



**MANITOBA
LEGISLATIVE ASSEMBLY**

**ANNUAL REPORT OF
THE ETHICS COMMISSIONER**

Jeffrey Schnoor, K.C.

2023



MANITOBA LEGISLATIVE ASSEMBLY
Ethics Commissioner
303 - 386 Broadway
Winnipeg, MB R3C 3R6

July 18, 2024

The Honourable Tom Lindsey
Speaker of the Legislative Assembly
Province of Manitoba
Rm. 244 Legislative Building
Winnipeg, MB R3C 0V8

Dear Speaker Lindsey,

I am pleased to present my annual report for the year ending December 31, 2023. The report is made pursuant to section 56(1) of *The Conflict of Interest (Members and Ministers) Act*.

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'Jeffrey Schnoor'.

Jeffrey Schnoor, K.C.
Ethics Commissioner

ETHICS COMMISSIONER

ANNUAL REPORT 2023

Introduction

This has been a year of enormous change.

New legislation governing the conduct of members of the Legislative Assembly came into force on October 4, 2023, the day after the most recent provincial election. *The Conflict of Interest (Members and Ministers) Act* replaced decades-old legislation that I have previously described as possibly the weakest in Canada.

To fully grasp the extent of the change, it's worthwhile looking back at the main features of the old legislation (*The Legislative Assembly and Executive Council Conflict of Interest Act*):

- Disclosure by members was limited to a small, idiosyncratic selection of assets. There was no disclosure of liabilities or sources of income.
- Disclosure was done on paper and disclosure statements could only be viewed in person at the Office of the Clerk of the Legislative Assembly.
- The scope of conflicts of interest was poorly defined and narrow, restricted to pecuniary interests.
- The Conflict of Interest Commissioner had no investigative or enforcement powers. Enforcement was left to voters who had to bring an alleged contravention to the courts and pursue the matter at their own initiative and expense.

Contrast this with the following highlights of the new Act:

- There is a clearer definition of conflict of interest: “a member is in a conflict of interest when the member exercises an official power, duty or function that provides an opportunity to further their private interests or those of their family or to improperly further another person's private interests.”
- The new Act requires members to disclose all assets, liabilities and sources of income with a value exceeding \$5,000 held by themselves, as well as by their spouses, minor children and adult dependants. They must also disclose all legal proceedings being brought against them and any support payments that are in arrears. Some exceptions to the required disclosure include:
 - a member's principal residence and recreational properties;
 - bank accounts and guaranteed investment certificates (GICs);

- interests in pension plans and life insurance policies; and
- investments in mutual funds or exchange-traded funds (ETFs) that have broadly based investments not limited to one industry or one sector of the economy.
- Members with private corporations must disclose:
 - information about the activities and sources of income of those corporations;
 - the names of any affiliated corporations;
 - the names and addresses of all other persons with an interest in the corporations; and
 - all real property owned by the corporations.
- Cabinet ministers must disclose to the Commissioner all of the assets, liabilities and sources of income that are excluded from disclosure for other members. This additional information is kept confidential by the Commissioner, except to the extent that it is required for an investigation of an alleged breach.
- Limitations are placed on outside activities by Cabinet ministers and leaders of recognized Opposition parties. Subject to certain exceptions approved by the Commissioner, they are not allowed to:
 - hold or trade in stocks that are not listed on a recognized stock exchange (in other words, shares in a private corporation);
 - hold or trade futures or commodities for speculative purposes; or
 - engage in employment, the practice of a profession or the management of a business if doing so is likely to conflict, or be seen to conflict, with their official powers, duties or functions.
- The Conflict of Interest Commissioner is renamed the Ethics Commissioner and is given significantly broader powers. The following are some examples:
 - The Commissioner has the power to investigate alleged breaches of the Act and recommend appropriate penalties to the Legislative Assembly. These penalties can include a reprimand, fine, suspension or the loss of the member's seat. Only another member can lodge a complaint with the Commissioner.
 - The Commissioner can provide confidential written advice to members (previously, written advice received by members was made public, creating a disincentive for members to ask for written advice).
 - The Commissioner can allow Cabinet ministers and leaders of recognized Opposition parties to hold assets or engage in activities that would otherwise not be permitted, subject to appropriate conditions. In narrow circumstances, the Commissioner can approve the transfer of certain assets

to “blind trusts” and approve reimbursement to the member of the expenses for doing so.

- The Commissioner has the power to extend any time limits imposed by the Act.
- The Act contains new restrictions on the activities of members and ministers after they leave office, and the Commissioner is empowered to provide them with advice.
- *The Lobbyists Registration Act* is also amended to prohibit lobbyists from giving or promising any gift or benefit to a public official being lobbied, except if given as an incident of protocol or social obligation that normally accompany the duties or responsibilities of the public official.

The new Act can be viewed at [C.C.S.M. c. C171 \(gov.mb.ca\)](http://C.C.S.M.c.C171.gov.mb.ca). More information can be found at the new website: www.ethicsmanitoba.ca.

Preparing for the New Act

It is difficult to summarize the large amount of work that went into preparing for the implementation of the new Act.

The new Act requires that the Commissioner have a website and specifies the information that must be posted there. This includes the statements in which members disclose their assets, liabilities and sources of income.

Creating a website is relatively simple (with the help of IT professionals). The hard work was in the creation of the system in which members would complete their disclosure statements online. This required a deep analysis of the legislation and converting its requirements into the “if this, then that” logic that programmers use. It also required the creation of a secure portal accessible only by members and a “back end” where the Commissioner and staff can review and, where appropriate, return statements to members with comments. Members can now fulfill all of their disclosure requirements in one location (including disclosure statements, gift statements and requests for approval of private air travel) and can submit requests for advice or requests to investigate allegations of contraventions of the Act.

The system also includes workflow elements that automate many functions in the disclosure process. For example, when the Commissioner accepts a statement from a member, the system automatically generates an email advising the member of the acceptance, generates a PDF of the statement and posts it to the Commissioner’s website for public viewing and sends an email to the Office of the Clerk of the Legislative Assembly with the PDF of the statement, as required by the Act.

The benefits of the new system are many. Members no longer have to rewrite their disclosure statement every year; data is simply carried forward from the most recent statement. Members of the public no longer have to go to the Legislative Building in Winnipeg to view a disclosure statement; they are easily viewed on the Commissioner's website (and the public no longer has to decipher members' handwriting on the paper forms).

Hundreds of hours were spent developing and then testing the website and the disclosure application. Still more hours were spent building awareness of the new Act and the new disclosure process.

In January 2023, I wrote to the leaders of the three parties represented in the Legislative Assembly, offering to provide an information session to their caucuses and their candidates in the upcoming election (one party accepted my invitation and had me speak to their caucus). I also prepared a short document outlining the requirements of the new Act and provided it to the Chief Electoral Officer so it could be made available to all candidates in the fall election.

Immediately after the October 2023 provincial election, I met with all members of the Legislative Assembly and provided an orientation to the new Act and to the online disclosure process. One session was held for each party and individual sessions were held for members who were unable to attend the caucus orientations.

Dealing with Conflicts of Interest

As indicated above, the new Act provides a clearer definition of conflict of interest: "a member is in a conflict of interest when the member exercises an official power, duty or function that provides an opportunity to further their private interests or those of their family or to improperly further another person's private interests." I highlight this last phrase because it broadens the potential scope of a conflict of interest. It is important to note that a conflict of interest exists if there is an opportunity for a member to prefer a private interest over the public interest. The key is that the member act appropriately if the opportunity exists.

Subject to some exceptions, the Act specifies two things that a member must not do if a conflict of interest exists:

- A member must not make a decision or participate in making a decision related to the exercise of an official power, duty or function if the member knows or reasonably should know that, in making the decision, the member would be in a conflict of interest.

- A member must not use their position to seek to influence a decision of another person so as to further the member's private interests or those of their family or to improperly further another person's private interests.

A member who has reasonable grounds to believe that they have a conflict of interest in a matter before the Legislative Assembly or the Executive Council (Cabinet), or a committee of either of them, or the board of a government agency on which the member serves, must, if present at a meeting considering the matter,

- disclose the general nature of the conflict of interest;
- withdraw from the meeting without voting or participating in consideration of the matter; and
- refrain at all times from trying to influence the matter.

Except where the disclosure is made at a meeting of Cabinet or one of its committees, the clerk or secretary of the meeting must make a record of the disclosure and file it with the Ethics Commissioner. It is then posted to the Commissioner's website. No such disclosures were received as of December 31, 2023.

The Disclosure Process

Every member of the Legislative Assembly must file a draft of their disclosure statement with the Ethics Commissioner within 60 days of assuming office. If requested, they must meet with the Commissioner to discuss their disclosure. They must file a finalized disclosure statement within 90 days of assuming office.

This process is repeated annually. Members must file an updated draft of their disclosure statement with the Ethics Commissioner within 30 days after the date established by the Commissioner for the annual review. Once again, if requested, they must meet with the Commissioner to discuss their disclosure. Members must file a finalized annual disclosure statement within 60 days after the date established by the Commissioner.

In addition, members must file a statement reporting a material change to the information on their most recent disclosure statement. This must be done within 60 days after the change.

After they have been reviewed and accepted by the Commissioner, all finalized disclosure statements from members are posted to www.ethicsmanitoba.ca and can be viewed under 'Search Members' Statements'.

Cabinet ministers must file additional disclosure statements covering assets, liabilities and sources of income that would otherwise be excluded from disclosure. These additional statements are kept confidential by the Commissioner.

This year, I met with all 57 members of the Legislative Assembly. As of the date of this annual report, all members of the Assembly and all Cabinet ministers were on track to submit their finalized disclosure statements by the due date (January 19, 2024) and I anticipate posting them to the website on that date. Gift disclosures will be posted to the website the day before.

Meetings and Advice

In addition to the formal meetings described above, I am available to members at any time to provide confidential advice on any questions they may have about their obligations under the Act. In the period up to the provincial election, I had approximately 20 of these conversations with members on a wide variety of issues under the Act. Not surprisingly, there was a large increase in questions following the coming into force of the new Act. I had approximately 45 phone calls, meetings or email exchanges with members during the last three months of 2023 (some covered more than one issue and some exchanges involved multiple calls, emails or meetings). In addition, there were a significant number of calls and meetings in which I helped members as they became familiar with the new online disclosure process.

As noted above, the new Act imposes restrictions on the activities that Cabinet Ministers and the Leader of recognized Opposition parties may undertake. However, the Commissioner can grant a waiver of the prohibitions, subject to conditions. I granted waivers with conditions to two Cabinet ministers.

The Act also sets out certain restrictions on the activities that former members and ministers may undertake after their departure from office. I responded to five requests for advice about these provisions of the Act. Under the new Act, former members can now ask for a written opinion regarding their intended activities. No written opinions were requested this year.

Private Air Travel

Members may not accept travel on a non-commercial chartered or private aircraft – other than one owned or leased by the Crown – that is connected, directly or indirectly, with the performance of their official powers, duties or functions unless the member receives approval from the Ethics Commissioner before accepting the travel or the travel is required for the performance of the member's office. In either case, information about the travel must be posted to the Ethics Commissioner's website.

As of December 31, 2023, no requests had been made to approve travel in advance and no statements respecting travel required for the performance of a member's office had been received.

Requests for Inquiries

Any member of the Legislative Assembly who has reasonable grounds to believe that another member has contravened the Act may ask the Ethics Commissioner to give an opinion on whether the other member has breached the Act. Only a member of the Legislative Assembly can make this request. The Commissioner has broad powers to investigate the alleged contravention.

If, after conducting an inquiry, the Commissioner is of the opinion that the member has contravened this Act, the Commissioner may recommend that any of the following penalties be imposed:

- the member be reprimanded;
- the member be fined an amount not exceeding \$50,000;
- the member's right to sit and vote in the Assembly be suspended for a specified period or until the fulfilment of a condition imposed by the Commissioner;
- the member's seat be declared vacant.

The Assembly must consider a report of the Commissioner within 10 sitting days after the report is tabled. The Assembly can either order the penalty recommended by the Commissioner be imposed or can reject the recommendation. The Assembly cannot impose a penalty other than the one recommended by the Commissioner and cannot inquire further into the matter or impose a penalty other than the one recommended by the Commissioner. The Assembly's decision is final and conclusive.

As of December 31, 2023, no requests to investigate an alleged contravention of the Act had been received.

Errors in the New Act

In the course of preparing for the implementation of the new Act, I found that it contained several drafting errors that should be corrected:

1. Gifts and personal benefits – publication (s. 7)

Certain gifts and personal benefits must be reported to the Ethics Commissioner. However, there is no requirement or authority for the Commissioner to make this information available to the public by posting it on the Commissioner's website and by providing it to the office of the Clerk of the Legislative Assembly. This contrasts with the provisions respecting the disclosure of assets, liabilities and sources of income by members and the disclosure of private air travel, both of which do provide for publication.

I devised an interim solution by which members consent on their gift disclosure form to their disclosure being made public; however, members are free to withhold this consent. So far, no member has done so, but the risk remains.

This section needs to be amended to provide that the Commissioner must make gift disclosures available to the public.

2. Non-compliance – gifts and travel (s. 24)

Section 24 requires the Ethics Commissioner to report to the Speaker certain situations in which a member is not in compliance with the Act. These include:

- failure to file the member's annual disclosure statement within the specified time;
- failure to file a disclosure statement reporting a material change within the specified time;
- failure to provide additional information requested by the Commissioner;
- failure to file a Minister's additional disclosure statement within the specified time; and
- failure to meet with the Commissioner when so requested.

However, the following situations are not covered:

- failure to file a disclosure of a gift or personal benefit within the specified time; and
- failure to file a disclosure of private air travel (already taken) within the specified time.

The section needs to be amended to include these two situations.

3. Destruction of records (s. 43)

This section requires the Ethics Commissioner to destroy all records relating to a member 24 months after they cease to be a member. However, there is an exception for “a disclosure statement that is required to be made available to the public under section 20”. That refers to the disclosure statement of assets, liabilities, and sources of income that members must file after assuming office and annually thereafter. The exception does not cover disclosures of gifts and private air travel. This makes no sense since those records will already be on the Commissioner’s website and at the office of the Clerk of the Legislative Assembly (assuming the change respecting the reporting of gifts is made).

Subsection 43(2) needs to be amended to include all records that have been made available to the public.

4. Approved trusts

Clause 19(4)(i) provides that “an interest or asset that has been entrusted to another person under subsection 10(4) or 12(2)” is to be excluded from a member’s disclosure statement. This refers to a “blind” trust approved by the Ethics Commissioner and is appropriate since, once the trust is established, a member won’t know what is in it. However, trusts can also be established under clause 11(2)(a) and this has not been listed as an exclusion from the member’s disclosure statement.

Clause 19(4)(i) needs to be amended to include a reference to clause 11(2)(a).

At my request, the previous government introduced legislation in the Spring 2023 session of the Legislature to correct these errors. Unfortunately, the bill was not passed before the Legislature was dissolved for the provincial election. I have written to the current government, drawing their attention to the need to correct these drafting errors, and am hopeful that it will introduce the necessary legislation.

Relationships with other jurisdictions

As always, the Canadian Conflict of Interest Network (CCOIN) has been an invaluable source of information and support. CCOIN is an informal organization that brings together Ethics and Conflict of Interest Commissioners from across the country and I am grateful for the opportunity to consult with and learn from my colleagues. We met by videoconference in the spring and met in person in Halifax in the fall of 2023.

Our office also belongs to the Council on Governmental Ethics Laws (COGEL) and a similar organization within the international francophone community, le Réseau francophone d'éthique et de déontologie parlementaires. These memberships provide a broadened perspective on ethical issues.

Lobbyists Registry

In addition to being the Conflict of Interest Commissioner for the Manitoba Legislative Assembly, I am also Manitoba's Lobbyist Registrar. The Lobbyists Registration Act is companion legislation that contributes to the ethical framework within which the members of the Legislative Assembly work. Although that Act has no requirement for an annual report, I have made it my practice, in the interests of public education, to provide some information about the operation of that legislation here.

The Act is based on the principle that lobbying, when done ethically, is a legitimate activity and is part of the democratic process. The Registry brings a measure of transparency to that activity, providing information to the public about who is attempting to influence government and the details of the lobbying. Under the Act, consultant lobbyists (those paid to lobby for others) file detailed returns in the online registry, documenting their lobbying activities, and senior officers of organizations file detailed returns documenting the lobbying activities of their organization's in-house lobbyists. There is no cost to file a return and no cost to search the online registry.

Certain types of organizations and certain activities are excluded from the Act. For example, in-house lobbying that does not constitute a significant part of an individual's duties does not have to be registered; the regulation to the Act defines this as at least 100 hours annually. The Act does not apply to charitable or non-profit organizations, unless they are constituted to serve employer, union or professional interests or the interests of for-profit organizations.

The Lobbyist Registrar has no enforcement powers. Instead, a failure to comply with the Act is an offence, making it a matter for prosecution in the courts.

The following provides some statistical information as of December 31, 2023; statistics from the previous two years are shown in brackets. A slow and steady increase is evident. There were 113 (112, 92) active consultant lobbyist returns and 75 (70, 65) active returns filed by senior officers on behalf of organizations, with 303 (294, 285) in-house lobbyists being identified.

As noted at the beginning of this Report, *The Lobbyists Registration Act* was amended, effective October 4, 2023, to prohibit lobbyists from giving or promising any gift or benefit to a public official being lobbied, except if given as an incident of protocol or

social obligation that normally accompany the duties or responsibilities of the public official. In order to assist registered lobbyists, I prepared and distributed an Interpretation Bulletin to explain the new prohibition on gift-giving. It was sent out to all registered lobbyists to make them aware of the new rules.

More information about the Act and the registry (including how to search the registry at no cost) can be found at our website: www.lobbyistregistrar.mb.ca. The Interpretation Bulletin can also be found there.

Conclusion

I would again like to thank the office of the Clerk of the Legislative Assembly. The support of Patricia Chaychuk, followed by Rick Yarish, and their staff has been invaluable. I am particularly grateful for their assistance in setting up the orientations for members of the Legislative Assembly and for allowing me the use of their offices for meetings with members.

I would also like to thank the Administration Branch of the Legislative Assembly of Manitoba, led by its Executive Director, Deanna Wilson. Special thanks go to Zdenek Ondracek, IT Director, and Sebastian Czigler for their essential roles in the development of the online disclosure process.

Finally, I would like to express my appreciation to Holly Mackling, my assistant and the Deputy Lobbyist Registrar. It has been a busy and challenging year, and she has been an essential part of the transition to the new Act and in the development and testing of the online disclosure process. I very much appreciate her invaluable work and support throughout the year.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jeffrey Schnoor", with a long horizontal flourish extending to the right.

Jeffrey Schnoor, K.C.
Ethics Commissioner