delma Good, Executive Assistant at the Public Service Commission for their support in the execution of my duties.

Respectfully submitted,

Shauna Sullivan Curley

Ethics and Integrity Commissioner

Appendix A – Disclosure Statements 2019-2020

Clerk of Executive Council and Secretary to Cabinet*

Chief of Staff to the Premier

Principal Secretary and Senior Policy Advisor to the Premier

Deputy Minister, Agriculture and Land

Deputy Minister, Economic Growth, Tourism and Culture

Deputy Minister, Education and Lifelong Learning

Deputy Minister, Environment, Water and Climate Change

Deputy Minister, Finance

Deputy Minister, Fisheries and Communities

Deputy Minister, Health and Wellness

Deputy Minister, Justice and Public Safety and Deputy Attorney General

Deputy Minister, Social Development and Housing

Deputy Minister, Transportation, Infrastructure and Energy*

Children's Commissioner and Advocate

Clerk Assistant of the Executive Council

Secretary to Treasury Board

Senior Director responsible for Greater Charlottetown Area Economic Development/Partnership for Growth

Assistant Deputy Minister, Social Development and Housing

Assistant Deputy Minister, Health and Wellness

Assistant Deputy Minister, Intergovernmental and International Affairs

Chief Executive Officer, Finance PEI & Executive Director, Island Investment Development Inc.

Chief Executive Officer, Innovation PEI

Chief Executive Officer, Island Waste Management Corporation

Acting Chief Executive Officer, Liquor Control Commission & Cannabis Management Corporation

Chief Executive Officer, PEI Energy Corporation

Chief Executive Officer, Public Service Commission (2)

Chief Executive Officer, Tourism PEI

Executive Director, Climate Change Secretariat

Executive Director, Public Affairs, Premier's Office

Executive Assistant, Premier's Office

Ministerial Assistants (8)

*Received after year end