

JOYCE REPORT

APRIL 12, 2022



Commissioner for Legislative Standards

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EXECUTIVE SUMMARY

This report was initiated in accordance with subsection 42(2) of the House of Assembly Act R.S.N.L. 1990 c. H-10, (“the Act”) into the compliance of MHA Eddie Joyce (MHA, Bay of Islands).

The main issue in this report is the continued non-compliance of MHA Joyce with the Conflict of Interest Provisions in Part II of the HOA Act. Specifically, MHA Joyce is not compliant with the statutory financial disclosure requirements of sections 36 – 38(1) of the Act. These financial disclosure requirements of the legislation are the foundations of the conflict of interest provisions and form the pillars of our political system. Failure to comply with the provisions strikes at the integrity of our political system and the public confidence of our elected officials.

This is the second report that I have had to issue on this issue concerning MHA Joyce. The first report was issued on November 3, 2020 but was not addressed before the legislature was dissolved for the 51st General Election.

Since June 2021, MHA Joyce has repeatedly and willfully refused to provide requested information required in order to prepare his Member’s public disclosure statement. During that time, MHA Joyce has attempted to dictate that his compliance with the law is contingent upon the Commissioner answering questions related to the Joyce Report issued on October 18, 2018. That report was accepted by the House of Assembly and has been concluded. While it is clear that MHA Joyce disagrees with the Joyce Report findings, this does not excuse him from oversight and accountability.

This is a very straightforward issue and while it was my preference to simply advise the member and assist him with his disclosure obligations, he has left me with no choice to provide this report to the Speaker pursuant to s.44(1) of the Act.

As MHA Joyce has not complied with his statutory obligations, I am of the opinion that he has violated the conflict of interest provisions. Furthermore, this violation of the Act also results in a violation of the Code of Conduct for Members of the House of Assembly (the “Code”) and his Oath of Office. Specifically, I am of the opinion that he has also violated principles 1 and 6 of the Code.

Given the serious nature of these violations and the continued non-compliance exhibited by MHA Joyce, I am of the opinion that he be suspended from the House of Assembly in accordance with s.45(c) of the Act until he has fulfilled his statutory obligations.

INTRODUCTION

This report arises out of the failure of MHA Joyce to provide requested financial disclosure necessary to complete his Public Disclosure Statement in accordance with the *House of Assembly Act* R.S.N.L. 1990 c. H-10. (“*HOA Act*”).

This is the second report that I have had to issue on this issue concerning MHA Joyce. The first report was issued on November 3, 2020 but was not addressed before the legislature was dissolved for the 51st General Election. While some members have missed the statutory deadline for providing information in the past, they have not been openly defiant and those members have subsequently provided the necessary financial information to allow public disclosure statements to be completed. MHA Joyce is the exception. I would much rather advise members how to manage their affairs in accordance with their statutory obligations than write reports to the legislature highlighting non-compliance. MHA Joyce has left me no choice as he will simply not cooperate.

Since June 2021, I have requested that MHA Joyce provide me with financial documentation necessary for review so that I can advise the member with respect to what is required to be contained in his Public Disclosure Statement. Since that time, I have offered to meet with the member virtually, in person, and in the presence of his legal counsel. However, rather than cooperate and provide the requested documentation necessary for me to fulfill my statutory duty, MHA Joyce continues to refuse to disclose it to me. Despite repeated requests and assurances that the information provided to my office is privileged and is never disclosed, he continues to refuse to cooperate and is placing pre-conditions upon the provision of this information. On February 14, 2022 MHA Joyce requested an extension to provide a response. That extension was granted until 4pm on February 23, 2022. Although MHA Joyce was granted an extension no response was received from MHA Joyce concerning the obligations, only a reiteration of his demands.

It is clear MHA Joyce has concerns regarding the October 18, 2018 Joyce Report, however this does not limit or reduce the obligation of the member to proactively disclose information to my office to ensure compliance with governing legislation. A member has no authority to request information from the Commissioner before deciding to comply with provincial law. The statutory obligation is upon him to disclose. My role in providing advice to members regarding their financial holdings is not a quasi-judicial function, it is a legislative administrative function designed to assist members in putting their financial affairs in order. Despite MHA Joyce not facing any jeopardy in providing this documentation to me, he continues to refuse and raises questions about issues concerning the October 18, 2018 Joyce Report. That report was accepted by the legislature, and while MHA Joyce may be upset with the result, he must continue to abide by the law.

LEGISLATIVE OVERVIEW AND ANALYSIS

All members of the House of Assembly are subject to the provisions of the Act. Part II of the Act is entitled “Conflict of Interest” and sets out specific obligations for members to disclose financial information to the Commissioner for Legislative Standards (the “Commissioner”). A fundamental purpose of the disclosure obligations is to ensure transparency and accountability for those holding public office.

Section 38 of the Act states:

*38. (1) Upon reviewing the disclosure statement received from the member, and after considering information received during a meeting with the member, **the commissioner shall advise the member whether steps need be taken to ensure that the member’s obligation under this Part are fulfilled.***

*(2) The commissioner **may make a recommendation to a member that in order to fulfil the member’s obligations under this Part, the member sell a private interest at arm’s length, place the private interest in a trust on those terms and conditions that the commissioner may specify, with or without those other arrangements to be made that will ensure that the member’s obligations under this Part are fulfilled.***

(3) Where the commissioner is satisfied on the basis of the disclosure statement and subsequent steps taken by a member, whether in response to advice received from the commissioner or not, that the member has fulfilled the member’s disclosure obligations, then if the member requests, the commissioner shall certify in writing to the member, and the member is entitled to rely on that certificate, for all purposes of this Part, according to its terms.

(4) Advice or a certificate given by the commissioner to a member under this section is privileged, except to the extent necessary to insure compliance with this Part, to the member, and may be made public only by the member or with the member’s written consent.

(5) Notwithstanding subsection (4), a copy of any advice or certificate given under this section shall be given by the commissioner to the Premier, where the advice or certificate relates to a minister, or relates to that member’s family.

Section 38 of the Act includes the word “shall” with respect to the duty of the Commissioner to advise the member. To effectively advise the member, it is necessary for me to have all the information necessary that has been requested of the member. Otherwise, my advice would be incomplete and the principles of accountability and transparency for those holding public office would not be respected.

Section 38(2) of the Act allows me to make a recommendation to a member that in order to fulfil the member’s obligations, the member shall sell a private interest at arm’s length, or place a private interest in trust on terms and conditions to ensure the member’s obligations are satisfied. The absence of complete financial disclosure prevents such an assessment.

Section 39 of the Act states:

39. Where it would not be contrary to the purposes of this Part, and would be consistent with the public interest, the commissioner may designate a private interest of the member or the member's family to be an excluded private interest, either absolutely or on stated conditions.

Section 39 of the Act provides me with a discretion to designate a private interest of a member or the member's family to be an excluded private interest, either absolutely, or on stated conditions. Without full disclosure of the particulars of the members private interests, I am unable to make such an assessment.

The Act also requires members to report if there has been a material change in circumstances, the absence of complete financial disclosure prohibits me from determining if there has been changes to a member's disclosure statement based on previous filings.

The importance of the proactive disclosure obligations cannot be overstated and is highlighted in the oath that members take upon election to the House of Assembly. Upon being sworn in, members state:

(c) "I will faithfully, to the best of my ability, perform the duties and responsibilities of my office and will not allow any direct or any indirect monetary or other personal or private interest to influence my conduct or affect my duties in public matters;" and

(d) "I affirm, ascribe to and agree to follow the Code of Conduct of Members adopted by the House of Assembly".

MHA Joyce was informed in writing on several occasions that his continued non-compliance with the law would result in me exercising my discretion to inquire into the matter and provide a report to the legislature. Rather than cooperate and provide the requested information, MHA Joyce continues to question issues and events in relation to the October 18, 2018 Joyce Report. He will simply not comply.

Therefore, I am of the opinion that MHA Joyce is in violation of the conflict of interest provisions of the House of Assembly Act.

CODE OF CONDUCT ANALYSIS

In addition to the analysis of the *Act*, I have also conducted a review of the Code of Conduct for Members of the House of Assembly to determine if there has been a violation of the Code.

Principle 1 of the Code of Conduct states that “Members shall inform themselves of and shall conduct themselves in accordance with the provisions and spirit of the Standing Orders of the House of Assembly, the House of Assembly Accountability, Integrity and Administration Act, the Members’ Resources and Allowances Rules, the Elections Act, 1991, the House of Assembly Act and this Code of Conduct and shall ensure that their conduct does not bring the integrity of their office or the House of Assembly into disrepute.”

Furthermore, principle 6 of the Code of Conduct states: “Members will carry out their official duties and arrange their private financial affairs in a manner that protects the public interest and enhances public confidence and trust in government and in high standards of ethical conduct in public office.”

By repeatedly failing to provide the requested information, it is my opinion that MHA Joyce has violated Principle 1 by not adhering to the requirements of the *Act* and has violated principle 6 by not arranging his private financial affairs in a manner that protects the public interest and enhances public confidence. Our democracy requires this disclosure to promote accountability in public officials.

This is a very straightforward issue and while it was my preference to simply advise the member and assist him with his disclosure obligations, he has left me with no choice but to provide this report to the Speaker pursuant to s.44(1) of the *Act*. All members of the House of Assembly are subject to disclosure requirements for the good of the entire province and no member can be perceived to be above the law.

RECOMMENDATION

In light of continued non-compliance of MHA Joyce to provide requested financial disclosure to allow completion of his Public Disclosure Statement, I recommend under the authority of s. 45(1) of the *Act* that MHA Joyce be suspended from the House of Assembly until such time as the requested financial disclosure is provided to me for review and his Public Disclosure Statement is complete.

APPENDIX A: MEMBERS CODE OF CONDUCT


Commitments:

Members of this House of Assembly recognize that we are responsible to the people of Newfoundland and Labrador and will responsibly execute our official duties in order to promote the human, environmental and economic welfare of Newfoundland and Labrador.

Members of this House of Assembly respect the law and the institution of the Legislature and acknowledge our need to maintain the public trust placed in us by performing our duties with accessibility, accountability, courtesy, honesty and integrity.

Principles:

1. Members shall inform themselves of and shall conduct themselves in accordance with the provisions and spirit of the Standing Orders of the House of Assembly, the *House of Assembly Accountability, Integrity and Administration Act*, the Members' Resources and Allowances Rules, the *Elections Act, 1991*, the *House of Assembly Act* and this Code of Conduct and shall ensure that their conduct does not bring the integrity of their office or the House of Assembly into disrepute.
2. It is a fundamental objective of their holding public office that Members serve their fellow citizens with integrity in order to improve the economic and social conditions of the people of the province.
3. Members reject political corruption and refuse to participate in unethical political practices which tend to undermine the democratic traditions of our province and its institutions.
4. Members will act lawfully and in a manner that will withstand the closest public scrutiny. Neither the law nor this code is designed to be exhaustive and there will be occasions on which Members will find it necessary to adopt more stringent norms of conduct in order to protect the public interest and to enhance public confidence and trust.
5. Members will not engage in personal conduct that exploits for private reasons their positions or authorities or that would tend to bring discredit to their offices.
6. Members will carry out their official duties and arrange their private financial affairs in a manner that protects the public interest and enhances public confidence and trust in government and in high standards of ethical conduct in public office.
7. Members will base their conduct on a consideration of the public interest. They are individually responsible for preventing conflicts of interest and will endeavour to prevent them from arising. Members will take all reasonable steps to resolve any such conflict quickly and in a manner which is in the best interests of the public.

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8. In performing their official duties, Members will apply public resources prudently and only for the purposes for which they are intended.
 9. Members will not use official information which is not in the public domain, or information obtained in confidence in the course of their official duties, for personal gain or the personal gain of others.
 10. Members should have regard to the duty of public service employees to remain politically impartial when carrying out their duties.
 11. Members should promote and support these principles by leadership and example.
 12. This Code of Conduct has a continuing effect except as amended or rescinded by resolution of the House of Assembly.