



**Annual Report**  
**of the**  
**Saskatchewan**  
**Conflict of Interest Commissioner**  
**Ronald L. Barclay, Q.C.**  
**2010**





June 17, 2011

The Honourable Don Toth  
Speaker of the Legislative Assembly  
of Saskatchewan  
Room 129, Legislative Building  
2405 Legislative Drive  
REGINA, Saskatchewan  
S4S 0B3

Dear Mr. Speaker:

I have the pleasure and honour to present to you the Annual Report of the Conflict of Interest Commissioner for the period of January 1, 2010 to December 31, 2010.

This Report is submitted pursuant to Section 25 of *The Members' Conflict of Interest Act*, Chapter M-11.11, Statutes of Saskatchewan, 1993.

Yours respectfully,

A handwritten signature in blue ink, appearing to read "R. L. Barclay".

Ronald L. Barclay, Q.C.  
Conflict of Interest Commissioner





## ANNUAL REPORT

### To the Legislative Assembly For the Year Ending December 31, 2010



It is an honour and privilege to submit my first Annual Report of the Office of the Conflict of Interest Commissioner for the Province of Saskatchewan. I was formally appointed to a five year term by Resolution of the Legislative Assembly of Saskatchewan on April 29, 2010.

The previous Conflict of Interest Commissioner was Gerry Gerrand, Q.C. whose term expired on April 24, 2010 by operation of Statute.

I would be amiss if I failed to pay tribute to Mr. Gerrand. While in practice he always wore his barrister robes with humility, dignity, integrity and compassion; and the same qualities were evident while acting as the Conflict of Interest Commissioner. While in office he contributed so much to ensuring that our Members of the Legislative Assembly maintain a high standard of ethical conduct.

I echo Mr. Gerrand's eloquent comments in his last report when he stated, "that the maintaining of the ethical integrity of our legislative institutions is fundamental to transparent and honest government."

### **Responsibilities of the Conflict of Interest Commissioner**

It is critical to underscore that the Conflict of Interest Commissioner is an Officer of the Legislative Assembly and is independent of Government. In my view, the complete independence granted to the Commissioner is essential in the carrying out of the statutory requirements detailed in *The Members' Conflict of Interest Act*.

The duties of the Commissioner were accurately described by Paul Fraser, Q.C. the Conflict of Interest Commissioner for the Province of British Columbia in his Annual Report 2010. The British Columbia legislation is similar to our *Members' Conflict of Interest Act*. He states:

The Commissioner:

- acts as an **adviser** to Members to ensure they meet their obligations under the *Act*
- meets with each Member at least annually to review the **disclosure** of the Member's financial interests
- **gathers information** in response to requests made under the *Act*
- may undertake a **formal inquiry** into alleged contraventions of the *Act*

The Commissioner's primary role is that of an adviser to Members. The Commissioner encourages Members to consult with him at the earliest opportunity if they have any questions or concerns about their obligations so that potential conflict of interest situations can be avoided. The majority of requests usually come from Ministers, given the wider scope of their duties and their additional obligations under the *Act*.

Requests for opinions come in various forms. Members may have an informal conversation with the Commissioner, or may make a formal request for a written response. If the Commissioner decides that a Member has or may have a conflict of interest, he can make recommendations specifying a timeframe for compliance.

The opinion and recommendations of the Commissioner are confidential unless released by the Member or with the Member's consent.

[In Saskatchewan, within 90 days after an election and annually by March 31<sup>st</sup> for each year after that], each Member must file a **confidential disclosure statement** with the Commissioner, in the form prescribed by the regulations. This disclosure statement must contain an accounting of the *nature* of the assets, liabilities and financial interests of the Member, the Member's spouse, minor children and private corporations they control.

The disclosure requirements are the same for all Members. There is a form on which they list their assets, liabilities and sources of income. There are accompanying forms for those who have minor children or interests in private corporations.

Once the confidential disclosure statement has been filed with our Office, the Member (and spouse if available) meets with the Commissioner to discuss their obligations under the *Act*. This annual meeting with the Commissioner is required for all Members.

After meeting with the Member, the Commissioner must prepare a **public disclosure statement** which contains all relevant information provided by the Member (and spouse if applicable).

Prior to my appointment on April 29<sup>th</sup> of 2011, Mr. Gerrand had already met with twenty-five (25) Members of the Assembly.

I subsequently met with the remaining thirty-three (33) Members.

They each consulted with me and where necessary, provided me with information I believed was lacking in their completed Disclosure Statement. I am satisfied that each Member is aware of his or her statutory obligations to avoid actual or perceived conflicts of interest in the carrying out of their legislative and executive responsibilities, and each is desirous of observing the letter and spirit of the *Act*.

Public Disclosure Statements for all fifty-eight (58) Members were duly filed on-line with the Office of the Clerk of the Legislative Assembly prior to June 30, 2010, as provided by Section 12 of the *Act*.

### **The Obligations of Members**

Persons elected to the Legislative Assembly of Saskatchewan are subject to statutory obligations designed to avoid any conduct that may constitute a conflict of interest on the part of the Member. These statutory obligations are set forth in *The Members' Conflict of Interest Act* adopted by the Legislative Assembly seventeen (17) years ago.

Members must avoid using information that they have acquired as Members of the Legislative Assembly and which is not available to the general public, for the purpose of advancing the private interest of his Member, his or her family, or an associate. This prohibition is set forth in Section 4 of the *Act*.

4 A member shall not use information that is gained in the execution of his or her office and not available to the general public to further or to seek to further the member's private interest, his or her family's private interest or the private interest of an associate.

Additionally, a Member must not use his or her position to influence other decision makers to advance the private interest of the Member, his or her family or associate. This prohibition is set forth in Section 5 of the *Act*.

5 A member shall not use his or her office to seek to influence a decision made by another person to further the member's private interest, his or her family's private interest or the private interest of an associate.

Members of the Legislative Assembly are prevented by statute from accepting, except in specific circumstances, any gifts or benefits offered to them in respect of the carrying out of the Member's duties. This prohibition is set forth in Section 7 of the *Act*.

7(1) Neither a member nor any of the member's family shall accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of the member's duties of office.

(2) Subsection (1) does not apply to a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office.

(3) Where a gift or personal benefit mentioned in subsection (2) is greater than \$200 in value, or where the total value received directly or indirectly from one source in any 12-month period is greater than \$200, the member shall immediately file with the commissioner a disclosure statement.

(4) The disclosure statement required pursuant to subsection (3) shall:

- (a) be in the form prescribed by the regulations; and
- (b) indicate the nature of the gift or benefit, its source and the circumstances under which it was given and accepted.

The interpretation of the provisions referred to above is based in part on the wording of Section 3 of the *Act* which provides a definition of Conflict of Interest.

3 For the purposes of this Act, a member has a conflict of interest when the member makes a decision or participates in making a decision in the execution of his or her office and at the same time knows that in the making of the decision there is the opportunity to further his or her private interest, his or her family's private interest or the private interest of an associate.

During the same session that *The Members' Conflict of Interest Act* was enacted and adopted, the Members moved and adopted the Code of Ethical Conduct for Members of the Legislative Assembly ("The Code of Ethical Conduct"). The comments of the Honourable Mr. Edward Blain Shillington, who rose to make a motion to provide for the adoption of the Code of Ethical Conduct, reflect the intentions of the Legislature as to the meaning of the word "conduct" in Section 32 of the *Act*. He states as follows:

With the adoption of this code, provincial legislators in Saskatchewan for the first time will have set out in writing their obligations and responsibilities. These responsibilities go beyond a commitment not to use one's position to benefit financially. These responsibilities and obligations include a fundamental commitment by members of this Assembly to honesty and integrity in public life.

[...]

Mr. Speaker, the adoption of this code of this comprehensive code of ethical conduct is not limited solely to conflict of interest or financial matters; it makes a significant contribution to our efforts to raise the profile of ethics in the government.

Mr. Speaker, this code is not intended to be cast in stone for all time. It is not an end in itself. Rather it should, and must, continue to be a reflection of the developing awareness of ethical decision making for politicians. This code should be seen as a starting point for our collective efforts to translate society's concern for a better government into higher ethical standards for legislators.

This code under consideration today is based on the assumption that although it is possible to develop a lengthy list of thou shalts and thou shalt nots, ultimate responsibility for applying ethical standards falls upon the individual legislator. The thrust cannot simply be directed toward catching people engaged in unacceptable behaviour, although clearly that's an important component. The basic goal of our efforts must be to facilitate and enhance the development of integrity in a public light.

Notwithstanding the fact that this code is intended to achieve these higher ethical standards, first and foremost by sensitizing members to the necessity of ethical decision making in politics, it must be recognized that there will be consequences for those who violate the code. The code will be enforceable by members of the assembly pursuant to s. 32 of the Members' Conflict of Interest Act currently before the legislature.

Section 32 of the above mentioned Bill permits the assembly, by resolution, to request the Commissioner to give an opinion on any matter that relates to the conduct of a member and it is in addition to the compliance of a member with such provisions of the actual legislation. In conducting any such investigation, the Commissioner has all the powers conferred on a Commissioner pursuant to the Public Inquiries Act.

Mr. Speaker, this represents a practical, reasonable mechanism for dealing with unacceptable behavior. Furthermore, it is consistent with our collective commitment that all members have some responsibility for ensuring that public interest is served.

Mr. Speaker, in concluding, I believe that time will judge this measure as a positive, as an innovative, sincere effort to protect public trust, thereby enhancing public confidence in the integrity of those elected to serve and ultimately in the institutions of parliamentary government.

[emphasis added.]

### **Inquiry**

I commenced an inquiry regarding the conduct of Joseph Serge LeClerc ("Mr. LeClerc"), then-MLA for Saskatoon Northwest, after receiving two written requests pursuant to *The Members' Conflict of Interest Act*, S.S. 1998, c. M-11.11 (the "Act") in May, 2010. One request was made by Ms. Judy Junor, Chair of the Official Opposition, regarding Mr. LeClerc's potential misuse of public funds in order to further his private interest. The second request was made by the Honourable Don Toth, Speaker of the Legislative Assembly, pursuant to a formal motion of the Legislative Assembly regarding the conduct of Mr. LeClerc in relation to an instant messaging transcript (the "Transcript") and phone recordings ("the Recordings") allegedly involving Mr. LeClerc which were provided to CBC News and subsequently made public.

Upon receipt of the above-noted requests for an inquiry and opinion regarding Mr. LeClerc, I appointed Maurice O. Laprairie, Q.C. as counsel.

In respect to the request received from the Honourable Don Toth, Speaker of the Legislative Assembly, dated May 20, 2010, his letter stated that the Legislative Assembly of Saskatchewan passed the following motion on May 19, 2010:

That pursuant to sections 32(1) and 33 of The Members' Conflict of Interest Act, this Assembly requests that the Conflict of Interest Commissioner conduct an inquiry and provide an opinion to the Assembly on the conduct of the Member for the Saskatoon Northwest with regard to the instant message transcripts and phone recordings allegedly involving that Member which were provided to CBC News, and matters relating to and arising from the transcripts and recordings.

Please accept this letter as formal notification of the Assembly's request for the Saskatchewan Conflict of Interest Commissioner to conduct the inquiry referred to in the motion and to provide an opinion on the results of the inquiry to the Legislative Assembly through the Speaker.

It will be noted that the opinion requested of the Commissioner, pursuant to Section 32(2) of the *Act* "relates to the conduct of a member of the Executive Council and that is in addition to the compliance of the Member of Executive Council with the provisions of this Act."

*The Members' Conflict of Interest Act* deals almost exclusively with the obligations of Members to avoid a conflict of interest in the carrying out of their legislative and executive responsibilities as persons elected as Members of the Saskatchewan Legislature. Section 32(2) relates to the providing of an opinion by the Commissioner respecting conduct "that is in addition" to the Members aforementioned responsibilities to avoid conflicts of interest.

It should be noted that this statutory provision is unique to the Province of Saskatchewan. All Canadian provinces and territories have statutory provisions similar to Saskatchewan's *Members' Conflict of Interest Act*, but no other Canadian jurisdiction has provision requiring the providing of an opinion by the Conflict of Interest Commissioner (or Ethics Commissioner as described under some statutes) respecting conduct of Members unrelated to conflict of interest issues.

The providing of the opinion requested by the Assembly necessarily requires consideration of the meaning of the word "conduct" as used in Section 32(2) of the *Act*.

After the request for an opinion was made and before the Inquiry was concluded, Mr. LeClerc resigned his seat in the Legislature effective August 31, 2010. Despite Mr. LeClerc's resignation, the Inquiry continued as section 33(7) of *The Members' Conflict of Interest Act* provides that I may comment on the conduct of a former member.

In my opinion, I did make reference to Mr. LeClerc's colourful history and his contributions to society. At paragraph 30 and 31, I state as follows:

30 Mr. LeClerc has a colourful history which has afforded him experience and abilities that are unique, and it is these attributes which form the basis of the *Career 7* business. His book describes his formative years as moving from a poverty-stricken inner-city youth to a young offender, a runaway street kid, a gang leader and a drug king-pin who served a total of twenty-one years in prison while battling a twenty-year drug addiction. He went on to begin university studies in Sociology and Social Work while still in prison, and later attended the University of Waterloo while on parole. Mr. LeClerc describes himself as having indepth knowledge in penology and corrections; crime, gang and social issues within the culture of poverty; poly-substance abuse and addiction; and the reality facing modern day youth and their families. In February, 2000, Mr. LeClerc was granted a pardon by the Government of Canada's National Parole Board (now referred to as the Parole Board of Canada).

31 Mr. LeClerc is an engaging and inspirational public speaker, and I have no doubt that he has had a positive impact on various individuals in Saskatchewan, not only through his work with Career 7, but from his contributions while he was an MLA for Saskatoon Northwest. His demonstrated ability to overcome a tumultuous and challenging personal history is commendable.

After a lengthy Inquiry, I made the following finding:

118 Mr. LeClerc's admitted use of marijuana and having someone at his home with cocaine, which I accept occurred while he was an MLA, and his admitted removal and throwing away of the hard drive to Mr. LeClerc's Government Laptop computer, which Mr. LeClerc admitted occurred while he was an MLA, are actions which I find to be clear violations of the Code of Ethical Conduct. Particularly, Mr. LeClerc's actions contravene the second paragraph of the Declaration of Principles which provides that "members of this Assembly must act not only lawfully but also in a manner that will withstand the closest public scrutiny". Mr. LeClerc's actions are unethical, and are highly inappropriate for an elected representative of the people of Saskatchewan. His actions do not withstand public scrutiny, and it is therefore my opinion that Mr. LeClerc breached the Code of Ethical Conduct.

Tragically, Serge LeClerc, after a courageous battle with cancer died in Trenton, Ontario on April 16, 2001. I wish to extend my sympathy to his family on their loss.

The other opinion requested was by Judy Junor, Member of the Legislative Assembly for Saskatoon Eastview in her letter of May 13, 2010. The operative portion of Ms. Junor's letter is as follows:

On behalf of the Official Opposition Caucus, I am writing to request that you immediately investigate the actions of Mr. Serge LeClerc, the Member from Saskatoon Northwest, with respect to his compliance with *The Members' Conflict of Interest Act* concerning the potential misuse of public funds in order to further his private interest.

In particular, I wish to draw your attention to concerns that Mr. LeClerc may have used his constituency assistant and office to further his private interest. Until recently Mr. LeClerc listed his constituency assistant as the primary contact for his personal business. When questions arose about this issue a few weeks ago, Mr. LeClerc removed his constituency assistant's name from his business website.

Other key information was also deleted from the business website, including dates of Mr. LeClerc's past speaking engagements, which could have been cross-referenced with his MLA and Legislative Secretary expenses to ensure that no misuse of public funds occurred.

In my opinion I made reference to Sections 32(1) and 33 of the *Act*.

These provisions state:

32(1) The Assembly may request, by resolution, that the commissioner give an opinion on any matter that relates to the conduct of a member and that is in addition to the compliance of the member with the provisions of this Act.

33(1) The commissioner may conduct an inquiry on receiving a request under section 32.

(2) The commissioner shall provide the member concerned with reasonable notice of an inquiry pursuant to subsection (1).

(3) For the purposes of an inquiry under this section, the commission has all the powers conferred on a commissioner pursuant to *The Public Inquiries Act*.

(4) Where the request for an opinion is made under subsection 32(1), the commissioner shall report his or her opinion to the Speaker.

(5) On receipt of an opinion pursuant to subsection (4), the Speaker shall lay the opinion before the Assembly as soon as is practicable.

(6) Where the request for an opinion is made under subsection 32(2), the commissioner shall report his or her opinion to the President of the Executive Council.

(7) In conducting an inquiry pursuant to this section, the commissioner may comment with respect to the conduct of:

(a) former members of the Assembly; and

(b) former or current employees in the public service within the meaning of *The Public Service Act, 1998* or former or current employees of a Crown corporation.

I came to the conclusion that without the expressed authority outlined in sections 32(1) and 33, I would not have jurisdiction to provide an opinion on these matters, which are unrelated to issues of conflict of interest outlined in the *Act*. Although I found that LeClerc's constituency assistant had done work for his public speaking business during constituency hours and had used government equipment, it was not a conflict of interest as defined by the *Act* and therefore I had no jurisdiction to deal with the matter.

### **RECOMMENDATIONS**

I did, however, in my opinion make recommendations in respect to the use of constituency and office staff and telephone and related expenses.

These recommendations are:

73. The Directives provide all MLAs with detailed explanations regarding expenses they are entitled to claim from various categories to assist them in fulfilling their duties and responsibilities. The Directives and associated explanatory notes entitled "Discussion" included in the Manual outline the procedures required for payment of expense claims. The Manual also outlines the principles governing the use of these expense allowances, which read as follows:

- That all reimbursements or payments sought are in keeping with the intent of the legislation;
- That expenditures from the allowances be such that they do not call into question the integrity of the Member;
- That, as expenditures from the allowances are expenditures from the public purse, they are for the benefit of all Saskatchewan residents regardless of political persuasion; and,
- That, as expenditures from the allowances are expenditures from the public purse, they be documented and supported by sound accounting procedures.

74. The ultimate responsibility for the propriety of an expense payment remains with the MLA. The Manual indicates that a good general guideline that may assist in determining if a payment is appropriate is to ask, "can this expenditure be justified to my constituents?" Given this background, I wish to address Directives #2 and #6 with some specificity in order to provide recommendations for the Board of Internal Economy and members of the Legislative Assembly.

75. Of particular interest to me is Directive #2 which governs “Telephone and Related Expenses”, and particularly clause 3 which governs the reimbursement of telephone expenses by an MLA:

(3) Members who incur telephone expenses that are not business related are expected to reimburse the Crown for these charges. Such reimbursements must include the GST component if it is not already included in the charge.

76. The “Discussion” of this provision in the Manual provides an explanation of this clause:

Members and their constituency office staff are expected to reimburse the Legislative Assembly for personal telephone calls [...]. To do this, a cheque should be made payable to the Minister of Finance and sent in with the bill that has the personal calls indicated on it.

77. Clause 3 of Directive #2 applies to all telephone bills which the Legislative Assembly pays for on behalf of an MLA, including: office phones; mobile phones; and residential office phones.

78. “Personal calls”, or calls considered “not business related”, are those which are not related to MLA business. The one exception arises in the circumstance when an MLA is out of town on MLA business, and places a phone call home to speak with his or her family. Such a phone call does not require reimbursement. Aside from this exception, any phone call that incurs a charge and is personal, and is not related to MLA business, must be reimbursed.

79. In my view, it is important that such reimbursement is provided in accordance with the terms of Directive #2, and that this be viewed as a serious obligation.

80. However, it is my recommendation that the procedure for reimbursement as outlined in the “Discussion” quoted above be somewhat modified to increase ease and efficiency. I recommend that each MLA be required to maintain a record of the charges incurred for personal, non-MLA related telephone charges. Every six months the MLA shall then reimburse the Legislative Assembly for the accrued amount for that period of time. Although a detailed list of calls should be kept by each MLA, it need not be provided with the payment.

81. Directive #6 governs the remuneration applicable to a constituency assistant employed to assist with a member's duties in his or her constituency. There is no express provision which indicates the appropriate responsibilities for which an MLA may retain a constituency assistant. However, the "principles" applicable to all Directives, as outlined above, do provide thoughtful guidance as to what is appropriate to ask an assistant, who is paid by the Legislative Assembly, to do.
82. For further guidance of MLAs, I recommend that express provisions are included in Directive #6 or the discussion related thereto to prohibit an MLA from employing a constituency assistant in any other capacity aside from that role, whether for remuneration or not.
83. As to the appropriate use of constituency assistants, by way of analogy I agree and adopt the comments of the Honourable Madam Justice Denise E. Bellamy who presided over the Toronto Computer Leasing Inquiry established by the City of Toronto. On this issue the distinguished jurist said:

**Councillors and staff should not ask other City employees to perform work that is unrelated to City business during office hours.**

The dividing line between work and personal life is not an iron curtain. It is perfectly acceptable to attend to short items of personal business that crop up during a workday. It is also perfectly acceptable, for example, to do a quick personal favour for someone else. That is basic human kindness.

This recommendation is aimed at something different. Councillors or staff with outside interests or projects should not impose on staff to further them. Councillors or staff should not run the risk of making a worker feel obliged to do something during work hours that is not the City's work. The keys to ascertaining what crosses the line are whether the task is obligatory, or more than a trivial intrusion on the staff member's time. If the task is either one of these, councillors or staff should not ask that it be done during work hours.

84. In addition, Directive #4.1 entitles MLAs to receive reimbursement for, or to have direct payment made on his or her behalf, for office equipment, including computers, to facilitate the fulfillment of their duties and responsibilities. Such equipment may be occasionally used for personal matters, but only on an occasional and infrequent basis.

85. The foregoing recommendations are made with the hope that if they are implemented, they will help clarify the MLA's responsibilities and avoid further complaints and inquiries.

**Budget of the Office of the Conflict of Interest Commissioner**

The total amount expended for the Office of the Conflict of Interest Commissioner for the year 2010 was \$297,869.90. This included expenditure in the amount of \$150,000.00 for legal fees for the law firm of MacPherson Leslie and Tyerman who acted as counsel for the Commissioner on the LeClerc Inquiry. A special warrant was issued for this expenditure.

The budget for the Office of the Conflict of Interest Commissioner for the year 2010 was \$156,000.00. If you excluded the legal expense for the LeClerc Inquiry the amount actually expended was \$147,869.90.

The budget for 2011 is the sum of \$145,000.00.

**Expression of Appreciation**

I wish to express my appreciation to Deb Zick my executive assistant and to Ron Samways and Allison Gartner from the Clerk of the Legislative Assembly Office for their assistance. The year 2010 was a very productive and fulfilling year. Our achievements could not have been possible without the dedication and contributions of Deb Zick, Ron Samways and Allison Gartner. I extend my sincere thanks to each of them for their valuable service.

DATED at Regina, Saskatchewan this 17<sup>th</sup> day of June, 2011.



Ronald L. Barclay, Q.C.  
Conflict of Interest Commissioner  
for Saskatchewan









