A Roundtable on Ethics and Conflict of Interest

by Gregory Evans, Wayne Mitchell, Robert Clark, Ted Hughes and Derril McLeod

In October 1995 the Special Joint Committee on Code of Conduct for Parliamentarians heard testimony from five provincial officials responsible for this area in their respective legislatures. The following is a condensed version of presentations to these committees. Gregory Evans is Integrity Commissioner in Ontario. Wayne Mitchell is Commissioner of Members' Interests in Newfoundland. Robert Clark is Ethics Commissioner in Alberta. Ted Hughes is Commissioner of Conflict of Interest in British Columbia. Derril McLeod is the Conflicts Commissioner in Saskatchewan.

Gregory Evans (Ontario): The *Members' Integrity Act of 1994* was proclaimed on October 6, 1995. The *Integrity Act* replaces the *Members' Conflict of Interest Act*, which was proclaimed on September 1, 1988. Both acts apply to all members of the legislature, with certain additional specific sections applicable to members of the executive and former members. I have been the Commissioner since the first act was introduced. The purpose in the change of name was to accentuate the positive and to eliminate the negative connotation that seems to be associated with the term "conflict of interest". It also reflects an increased jurisdiction.

We are concerned with more than economic matters. The legislation deals with personal conduct and with customs and procedures that have developed in the Ontario legislature over the years and that we have designated as Ontario parliamentary conventions.

Examples of these conventions include the prohibition against the members of the executive appearing as advocates or supporters before any provincial agency, board or commission under their particular jurisdiction. There is a prohibition also against all members and staff from communicating with members of the judiciary with respect to matters before the courts and from contacting court officials or police officials with respect to matters involving the discharge of their official duties.

Legislation of this type usually includes a preamble. It is a motherhood statement setting out certain broad principles for the members in carrying out their responsibilities and a declaration by the legislature of the reasons for enacting the statute, which may be helpful in the interpretation of any ambiguities that may exist in the statute.

The two principles that should be paramount in all aspects of parliamentary government are openness and fairness. While the fostering of personal interest in a socially acceptable manner is a perfectly natural right that an individual is entitled to exercise, the problem arises when the right of one individual impinges upon that of another. The competing rights create a confrontation, which in everyday life is usually settled by mutual agreement of the parties or by consensual arbitration or by a judicial decision. This is not a conflict of interest position or situation in the accepted sense, because there is no ethical issue involved and no questions of morality arise.

However, when a person is elected or appointed to public office, that person becomes a trustee for the interests of others, and their interests may conflict with the private interests of the member. When that situation arises, the ethical member will resolve it in a manner favourable to the public interest, not because there is legislation but for the reason that his or her conscience, shaped by training, education and life experience, will direct a member to do that which is morally correct.

No administrative rules or legislative codes of conduct are required to monitor the conduct of an honourable member, nor will they restrict the misbehaviour of the member who lacks the requisite moral integrity.

The primary purpose of integrity legislation is not to promote high ethical standards among members, all of whom, we expect, having chosen to aspire to public office, possess the necessary moral qualities that entitle them to be referred to as honourable members in the legislature or in Parliament. Rather it is a standard against which the ever-increasingly cynical and suspicious press and public may measure their behaviour in office. It may not appease the more rabid critics, but it will serve as a source of satisfaction to the member whose conduct is under attack to know that it meets the standard by which his peers are also judged.

> ***Members, whether appointed to the Senate or elected to the Commons, are in a position of trust. They represent the public and should expect to be held accountable for their actions. Accountability requires openness, and with it the right to investigate and to recommend penalties for violations of the public trust.***
>
> *Gregory Evans*

There is no quantifiable evidence that the level of public corruption has either risen or fallen in recent years. However, to believe it does not exist is not only to deny history but to overlook the many allegations of misconduct at all levels of government and the not infrequent convictions in the criminal courts when corruption has been detected and prosecuted.

Government is big business, and like any other large corporation it requires a statement of corporate values or accepted conduct with an independent officer whose duty it is to make sure the walk matches the talk. Nice words without accountability no longer satisfy the public. A survey in the United States reported in the August 24, 1993 issue of *The Globe and Mail* that 20% of the 1,000 largest industrial and service corporations in the United States have an ethics officer.

Today's focus on ethics has its roots in the time when the United States defence industry was besieged with claims of fraud and overcharging the government. Insider trading scandals in stocks in Canada and the United States gave further impetus to the desire for ethical codes and legislation. Today it is a growth industry, and it is a fair assumption that there would not be growth if the need did not exist.

I do not believe that governments in the present climate of public opinion can long delay the implementation of stringent rules of ethical conduct for their members. In what form will these rules be set out – a written code, a set of guidelines or a statute where right and wrong is clearly defined?

For governments, in my opinion, a legislative enactment is the best method of achieving the desired result, which is public trust in those whose servants the members are. One of the advantages of legislation is that it is available for consideration by those aspiring to public office before they seek a nomination. They know what they are getting into.

Whom should the legislation cover? I do not think senators and members of the House of Commons should be considered as subject to identical legislation. Many sections could be applicable to both, but these are separate and distinct branches of government. Their entrance to government is different: appointment as opposed to election. The terms of office are different. Tenure is determined by different standards. The same penalties may not be applicable. They are separate and independent bodies with different responsibilities.

That does not mean a good part of the legislation could not be made applicable to members of both Houses, in the same way as our legislation distinguishes between members of the executive, the ordinary members and former members of the legislature.

A question that is frequently asked is: why should government backbenchers and opposition members be subject to many of the same restrictions as members of the executive council? That is a question that has always arisen because the people who were there when the legislation was passed are not necessarily the same people who come in and go to confession to me after the next election. I have to say, "well, while you were not there, you could have inquired and found out what it was all about."

Government backbenchers and opposition members should not be subject to the same restrictions as members of the executive, but I think they should be subject to restrictions. The short answer that they are members of Parliament and any misconduct in which they may be involved reflects not only on the individual but also on his or her political party and on the institution of Parliament.

It is Parliament, irrespective of the political stripe of the governing party, to which the public criticism and mistrust is directed. It is true that your own constituents know who you are and know your political affiliation, but when you move a couple of counties away, they're never sure just who you are. So when there is a comment about a member of the legislature, a member of Parliament or a member of the Senate, forget about the individual. It is just Parliament, Senate or government that is to be criticized.

Backbenchers also serve on committees and as chairpersons of committees to which proposed legislation is referred. They have the opportunity to provide considerable input and draft legislation. In the discharge of their duties to their constituents and the public generally, they are in contact with many government agencies, boards, and commissions, advocating for funding for various organizations. One would be naive not to appreciate that they are frequently targets of lobbyists seeking to advance a client's interest.

The question of whether spouses should be required to disclose has been a matter of some concern. Spouses, particularly women, say "My husband was elected. I am not the member and I do not see why my privacy should be invaded." As far as I am concerned, in Ontario we do not require a spouse to appear personally for disclosure. But we do expect the member to have a general knowledge of spousal assets and liabilities. It would be important to know what the family assets comprise if the member is virtually bankrupt, according to his disclosure, and the family lifestyle is far removed from the poverty level.

If the spouse does not wish to inform the member, I note when filling out the public disclosure statement that information as to the spouse's assets is not available. When this appears in the public press, the curious neighbours assume the spouse has a Swiss bank account, a yacht in Fort Lauderdale and a condo at Whistler. The next year invariably full details are provided by the spouse.

Who should be a commissioner? I believe the commissioner should be appointed by a resolution of the House of Commons. I am appointed by a resolution of the legislative assembly, and there are half a dozen members in that so-called select group. You have the provincial auditor, the ombudsman, elections finance, the privacy commissioner and the environment commissioner.

Such a process does provide for the independence necessary to discharge the duties of the office. The appointment should be for a minimum of five years, so you overlap one election with the next one. Appointment should be subject to renewal.

There is no reason why a member of the public service, appointed by a resolution of the House of Commons, would not be suitable for that position. I think you could take him out of where he is and put him in with a little more authority and visibly more independence.

D. Wayne Mitchell (Newfoundland): 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. This legislation replaced conflict of interest ministers' guidelines that had been in place since 1982.

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 interest for themselves and their families from public office, and 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. It specifies annual and material change disclosure to the commissioner of all private interests held by members and their families. It deals with public disclosure of defined private interests for members and their families, and it provides for annual reporting to the House of Assembly on the operation of the act in general and the commissioner's office in particular.

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 our act, notably:

- section 22, on influencing decisions;
- section 23 deals with the use of insider information;
- section 24 deals with accepting gifts or personal benefits;
- section 28 deals with the evasion of obligations by sale of interests;
- section 32 prohibits contracting with government in certain circumstances;
- section 33 is a general provision dealing with the participation in decisions that further private interests.

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 from outside business activity; under section 29, that ministerial action ought not to be influenced by employment offers; under 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; and under section 33, that ministers withdraw from

departmental or cabinet decision-making that may benefit their own private interests.

> ***It would seem from public scrutiny, at least in the jurisdiction I represent, given to ministerial actions that the rigid adherence to these higher standards of conduct by ministers is indispensable to fostering public credibility in governmental ethics.***
>
> *Wayne Mitchell*

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 from their periodically focusing attention on 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. There is reference to this in my two annual reports to the Newfoundland 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 only recently proposed statutory language to reaffirm coverage of spouses as broadly defined under paragraph 20(g) of our act.

The public disclosure of private interest 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. Members' public disclosure statements are updated each year. In actual practice there have been relatively few requests to view the public disclosure statements of members, but their existence affords the public an opportunity to become informed so that they can draw reasonable conclusions as to the ethical conduct of elected representatives.

The creation of a commissioner of members' interest as an independent officer of the House of Assembly ensures accountability under the act. This is achieved through periodic interaction with members to clarify interrelationships between public office and private interests and through advice being given on how to avoid conflict of interest situations.

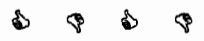
It has not yet been necessary for me to recommend punitive measures. The tabling of annual reports to the House of Assembly on the administration of the act keeps the issue of ethics of provincial elected representatives in the public domain.

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 that 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 required by the legislation.

I suggest there must be a collective effort to achieve 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 giving advice to prevent conflict situations from arising but also having the power to, if necessary, insist on specific compliance and propose penalties for transgressions.

Public office must be open and transparent so that the public has a reasonable opportunity to be informed about circumstances on which they can then base well-founded judgments.



Robert C. Clark (Alberta): The public disclosure situation in Alberta is very similar to the situation that my colleague from Newfoundland has outlined.

There was initially a considerable amount of resentment or questioning by some members about the disclosure documents. It should be pointed out that members in Alberta file a disclosure document with me in my role as commissioner, and I sit down with the member and his or her spouse and go over the disclosure document. Following that, a public disclosure document is prepared. This document is sent to the member. Then the member has a look at it before it goes to the clerk's office for public disclosure.

The document that goes to the clerk's office for public disclosure does not deal with the number of shares or the level of financial commitment a member may have. It would say a member has shares in this organization or that company, or it would say a member has a liability at this financial institution or a guarantee at this trust company. The mere fact that the public can see where the member's interests are is deemed to be sufficient.

I also advise members that it is one thing to pass the test of the legislation, but I caution them to also use what I call the nose test. Think what you are doing and if you do not mind it appearing on the front page of the *Calgary Herald* or the *Edmonton Journal*, then it is quite likely all right to do. The nose test goes somewhat further than the legislation, but I think that advice has served a number of members reasonably well.

The second point deals with section 41 of our act. It is somewhat unique because a member can come to the commissioner and point out to the commissioner what the member plans to do with a particular investment or a particular change in his or her financial situation. The member can then ask the commissioner to give the member written direction or written advice on how that matter should be handled in keeping with the Canada legislation. Once that information is presented to me, I am bound by the legislation to respond to the member. If all the information presented to me is complete and a mistake is made in the advice that is given, it is responsibility that rests on my shoulders.

> ***When I took on this job of commissioner almost three years ago, I was told by one of the members of the committee that recommended this approach to the Legislative Assembly of Alberta that I should strive to be 90% priest and 10% policeman. I found that approach serves the office well.***
>
> *Robert Clark*

Let me touch on the approach we use for reporting. Like my colleague from Newfoundland, we report to the Speaker of the Assembly and then my reports are dealt with by the Assembly. From the point of view of budgets and legislative amendments, we report to what is referred to as a legislative officers' committee, the same committee that the ombudsman, the auditor general, the chief electoral officer and the information and privacy commissioner report to. They deal with our budget. They also deal with our requests for changes to the legislation and then they go directly to the legislature on that basis.

Obviously, I think one starts with the point of view that all members are honourable. Under the legislation, a member can ask the commissioner to do an investigation of that member's actions or of another member's actions. In a particular case one of the ministers in the Alberta government asked me to do an investigation of allegations that centred on that minister. It dealt with the sale of shares in Syncrude Canada Limited. There were stories in the media that the minister had used her influence to give inside information to a company that had acquired shares in Syncrude. This minister's brother was the president of the company that had acquired the shares. The minister asked for an investigation. The investigation was done within a week. I was able to report to the Assembly that not only had the minister not taken part in that matter or breached the act in any way, but the member had gone further than was necessary under the act.

The important thing for members to have understood on that occasion was that the investigation and report immediately stopped the story. It was no longer a news item. I do not think there has been any public discussion of the matter since.

Within the last year we had a situation where a member from the opposition came to us and said, quite frankly, that he had breached the act. He was a very small businessman. His company, of which he was a direct associate, had done some work for Public Works. The member came to me and asked me to do an investigation. That was done. The member had been very forthright, very upfront about it. The member ended up paying back the profit he had made on the project to Public Works. The report went to the House. I indicated that he had breached the act but certainly I could see no intent. I recommended there be no sanctions.

The bottom line was that there was one story in the media in Alberta as far as that member was concerned. I think it served to show that in fact this individual was an honourable member.

E.N. (Ted) Hughes (British Columbia): I became the acting commissioner on October 1,1990. My appointment was confirmed by a vote of the legislature on May 23, 1991, for a five-year term. So I have actually been in office now for in excess of five years.

Our statute covers all members of the Legislative Assembly. It makes no distinction insofar as its broad coverage is concerned between members of the executive council and members of the House, but there are some

sections that deal solely with the role and position of members of cabinet, such as section 8, which deals with the prohibition against carrying on a business or a profession that would interfere with one's duties in the executive offices of government.

I will divide my remarks into two segments. First, I will talk briefly about the British Columbia experience. Second, I intend to take a look at where I see the future unfolding in this area, in that I am now well into my final year as the conflict commissioner for British Columbia.

The three responsibilities I have are not unlike those that have been outlined today by my colleagues from Newfoundland and Alberta: first, disclosure; second, an advisory role; and third, an investigative arm. I will speak briefly about each of those.

Before I do, however, let me say that the position I hold is a half-time one. I am paid half what the auditor general, the ombudsman, and the freedom of information or privacy commissioner are paid. They are the other three officers of the House. That arrangement is at my suggestion, because this position, time-wise and staff-wise, is not nearly as onerous as the positions they carry. I think from the important perspective of the responsibility of the office it is equal to those, but it is not the hub of activity in government that the other three are, particularly when, in our jurisdiction, my responsibilities are limited to the elected members, unlike in Alberta where senior public servants are covered.

As for disclosure, the requirements are the same for all 75 members. We have a form on which they list their assets, liabilities and sources of income. There is an accompanying form for those who have interests in private corporations.

We also have a system in our jurisdiction where, if a material change takes place in one's financial status over the course of the year, one must fill out a form and file that information with me within 30 days of that change taking place.

I believe I have had the full cooperation of the members throughout my tenure. Perhaps one reason members have very willingly participated in their annual meetings with me and in their completion of the documents is that, differing from some other jurisdictions, the members are not required to fill out dollar figures insofar as their ownership of assets is concerned. They have to indicate where they have assets and what the nature of those assets are, but they have not had to reveal to me the dollar value of them. I have the opportunity of inquiring, if need be, but I seldom need to because it is the ownership – not the quantum – of the asset or the liability that can trigger the conflict. I think the fact that this does not have to be revealed to me has been partly responsible for the cooperation I have had. That includes the cooperation regarding spousal participation.

The act requires that I have an annual meeting with the member and spouse, if available. The first time around I have insisted on the availability of the spouse. I have been much more lax in that requirement in my subsequent annual meetings.

My second position is that of adviser, as my colleague from Alberta mentioned. This procedure is used quite extensively by members making requests for opinions about certain matters. I think it is fair to say that the majority of requests come from ministers, but not always.

It is fair to ask what they are seeking opinions about. The best answer I can give is that they are seeking assurances that they are not running afoul of the various prohibitions set out in the Act for something they have in mind.

Chief among those prohibitions is the one in section 2.1 of the Act which says:

> A member shall not exercise an official power or perform an official duty or function if the member has a conflict of interest or an apparent conflict of interest.

Preceding that, in the Act, is a definition of both conflict of interest and apparent conflict of interest.

> ***I believe British Columbia is the only jurisdiction that has legislated with respect to an apparent conflict of interest.***
>
> ***E.N. (Ted) Hughes***

That definition was taken by way of an amendment in 1992, insofar as apparent conflict of interest is concerned, pretty much from the definition of Chief Justice Parker in the Sinclair Stevens inquiry that was conducted back in the 1980s.

I have not had a problem with the apparent conflict of interest section. I think it is controversial among some of my colleagues. It puts a higher requirement on members insofar as their performance is concerned, but I think I can say it has worked reasonably well.

Other prohibitions in the act are against the use of insider information and influencing others in positions of authority, a prohibition against accepting gifts and benefits, and contracting with government. Members do write to me in my advisory role requesting advice in those areas.

The third hat I wear is with respect to investigative matters. Under the statute, either members of the legislature or members of the public can file an application for an opinion with me where they allege

there has been a violation of the Act and set forth the reasonable and probable grounds they have for believing that a violation has taken place. It then becomes my responsibility, if I believe they have laid that groundwork, to conduct an investigation and to make a report to the House. Additionally, if I have found someone in breach of the Act, it is open to me to recommend a penalty or sanction for the House to take up and impose or not impose as the House may wish.

I am pleased to be able to say that in the excess of five years I have been doing this job, I have never had occasion to recommend that a penalty or a sanction be imposed upon any member. I think that speaks well in a number of ways. It is not something I would hesitate to do if I felt the circumstances called for it, but we have been able to operate the system – notwithstanding a number of inquiries that have taken place – without that step having to be necessary.

The remaining part of this presentation deals with what I referred to at the outset as how I see the future unfolding. I move into that by asking the question of why we have existing legislation in the provinces and the territories and the regulatory system in Ottawa for public office holders. Why are these systems in place?

It is my view that a nation is no stronger than its ethical and moral principles, and the ultimate strength of those ethical and moral principles is in the hands of those citizens democratically elected to lead our country in the provinces, the territories and our municipalities. The cornerstone that underpins sound moral and ethical principles and values is the integrity, honour and trustworthiness of our democratically elected officials at all levels of government.

I believe conflict of interest legislation, which has mushroomed across this country at the provincial level in the last two to seven years, has been a response to shore up that cornerstone lest those elected to public office be tempted to put self-interest ahead of the public good. That has likely also been the motivating factor behind the existing Ottawa code for public office holders and also the establishment of this Committee to look at parliamentarians and ministers and parliamentary secretaries in the elected House of Commons.

The conflict of interest legislation that has resulted in British Columbia – and I believe elsewhere in Canada – has been substantially successful in accomplishing what was expected of it by those legislators who enacted it. Therefore, insofar as matters of conflict of interest are concerned, I advocate the continuance of it the way it is, with the requirements as they are, particularly with the availability of enforcement.

However, what I have come to realize as I have performed this job over a five-year period is that conflict of interest is only one aspect, one component if you like, of honour, trust, integrity and morality in public service. What I believe should occur is for existing legislation, at least in British Columbia, to embrace the wider gamut of honour, trust and integrity in public service in the same way as legislation has embraced the concept of conflict of interest.

It is my present expectation to file my 1996 annual report early in the new year and to recommend, as I have alluded to modestly in the past but will do more forcefully in this next report, the inclusion, in our statute, of sections that are now statutory in some other parts of the country. For example, in the conflict of interest legislation of the Northwest Territories, a commission on which my colleague the Hon. Greg Evans and I have the honour to serve, there is a provision that says that each member shall:

> Perform his or her duties of office and arrange his or her private affairs in such a manner as to maintain public confidence and trust in the integrity, objectivity and impartiality of the member.

Then of course the federal code, which is administered by federal ethics counsellor Wilson, at the request of the Prime Minister, has the opening provision that:

> Public office holders shall act with honesty and uphold the highest ethical standards so that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced.

You heard from our colleague the Hon. Greg Evans on the progress that has been made in Ontario, in that they no longer have a Conflict of Interest Act but now an Integrity Act. A clause in the preamble to that statute says: "Members are expected to act with integrity and impartiality that will bear the closest scrutiny."

I commend my colleague from Ontario for the leadership he has shown in bringing about these changes with their new statute. I appreciate that they have moved to include in their statute "Ontario parliamentary convention". I personally favour the inclusion of a more definitive statement, like one of those I have just mentioned that exist in the Northwest Territories and in the Code here. Nonetheless, they all have moved in the same direction.

If what I advocate were to come to pass, the British Columbia Act would, like the one in Ontario, have to be renamed the "Integrity" or "Ethics" Act and the Commissioner reconstituted, as in Ontario, as the "Integrity Commissioner", or as in Alberta, where my colleague Mr. Clark is known as the "Ethics Commissioner".

If this kind of addition were to be made to the statute, the result, I believe, would be the implementation of the

highest possible standard through incorporating in the one statute British Columbia's conflict of interest requirements and the federal Code requirements, backed by an effective investigative and enforcement mechanism.

Derril G. McLeod (Saskatchewan): Many aspects of the Saskatchewan act are substantially the same as those of the other jurisdictions. The disclosure requirements are a little more stringent than those of British Columbia. The private disclosure statements require the amount to be disclosed, but the public disclosure statements I prepare that are available for public inspection do not disclose the value of assets, the amounts of liabilities or anything of that nature. In fact, they are very much more limited.

I have only been in this position now for a year and a half. During that time I have had the opportunity to meet all of the members and their spouses in the review process.

I am satisfied that the introduction of this type of legislation in Saskatchewan – and I suspect anywhere else – is not due to the sudden outbreak of moral turpitude among members or a rash of conflicts of interest. I think it is important to remember that this type of legislation is designed primarily for the benefit of the public, and not for the benefit of members. It has a secondary role and that is, of course, the direct benefit to members. In its operation it will enhance the reputation of these institutions for probity and integrity.

You must remember that all too often conflicts of interest are more perceived than real. I have just concluded my first investigation in Saskatchewan of an allegation of conflict of interest on the part of the Minister of Social Services. There was a perception of conflict. It only took me ten days to prepare and file a report that satisfied everyone that there was no conflict of interest and no breach of the *Members Conflict of Interest Act*.

The other thing that has to be borne in mind is that these provisions are not unlike, and indeed are analogous to, codes of ethics that are in place and adopted by all sorts of institutions and professions. Universities, hospitals, the legal profession, the medical profession and the nursing profession all have them, and they are all there for the same reason. They are there to protect the public and to ensure that public trust in those institutions is maintained, because it has to be at a very high level. I think the same reasoning applies here.

The next thing I want to point out is that under these acts the institutions, be they the legislatures or the House of Commons, retain their complete supremacy or sovereignty with respect to any final decision in any given case. In the acts I have looked at there is only one exception to that. The Saskatchewan act, the Ontario act and I think the British Columbia act each have an offence penalty enforceable before a provincial court judge with respect to violation of sections pertaining to employment by a member who has ceased to be a minister or a member.

I have some difficulty with that. I had occasion to be asked by a minister who was resigning her position for advice on what she could do and what she could not do. I had to end up telling her I thought what she was proposing to do was probably okay, but the act gives jurisdiction over that to a provincial court judge. I am not at all sure why that should be so, and I am not convinced that I see any good reason for it.

Of course there is always a temptation to want to go into too much detail in these things. Too much detail is usually a bad idea because the specific excludes everything else. In this inquiry I just finished dealing with, I had occasion to decide whether the minister was in violation of section 5 of the Saskatchewan act. The Saskatchewan act says:

> 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.

Then it defines family. A family includes only dependent children. During my inquiry I find he is supposed to have helped his son, but it turns out the son is 22 years old. He is not a dependant and so is outside the act.

The final comment I have to make is regarding the use and appointment of outsiders – commissioners, like this lot – to interpret and advise with respect to the act. Now remember, the final decision is always with the House or the Senate or the legislature. In my respectful submission, I believe it's probably wise to have someone outside the House or the institution. The fact that there are five of us here with different backgrounds, and I think all appointed in the same fashion by the unanimous vote of our legislatures, probably indicates that it is possible after all to find people to do this job, people in whom the members can have confidence, who can deal with things that otherwise might fester and create problems in a fairly summary fashion and get the matters disposed of.

Editor's Note: See also the article in the *Canadian Parliamentary Review* by Albert Khelfa on "Conflict of Interest and the Office of the Juriconsult in Quebec" in Volume 9, (4), 1986.