



**MANITOBA LEGISLATIVE ASSEMBLY
OFFICE OF THE ETHICS COMMISSIONER**

**REPORT OF
JEFFREY SCHNOOR, K.C.
ETHICS COMMISSIONER**

Re: Greg Nesbitt, Member of the Legislative Assembly for Riding Mountain

November 5, 2024

I. Introduction

1. On August 9, 2024, I received a request from Mike Moyes, the member of the Legislative Assembly for Riel, that I conduct an inquiry into the conduct of Greg Nesbitt, the member for Riding Mountain. The request was in the approved form and, as required, Mr. Moyes submitted a copy of the request to the Speaker on September 11, 2024; a copy was tabled in the Assembly on October 2, 2024.

2. The request was made pursuant to section 44(1) of *The Conflict of Interest (Members and Ministers) Act* (the "Act"):

Member may request commissioner's opinion

44(1) A member who has reasonable grounds to believe that another member has contravened this Act may request the commissioner to give an opinion respecting the compliance of the other member with this Act.

3. Mr. Moyes alleged that Mr. Nesbitt had contravened the Act by having an interest in a private corporation with a contract with the Government of Manitoba and failing to disclose the contract. The following are relevant extracts from the letter:

This complaint is against Riding Mountain MLA Greg Nesbitt and concerns a failure to disclose a contract that his company has with the Province of Manitoba in contravention of the Conflict of Interest (Members and Ministers) and Related Amendments Act (the "Act").

A company of which Mr. Nesbitt is an officer and shareholder, Russell Inns Ltd., entered a contract (contract number 4600024216) in December 2023 with the Government of Manitoba that allows the Provincial employees to use Russell Inns Ltd. for rooms at established rates. The contract's target value is fifty thousand dollars.

Section 10(2) of the Act states that "A member must not have an interest in a partnership or private corporation that is a party (directly or through a subcontract) to a contract with the government or a government agency under which the partnership or corporation receives a benefit."

This prohibition applies to the situation outlined above. Mr. Nesbitt (a member) has an interest in a private corporation (Russell Inns Ltd.) that is a party to a contract with the government.

Additionally, Mr. Nesbitt did not disclose this contract to your office. He has submitted Member Disclosure Statements accepted January 19, February 22, May 30, June 19, and June 26, and stated that he is an officer and shareholder of Russell Inns Ltd. But when asked in all five statements whether Russell Inns Ltd. had "any contract or subcontract... with the Government of Manitoba", he responded "Not applicable" each time.

A record of the contract can be viewed here:

<https://web.gov.mb.ca/DisclosureOfContracts/en/Contracts/GetContract/BA08/e99da54a->

II. The Inquiry Process

4. Section 46 of the Act provides:

Notice of inquiry

46 Before conducting an inquiry, the commissioner must give the member whose conduct is the subject of the inquiry reasonable notice.

5. I wrote to Mr. Nesbitt on August 9, 2024, advising him of the request for an inquiry. In my letter, I asked him to provide me with a copy of the contract referred to in the request for an inquiry, as well as any other relevant documents in his possession, whether in paper or electronic form. I also advised him that he could provide me with a written response to the allegations, if he wished. Mr. Nesbitt provided me with a copy of the contract as well as some preliminary comments explaining the situation. Over the course of my investigation, Mr. Nesbitt and I have had a number of conversations and I thank him for his cooperation.

6. I also obtained a copy of the contract and related documents from the Department of Consumer Affairs and Government Services.

7. The Act provides in section 47(3) that members must be given an opportunity to respond to the possibility of an adverse finding by the Ethics Commissioner:

Representations by affected member

47(3) If it appears to the commissioner that the commissioner's report may adversely affect the member, the commissioner must inform the member of the particulars and give the member the opportunity to make representations — either orally or in writing, at the discretion of the commissioner — before the commissioner finalizes the report.

8. After due consideration, I concluded that it was likely that I would be making an adverse finding. Accordingly, I wrote to Mr. Nesbitt on October 16, 2024 and sent him a draft copy of the portion of this report setting out the introduction, inquiry process, facts, issues and tentative findings. I offered him the opportunity to make representations respecting the accuracy of the facts, whether he had contravened the Act and, if so, what an appropriate penalty would be. Mr. Nesbitt submitted written representations to me on October 17, 2024. His comments will be summarized later in this report.

III. Facts

9. As indicated in the request that I conduct an inquiry, Russell Inns Ltd. entered into a contract with the Government of Manitoba in December 2023. The contract was awarded after a competitive process. Russell Inns Ltd. was one of a number of successful bidders across Manitoba for the provision of hotel and conference services as needed to the Government of Manitoba and several of its agencies and Crown Corporations.

10. Mr. Nesbitt has an indirect interest in Russell Inns Ltd. However, he advised me that he had no knowledge of this contract. To explain why, it is necessary to review the history and complex ownership structure of Russell Inns Ltd. and its affiliated corporations. Collectively, I will refer to them as the Russell Inns group of companies.

11. In 2018, Mr. Nesbitt sold control of the Russell Inns group of companies to his business partner. The purchase price is to be paid over a period of 11 years.

12. Russell Inns Ltd. is a wholly-owned subsidiary of Russell Inns Holdings Ltd. In other words, all of the outstanding shares of Russell Inns Ltd. are owned by Russell Inns Holdings Ltd.

13. In turn, Russell Inns Holdings Ltd. is a wholly-owned subsidiary of Russell Inns Holdings (2010) Ltd. In other words, all of the outstanding shares of Russell Inns Holdings Ltd. are owned by Russell Inns Holdings (2010) Ltd.

14. Russell Inns Holdings (2010) Ltd. has three shareholders. One is a corporation owned by Mr. Nesbitt's former business partner and the second is a trust in favour of the former business partner; Mr. Nesbitt has no interest in either. The third shareholder is Lynndale Properties Ltd., a corporation controlled by Mr. Nesbitt.

15. Lynndale Properties Ltd. holds preferred and special shares in Russell Inns Holdings (2010) Ltd.; these shares do not have any voting rights. They are effectively held by Mr. Nesbitt as security for the payment of the purchase price for his sale to his former business partner.

16. As a result of the sale in 2018 and the resulting corporate structure, Mr. Nesbitt is neither an officer nor a director of any of the Russell Inns group of companies (his Disclosure Statement indicates otherwise but that is an error that he is in the process of correcting). Mr. Nesbitt has no common or voting shares and so has no voice in or control over their operations. He receives no information about the activities of any of those corporations other than annual financial statements. The most recent financial statements received by Mr. Nesbitt were for the fiscal year ended April 30, 2023 which of course predates the contract in question with the Government of Manitoba.

17. As part of my investigation, I reviewed documents from the 2018 sale and the most recent financial statements. I spoke with Mr. Nesbitt's former business partner, the now owner of the controlling interest in the Russell Inns group of companies, and with the lawyer who prepared the documents that established the current corporate structure. Both corroborated the facts set out above.

IV. Issues and Findings

18. The request for inquiry submitted by Mr. Moyes raises two issues for my determination:

1. Has Mr. Nesbitt contravened the Act by having an interest in a private corporation that is a party (directly or indirectly) to a contract with the Government of Manitoba under which the corporation receives a benefit?
2. Has Mr. Nesbitt contravened the Act by failing to disclose the contract with the Government of Manitoba?

1. Has Mr. Nesbitt contravened the Act by having an interest in a private corporation that is a party (directly or indirectly) to a contract with the Government of Manitoba under which the corporation receives a benefit?

19. Section 10 of the Act states that members may not have an interest in a private corporation that has a contract with the Government of Manitoba under which the corporation receives a benefit.

Interest in partnerships and private corporations

10(2) A member must not have an interest in a . . . private corporation that is a party (directly or through a subcontract) to a contract with the government or a government agency under which the . . . corporation receives a benefit.

20. It is clear, and accepted by Mr. Nesbitt, that he had an interest in Russell Inns Ltd. and Russell Inns Ltd. had a contract with the Government of Manitoba under which it received a benefit. Therefore, despite the fact that he was not aware of the contract, Mr. Nesbitt has contravened this provision of the Act. The Act sets out three exceptions to this prohibition but none of them apply.

2. Has Mr. Nesbitt contravened the Act by failing to disclose the contract with the Government of Manitoba?

21. All members must file a statement disclosing their assets, liabilities and sources of income in a form approved by the Ethics Commissioner. It must be filed within 90 days after assuming office and, in each subsequent year, within 60 days after a date established by the Commissioner. Once accepted by the Ethics Commissioner, the statement is posted to the Commissioner's website at www.ethicsmanitoba.ca.

22. Section 19 of the Act specifies the information that must be included in a Disclosure Statement. Clause 19(1)(d) states that the Disclosure Statement must "include the subject matter and nature of any contract or subcontract that the member or their family – and any private corporation in which any of them has an interest – have with the government".

23. Because he was unaware of its existence, Mr. Nesbitt did not include this contract in his Disclosure Statement.

24. The Act does not provide an exception for a situation where a member does not have knowledge of a contract with the Government of Manitoba. I therefore must conclude that Mr. Nesbitt contravened the Act by failing to disclose the contract that Russell Inns Ltd. had with the Government of Manitoba.

V. Mr. Nesbitt's response

25. Mr. Nesbitt's response is straightforward. He is not an officer, director or employee of Russell Inns Ltd. He holds no common or voting shares in it or in its parent corporations. He therefore has no knowledge of its operations and was unaware of the contract entered into with the Government of Manitoba. I accept this explanation.

VI. Recommendation Respecting Penalty

26. The Act provides that, if the Commissioner determines that a member has contravened it, the Commissioner must recommend a specific penalty or recommend that no penalty be imposed.

27. Section 50(1) sets out the penalties that the Commissioner can recommend:

Commissioner's recommendations in case of contravention

50(1) If, after conducting an inquiry, the commissioner is of the opinion that the member has contravened this Act, the commissioner may recommend the following penalty be imposed on a member:

- (a) the member be reprimanded;
- (b) the member be fined an amount not exceeding \$50,000;
- (c) 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;
- (d) the member's seat be declared vacant.

28. The next two subsections set out the circumstances in which the Commissioner has the discretion to recommend that no penalty be imposed. The first of these subsections, section 50(2), deals with situations where the member had relied on the advice of the Commissioner. It is not applicable here.

29. The second of these subsections, section 50(3), provides as follows:

Recommendations re no penalty

50(3) The commissioner may recommend that no penalty be imposed if the commissioner is of the opinion that

- (a) a contravention occurred even though the member took all reasonable measures to prevent it; or

(b) a contravention occurred that was trivial or that was committed through inadvertence or an error of judgment made in good faith.

30. It is obvious that Mr. Nesbitt's contraventions occurred as a result of inadvertence. He was unaware of the existence of the contract and it would be unreasonable to impose a penalty under the circumstances.

31. I have therefore concluded that no penalty should be imposed for Mr. Nesbitt's contraventions of the Act.

VII. Going Forward

32. Now that Mr. Nesbitt is aware of the existence of the contract, he must take steps to comply with the prohibition in section 10(2) of the Act. He has two options. He can divest himself of his interest in the Russell Inns group of companies. Alternatively, he can seek my approval to waive the prohibition, pursuant to section 10(6):

Exception if commissioner approves

10(6) This section does not apply if

(a) the commissioner is of the opinion that the contract or interest is unlikely to affect the exercise of the member's powers, duties and functions; and

(b) the member complies with any conditions respecting the contract or interest that the commissioner may impose.

33. Mr. Nesbitt has chosen the second option and I have approved a waiver of the prohibition. I have also advised Mr. Nesbitt that he should, if possible, take steps to have the Russell Inns group of companies advise him if any of them enter into contracts with the Government of Manitoba in the future.

VIII. Conclusion

34. For the reasons given above, it is my opinion that Mr. Nesbitt contravened the Act by having an interest in a private corporation that had a contract with the Government of Manitoba. He also contravened the Act by failing to include the contract in his Disclosure Statement of Assets, Liabilities and Sources of Income.

35. However, I also conclude Mr. Nesbitt's contraventions were inadvertent and resulted from the unique circumstances of the corporate structure of the Russell Inn group of companies. I therefore recommend that no penalty be imposed.

Jeffrey Schnoor, K.C.
Ethics Commissioner