HOUSE OF ASSEMBLY

NEWFOUNDLAND AND LABRADOR

ANNUAL REPORT

OF

THE COMMISSIONER OF MEMBERS' INTERESTS

1995-96

JUNE 11, 1996

June 11, 1996

Honourable Lloyd Snow
Speaker
House of Assembly
Province of Newfoundland

Dear Speaker:

I present the 1995-96 Annual Report of the Commissioner of Members' Interests which is to be tabled in the House of Assembly pursuant to Section 35 of the House of Assembly Act.

A copy of this Report will be forwarded to the Legislative Librarian for future reference by Members of the House of Assembly. Also, this Report will be given to the Queens Printer to respond to public requests for reproduction.

Yours sincerely,

D. Wayne Mitchell
Commissioner of Members' Interests

INTRODUCTION

This is the third Annual Report on the administration of conflict of interest legislation since the election of Members of the House of Assembly in the Provincial General Election of May 3, 1993. The Annual Report presents:

1) a status report on conflict of interest amendments raised in previous years;

2) an assessment of Members' compliance with conflict of interest obligations;

3) a description of post-election private interests disclosure for the 48 Members elected on February 22, 1996;

4) summaries of Commissioner interpretations on the application of conflict legislation to individual situations;

5) highlights of Commissioner activities in the year; and

6) observations on the current state of conflict of interest administration.

CONFLICT OF INTEREST LEGISLATIVE AMENDMENTS

The need for amendments to deal with inadequate or ambiguous legislative provisions in Sections 30, 31, 36 and 41 of Part II - Conflict of Interest of the House of Assembly Act was first raised in my Annual Report of April 25, 1994. These are reproduced in Appendix 1. In my second Annual Report of May 5, 1995 it was noted that a Select Committee of the House of Assembly still had not completed its deliberations on the legislative issues presented a year earlier. The Select Committee eventually released a Report which contained recommendations for legislative drafting to:

- exclude employment contracts resulting from public competitions conducted by the Public Service Commission from Section 30 post employment contracting prohibitions applicable to former Ministers;

- delete the requirement for the Commissioner to make a waiver determination under Section 31 for post employment of former Ministers;

- allow commonly accepted financial reports to be filed under Section 36 where audited financial statements are not available;

- require Members and their families to submit financial statements under Section 36 for all companies, even those where less than a 10% interest is held;

- clarify Sections 36(2)(c) and 36(3)(1) to ensure there is full and complete disclosure of private interests for spouses; and

- resolve any contradiction between privileged disclosure under Section 36(5) and the requirement to hold documents for inquiries in Criminal Code proceedings under Section 41.

The Provincial Government has not taken any action in response to the Select Committee Report. It remains for the Department of Justice to prepare appropriate legislative amendments in these areas for Cabinet consideration. Also, an amendment is to be made to Section 49, pursuant to the regulatory reform initiative of the Provincial Government, to remove the regulation making authority of the Lieutenant Governor in Council and allow the Commissioner to issue forms and otherwise generally give effect to the purpose of the Act.

MEMBERS COMPLIANCE WITH CONFLICT OF INTEREST OBLIGATIONS

The annual disclosures of private interests by all 52 Members of the House of Assembly for 1995-96 were reviewed and meetings held with individual Members, where necessary, in the first three months of the year. Updated Public Disclosure Statements were finalized and placed on the Public Register of this Office by the middle of July, 1995.

Most Members were careful to make complete disclosure of private interests. There were some who neglected to give updated values or compare private interests exactly with those reported previously. This necessitated additional liaison with individual Members who readily supplied more comprehensive private interests information when contacted.

There were no significant problems of compliance detected from the annual filing process except for the tardiness of several Members in submitting their completed disclosure forms by the April 1, 1995 deadline. As this was the first occasion that the Members in question missed a disclosure deadline and since the delay did not interfere with the administration of the Act, no further action was taken against the delinquent Members.

The reporting of material changes throughout the year as required under Section 36(4) was overlooked by some Members. This became evident from responses to my November 20, 1995 shareholding questionnaire. The first time share transactions were mentioned by certain Members, since the annual filing, was when the questionnaire was returned. Generally, the share values reported were below $10,000. Hence, there was no need to update the Public Disclosure Statements for the Members affected.

Two Members of the House of Assembly resigned their seats in the year. These Members were advised that their privileged conflict of interest material on file with this Office would be retained for one year and then destroyed pursuant to Section 41. One of the Members, who was a Cabinet Minister, was also informed of the post-employment provisions under Section 30 that continue to apply to former Ministers for one year after leaving office.

The Members elected in the Grand Falls By-Election of June 27, 1995 and the Gander By-Election of October 10, 1995 disclosed their private interests in a timely fashion. A Public Disclosure Statement for the Member for Grand Falls was finalized on October 16, 1995. The Public Disclosure Statement for the Member for Gander could not be completed before the Provincial General Election was called in January, 1996.

POST-ELECTION PRIVATE INTERESTS DISCLOSURE

A Provincial General Election was held on February 22, 1996 in which 48 Members instead of 52 Members were elected due to electoral boundaries redistribution. Only 42 of the Members in place at dissolution of the House of Assembly sought re-election and 30 of these Members were re-elected.

The Members who did not return to the House of Assembly following the General Election were informed that their privileged conflict of interest material would be destroyed after one year. Also, departing Cabinet Ministers were reminded of the post-employment provisions for former Ministers that apply for one year after leaving office.

The 18 new Members who were elected on February 22, 1996 were apprised of conflict of interest legislation immediately upon their appointment to Cabinet on March 14,1996 or swearing-in on March 20, 1996. Three separate briefing sessions were subsequently scheduled for the new Members to become acquainted with conflict of interest obligations. Three Members availed of this opportunity. The new Members were requested to complete the initial disclosure of private interests for themselves and families within sixty days of their formally becoming Members of Cabinet or being sworn-in as Members of the House of Assembly.

The 30 Members who returned to the House of Assembly after the General Election were required to file an updated disclosure of private interests within sixty days. This replaced the annual disclosure of private interests that would otherwise have occurred for 1996-97 in the absence of a General Election.

CONFLICT OF INTEREST INTERPRETATIONS

On several occasions throughout the year Members sought advice on the application of conflict of interest legislation to individual situations. The specifics of these referrals and the identity of the Member seeking advice cannot be divulged as this constitutes privileged communications. Also, a situation arose in the year where I felt it was advisable to inform Members that they should act not only to prevent a real conflict of interest but also avoid the perception of conflict.

The following are examples of preventative measures Members were encouraged to take to satisfy the letter and spirit of conflict of interest legislation:

Application for Crown Agency Assistance from Minister's Brother

A Minister requested advice on whether there was a conflict for an Agency that reported to this Minister approving an application for assistance from the brother of the Minister. The Minister was advised that the Agency's decision did not literally fall under conflict of interest legislation as the definition of family under Section 20(c) of the Act does not encompass brothers.

It was suggested that public credibility in the Agency's handling of this application would be enhanced if it could be demonstrated that: the type of assistance applied for is publicly known to be part of the Agency's established mandate; staff of the Agency made the decision based on an objective evaluation using established criteria without any input by the Minister; and the same evaluation and approval process would be used in dealing with similar applications.

Labrador Mineral Exploration Investments

Mineral discoveries in Voisey's Bay, Labrador have led to accelerated exploration and associated business activities with resultant speculation in stocks of various Companies. Ministers and their families were expressly prohibited by the former Premier from making investments in companies exploring in Labrador or other companies that benefit directly from mineral exploration. This action was taken in line with the general principle that Ministers should not put themselves in a position that any person who is fully aware of the facts could reasonably perceive them or their families to be in an actual conflict of interest position, such as benefiting from knowledge that has come through public office.

On August 7, 1995 I sent a circular to all Members regarding mineral exploration shareholdings. It was suggested that Members of the Liberal Caucus should not hold such investments given the public perception of information sharing with Cabinet Colleagues. A more tenuous public perception problem was suggested for Members

in the Opposition holding such shares given that an Act of the Legislature at the time prohibited a class of public employees from making such investments. It was felt that Members of the House of Assembly might be held to higher standards than public employees.

These suggestions to Members outside of Cabinet were made to enhance public perception of ethical activities. I explained to Members that the Act only empowers me to address real situations of conflict. Therefore, it is up to the Members to conduct themselves such that their actions withstand public scrutiny. Most Members accepted my advice. There are some who disagree that private Members or their families should be constrained in investing to the same extent as Members of the Cabinet.

Minister Withdrawal From Decision Making

A Minister was appointed to a new Cabinet post in the year with added responsibility for a Government Agency which previously awarded a tender for office space to a Company owned by the Minister. In order to remove any potential for conflict in Agency dealings on leasing arrangements with this particular Company, the Minister was advised to write the President of the Agency requesting that the alternate Minister be consulted on any matters pertaining to the leased premises.

Member Withdrawal from House of Assembly Debate

One Member of the House of Assembly enquired whether the holding of shares in mineral exploration companies preclude the Member from participating in debate on a Mining and Mineral Rights Tax Act. I reminded the Member that action to withdraw from participating in the consideration of a matter under Section 33 is dependent upon a determination under Section 25 as to whether the matter being debated is of general public application or affects the Member as one of a broad class of the public. If in doubt, I advised the Member to record in the House of Assembly the potential for conflict and withdraw from voting or consideration of the matter.

Former Minister Post-Employment Waiver

On March 8, 1996 I received a request for a waiver under Section 31 so that the former Minister of Justice and Attorney General could temporarily serve as Chief of Staff to the Premier in the transition to a new Government. The Minister did not run in the February 22, 1996 Provincial General Election and relinquished his Cabinet post on March 14, 1996 when the new Cabinet was sworn in.

It was initially difficult for me to find an overriding public interest in a former Minister occupying an established position within Government. I was subsequently persuaded that it would be at variance with the public interest for a new Premier to be denied the temporary services of a person with vast political and governmental experience considered valuable in the transition. Also, in canvassing other jurisdictions, I discovered that Governmental service by former Ministers is generally accepted as

being in the public interest. In the light of the broad interpretation of public interest elsewhere and considering the Premier's expressed need for experience in the transition period, I granted a waiver for the former Minister of Justice to serve as Chief of Staff for a short period until April 30, 1996.

COMMISSIONER ACTIVITIES IN 1995-96

More effort was exerted in discharging Commissioner duties in 1995-96 than the twelve weeks or so it typically takes to: deal with annual filings; respond to Members' requests for advice on the application of conflict of interest to specific situations; and prepare an Annual Report. Additional work was generated in the year on account of: new private interest filings connected with the Provincial General Election; the special survey of Members' shareholdings in Companies involved with mineral exploration and related development in Labrador; and calling for proposals for independent legal services to the Commissioner.

The work of Commissioner was interspersed with immense pressure to perform the dual role of Chief Electoral Officer. The latter function created exceptional demands throughout 1995-96 in conducting a Provincial Plebiscite, two By Elections and a General Election. Consequently, work had to be prioritized in meeting the two statutory mandates. This meant that Commissioner duties were interrupted at times. Fortunately, conflict of interest matters did not arise in these periods that had to be left unattended.

The budget for Commissioner of Members' Interests, that was included in the 1995-96 Estimates for the Office of Chief Electoral Officer, amounted to $35,500. The actual expenditures for the year totalled $14,785 for printing, legal services, attendance at two meetings and fit up of an office at Confederation Building. There are no salaries paid for the discharge of the Commissioner mandate in this Province.

The Commissioners responsible for conflict of interest at the Federal and Provincial levels in Canada held their annual meeting in Ottawa on October 24, 1995. At this meeting valuable information was exchanged on conflict of interest interpretations and Commissioner decisions in applying their respective statutes in various Canadian jurisdictions.

A Special Joint Committee of the Senate and House of Commons on a Code of Conduct for Parliamentarians invited the Commissioners attending the October 24, 1995 Canadian Conflict of Interest Network (CCOIN) Meeting to appear before them on October 23, 1995. My presentation to the Committee covering conflict of interest for elected Members in this Province is reproduced in Appendix 2 to this Report.

A request for proposals to provide legal services to the Commissioner was circulated to law firms in December, 1995. Three proposals were received with the proposal of Stewart McKelvey Stirling Scales judged best. A three year Agreement was prepared to cover legal services to the Commissioner.

Material on conflict of interest in this Province and elsewhere continues to be displayed at the Office of Chief Electoral Officer, 39 Hallett Crescent, O'Leary Industrial Park, St. John's. This material is available for public inspection during normal office hours. Once again in 1995-96 there were few public requests to view the materials. Occasionally, media representatives perused documents and sought clarification of conflict of interest legislation

applicable to Members of the House of Assembly.

The privileged communication between Members and the Commissioner requires me to devote considerable personal attention to matters raised as most of the issues cannot easily be delegated. Whenever it has been necessary to seek legal input, Mr. Michael Harrington, Q.C. has provided sound advice and prompt service. Also, Ms. Janet Lewis, Secretary to the Chief Electoral Officer has provided indispensable administrative support for the Commissioner function thereby achieving economies of scale as originally intended in having the Chief Electoral Officer perform the dual role of Commissioner of Members' Interests.

On December 21, 1995 an Act Respecting Standards of Conduct for Non-Elected Public Office Holders was passed. Under Section 17 of this Act, the Commissioner of Members' Interests is to handle appeals from virtually all public office holders who object to executive decisions respecting non-fulfilment of conflict of interest obligations. The magnitude of this additional work load is difficult to predict in advance of proclamation of the new Act.

SUMMARY AND OBSERVATIONS

Members of the House of Assembly took a bold initiative in 1993 by passing conflict of interest legislation to regulate their own conduct in public office. This commitment to ethics in Government was reinforced by appointing an independent Officer of the House of Assembly to monitor compliance of all Members with Part II - Conflict of Interest of the House of Assembly Act. Also, Ministers were exhorted by the Premier to follow high ethical standards in carrying out their public responsibilities.

There must be a continuing, collective effort to achieving ethics in Government. To this end, a number of observations on the current state of conflict of interest administration are commended to the attention of newly elected Members and a new Government at the commencement of the Forty-Third General Assembly.

Conflict of interest amendments that were first suggested more than two years ago have still not been acted upon. The initial delay by a Select Committee of the House of Assembly in dealing with my first Annual Report has been prolonged by Government inaction in drafting legislation to give effect to the eventual recommendations of the Select Committee. Prompt action is now required to remove legislative inadequacies and ambiguities that have been found to exist in the comprehensive conflict of interest Act passed in 1993.

Instances of Members having made superficial disclosure of private interests or overlooked deadlines for initial and annual disclosures as well as material change reporting have been excused given the particular circumstances. Such transgressions do serve to demonstrate the need for all Members to be vigilant in adhering to the entire Act not only as a matter of legal obligation but also to show that Members pay close attention to the duties of public office.

The Hansard account of House of Assembly proceedings for May 27, 1993 refers to conflict of interest legislation for Members as the fourth in a series of fundamental reforms introduced by the Liberal Government to the Provincial parliamentary process. This legislation set the minimum standard for Members to follow. Beyond this, Cabinet Ministers in the Wells Administration were expected to act without creating a perception of conflict for themselves or their families. Now that a new Government is in place, it is important that conflict of interest continue to be a high priority and be manifested through rigorous standards and strong enforcement particularly at the Cabinet level.

The dual appointment of Chief Electoral Officer as Commissioner of Members' Interests has necessitated the juggling of priorities between two separate, statutory mandates in each of the last three years. With electoral activities taking precedence, there are times when Commissioner duties must be left unattended. By continuing this arrangement, there is a risk that there will not be vigorous and effective conflict of interest administration at all times. This situation will be compounded through further expansion of the Commissioner mandate in dealing with conflict of interest appeals from most public office holders. These factors, when combined with earlier arguments for separation of the two Legislative Officer

positions, make it advisable for the House of Assembly to again revisit the dual appointment of Chief Electoral Officer as Commissioner of Members' Interests. Such re-evaluation is made more urgent as the economies inherent in the Commissioner drawing upon Office of Chief Electoral Officer administrative support and resourcing are significantly impacted by the 1996-97 Provincial Budget.

Under the recently passed Act Respecting Standards of Conduct for Non-Elected Public Office Holders, the Commissioner of Members' Interests is to handle conflict of interest appeals from virtually all persons employed by Government and Crown Agencies. There are exceptions for political staff, chief operating officers and Deputy Ministers who are to appeal to the Trial Division. It would be preferable to have one mechanism of appeal under this new Act to ensure conformity in approach and consistency in decision making for all public office holders especially when the Commissioner of Members' Interests is not a judge and has no legal training.

Members of the Forty-Second General Assembly displayed a high level of support for conflict of interest legislation. This is evidenced by the absence of significant non-compliance issues or penalties having to be imposed in almost three years working with the new Act. The challenge now is for Members of the Forty-Third General Assembly to continue the resolve to have strong conflict of interest standards in place and to be guided in their public actions by these legislated standards as well as public perception of ethical conduct.

APPENDICES

APPENDIX 1 - EXCERPT FROM 1993-94 ANNUAL REPORT

SECTION 30(2) - WAIVER EXEMPTION FOR PUBLIC COMPETITIONS

The requirement under Section 30 for a Government Department or Crown Agency to obtain a waiver from the Commissioner before granting contracts to former Ministers, within one year of their leaving office, excludes contracts awarded by public tender. In the situation of a former Minister's solicitor contract with the Department of Justice, it was determined that the public tender reference was not broad enough to encompass a public competition. Therefore, the public interest of a waiver had to be addressed. **The Legislature may wish to consider whether employment contracts offered through public competitions conducted by the Public Service Commission should be explicitly referenced together with public tender as exclusions from a waiver under Section 30(2).**

SECTION 31 - APPLICATION FOR WAIVER FROM GRANTING ENTITY

Section 31 only requires a former Minister to make application for a waiver to obtain contracts or benefits from Government or a Crown Agency within one year of leaving office. Meanwhile, Section 30 contemplates a waiver from the Commissioner for both the Department or Agency to make an award and the former Minister to receive the contract or benefit.

This anomaly was noticed in the waiver determination for a former Minister to receive an Occupational Health and Safety consulting contract from the Minister of Employment and Labour Relations. In this instance, the public interest served by a waiver was addressed both from the perspective of the granting authority as well as the recipient. **The Legislature may wish to consider clarifying the requirement for a dual waiver under Section 31.**

SECTION 36 - SUBMISSION OF AUDITED FINANCIAL STATEMENTS

The legislation provides for audited financial statements of companies in which the Member and/or family hold 10% or more interest to be supplied as part of the private interests disclosure. In the majority of cases where Members and families have business holdings, audited statements are not available but other forms of financial reports are prepared.

I understand that audited financial reports are generally accepted for various purposes such as filing of income tax returns. Therefore, I have chosen to accept such reports for purposes of Members' initial disclosure rather than impose a costly burden to have audited statements prepared that are not necessary in the normal course of business. **The Legislature should consider amending Section 36 to give flexibility to accept commonly accepted financial reports where audited financial statements are not available.**

APPENDIX 1 - EXCERPT FROM 1993-94 ANNUAL REPORT

SECTION 36(3) - FULL DISCLOSURE OF SPOUSAL PRIVATE INTERESTS

The Act contemplates full disclosure of the private interests of the Member's family. This has been followed by 51 Members of the House of Assembly in their initial and annual filings.

The lone exception is partial reporting for the spouse of the Member for Humber East. The Member for Humber East has stated that the interests disclosed are to the best of the Member's knowledge and that the spouse refuses to make further disclosure and especially to provide financial statements of companies where more than a 10% interest is held.

The compliance of the Member for Humber East with the disclosure obligations under the legislation is open to interpretation given the Section 36(2)(c) onus to disclose family interests "to the best of the Members's knowledge, information and belief" and the requirement of Section 36(3) to make "a full statement of private interests of the Member's family". I am concerned, however, that such partial reporting of spousal interests may risk the integrity of the legislation and weaken the support evident from all other Members in making spousal disclosure. **For these reasons, I feel the Legislature must deal with the incomplete disclosure by the Member for Humber East both for the initial filing in August, 1993 and annual filing in March, 1994.**

PRIVILEGED CLASSIFICATION OF DISCLOSED PRIVATE INTERESTS

Section 36(5) of the Act refers to all private interests disclosed by the Member and family as privileged except to the extent necessary to ensure compliance with the Conflict of Interest Part of the House of Assembly Act. Meanwhile, Section 41 appears to diminish this general privilege by obliging me to tender documents in Criminal Code proceedings. **It is therefore advisable for the Legislature to clarify its intention in these matters.**

APPENDIX 2

PRESENTATION TO SPECIAL JOINT COMMITTEE ON A CODE OF CONDUCT

BY

D. WAYNE MITCHELL
COMMISSIONER OF MEMBERS INTERESTS
PROVINCE OF NEWFOUNDLAND

October 23, 1995

APPENDIX 2

INTRODUCTION

It gives me great pleasure to appear before Honourable Members of the Senate and House of Commons as part of your public hearings into the development of a code of conduct for parliamentarians. Furthermore, it is a privilege to participate with my Commissioner Colleagues in sharing our experiences with the evolution of ethics for elected representatives of Provincial Legislatures.

NEWFOUNDLAND & LABRADOR OVERVIEW

One of the early actions taken by the Liberal Administration of Clyde Wells after the General Election of May 3, 1993 was to pass new legislation governing conflict of interest for Members of the House of Assembly and Ministers of the Crown. Part II - Conflict of Interest - House of Assembly (Amendment) Act, Chapter 1, S.N. 1993 replaced Conflict of Interest (Ministers) Guidelines, 1982.

I was deeply honoured that Premier Wells proposed my appointment as the first Commissioner of Members' Interests which was unanimously approved by the House of Assembly prior to proclamation of the new legislation on June 1, 1993.

The conflict of interest statutory framework for elected Provincial representatives in Newfoundland and Labrador specifies:

- standards of conduct for Members and Ministers to prevent furthering of private interests for themselves and their families from public office.

- the appointment of an independent Commissioner with powers to adjudicate Members' compliance under the Act' conduct inquiries; and recommend penalties for non-compliance to the House of Assembly.

- annual and material change disclosure to the Commissioner of all private interests held by Members and their families.

- public disclosure of defined private interests for Members and their families.

- annual reporting to the House of Assembly on the operation of the Act in general and the Commissioner's Office in particular.

APPENDIX 2

CONFLICT OF INTEREST OBSERVATIONS THAT MAY BE RELEVANT TO THE COMMITTEE'S DELIBERATIONS

Legislated conflict of interest standards in Newfoundland establish basic requirements to govern elected representatives in the conduct of their public duties. These standards also provide an objective means for others to assess the separation of public duties from private affairs. Specifically, there are prohibitions under:

Section 22 on influencing decisions;
Section 23 on use of insider information;
Section 26 on accepting gifts or personal benefits;
Section 28 on evasion of obligations by sale of interests;
Section 32 on contracting with Government in certain circumstances; and
Section 33 on participating in decisions furthering private interests.

It may be said that ethics in its truest sense constitutes obedience to these standards without the need for enforcement.

In addition to standards for all Members of the House of Assembly to follow, the Newfoundland legislation recognizes the sensitivity of Ministerial decision making by requiring under:

Section 27 that Cabinet Ministers refrain generally from outside business activity.

Section 29 that Ministerial action ought not to be influenced by employment offers.

Section 30 that a waiver be granted by the Commissioner for Ministers to receive post employment contracts or benefits within one year of leaving a Government Department or Agency.

Section 33 that Ministers withdraw from Department or Cabinet decision making that may benefit their own private interests.

It would seem from public scrutiny given to Ministerial actions that the rigid adherence to these higher standards of conduct by Ministers is indispensable to fostering public credibility on Governmental ethics.

Undoubtedly, the most onerous feature of the Newfoundland conflict of interest legislation is the requirement under Section 36 for disclosure to the Commissioner of all private interests by the Member and family. In actual practice, however, the negative reaction

about extensive filing has moderated with each successive annual filing. This may reflect greater acceptance of the fact that disclosure is a necessary requirement of serving in public office. It may also suggest a greater appreciation by Members of the mutual benefit to be gained in their periodically focusing attention or interrelationships between public duties and private interests.

The obligation under the Newfoundland conflict of interest legislation for complete disclosure of spousal private interests has been privately criticized by some and publicly challenged in one instance as referenced in my two Annual Reports to the Legislature. In this age of individual rights and freedoms, it is difficult to convince everyone of the need for comprehensive application of conflict of interest standards to the entire family unit. Nevertheless, a Select Committee of the Newfoundland House of Assembly recently proposed statutory language to reaffirm coverage of spouses as broadly defined under Section 20(g).

The public disclosure of private interests under Section 37, which are subject to the exclusions under Section 20, allows for a base level of public scrutiny without excessive intrusion into the private affairs of elected representatives and their families. In actual practice, there have been relatively few requests to view the Public Disclosure Statements of Members, that are updated each year, but their existence affords the public an opportunity to become informed so they can draw reasonable conclusions as to the ethical conduct of elected representatives.

The creation of Commissioner of Members' Interests as an independent Officer of the House of Assembly under Section 34 ensures accountability under the Act. This is achieved through periodic interaction with Members to clarify interrelationships between public office and private interests and advise being given as to avoiding conflict of interest situations. This focus on prevention has characterized my first two years in office. It has not been necessary for me to recommend punitive measures under Section 45. Furthermore, through the tabling of Annual Reports to the House of Assembly on the administration of the Act, as required under Section 35, the ethics of Provincial elected representatives is kept in the public domain.

The conflict of interest legislation in Newfoundland only mandates the Commissioner to make an objective determination of Members' conduct in relation to the standards set in the Act. There is no reference in the statute to "apparent conflict of interest" as is the case in some other jurisdictions. While I may make suggestions from time to time to enhance public perception of ethical activities by elected officials, it is up to the Members themselves to ensure their actions withstand public scrutiny. It is encouraging to note that there have been instances where Members have imposed higher standards on themselves and their families than are literally contained in the legislation. This is particularly true of the expectations Premier Wells has set for the conduct of his Cabinet Ministers.

APPENDIX 2

CONCLUSION

In summary, I suggest there must be a collective effort to achieving ethics in Government. This begins with the rigid adherence by elected representatives to specific standards of conduct with their actions at all times being guided by the potential reaction of a reasonably informed public. It is assisted by the Commissioner in giving advice to prevent conflict situations from arising but with powers to insist on specific compliance if necessary or to propose penalties for transgressions. Public office must be open and transparent such that the public have a reasonable opportunity to be informed about circumstances on which they can then base well founded judgements.

I am pleased to indicate that in Newfoundland and Labrador there has been a concerted effort to achieving a high standard of ethics in Government as evidenced by:

1. the will of the Legislature to pass a statute for ethical conduct of elected representatives in 1993;

2. the absence in two annual reports from the Commissioner of any reference to significant non-compliance issues or the need for penalties to be imposed; and

3. little public criticism being voiced about conflict of interest in the two years since the new legislation has been in existence.

I thank the Committee for this opportunity to share these personal thoughts with you on ethics from my perspective as Commissioner of Members' Interests for Newfoundland and Labrador. I would be pleased to answer any questions.