

TIBBS REPORT

September 14, 2022



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EXECUTIVE SUMMARY

This Report was initiated pursuant to s. 42(2) of the House of Assembly Act R.S.N.L. 1990 c. H-10, (“the Act”) regarding the compliance of MHA Chris Tibbs (MHA, Grand Falls-Windsor-Buchans) with s.36(4) of the Act.

Section 36(4) of the Act requires all members to report a material change in circumstances to the information required to be disclosed to the Commissioner for Legislative Standards (the “Commissioner”) pursuant to s.36(1) of the Act within 60 days. If this is not done, the member is non-compliant.

In early April 2022, following media reports regarding his personal finances, MHA Tibbs contacted the Commissioner with respect to his disclosure obligations. Upon review it was discovered that MHA Tibbs had not reported material changes to the information required to be included in his disclosure statement. MHA Tibbs was cooperative throughout, apologized for the error, and advised he will do whatever is expected of him to make sure his disclosure obligations are fulfilled.

There was no financial wrongdoing or personal gain related to MHA Tibbs non-compliance. As such, this report is meant to be advisory and educational, rather than punitive. It is likely that many members may have run afoul of s.36(4) of the Act in the past. MHA Tibbs indicated that this situation was a learning experience for him and other Members of the House of Assembly who may find themselves in similar situations. I could not agree more.

All members are encouraged after reviewing this Report to contact the Commissioner if there have been any material changes to the information disclosed to the Commissioner pursuant to s.36(1) as soon as possible. By proceeding in this fashion, members can avoid a finding of non-compliance with s.36(4) of the Act. More importantly, timely disclosure to the Commissioner may also prevent the member from experiencing further issues of a more serious nature, rather than administrative non-compliance.

FACTS

In early April 2022, MHA Tibbs contacted the Commissioner regarding media reports about his personal financial situation.

Upon being contacted by MHA Tibbs, it was determined that further investigation was necessary, and an inquiry was commenced pursuant to s.42(2).

On May 17, 2022, MHA Tibbs was invited to submit a written submission to address the issue of non-compliance with 36(4) of the Act.

On May 30, 2022, MHA Tibbs provided his submission for review and consideration. In his submission, MHA Tibbs advised that in February 2020 he entered into a financial reorganization of debt obligations. This became necessary as MHA Tibbs income had been reduced from the transition from the private sector to the public sector. MHA Tibbs stated, “If I’d had any inkling that I was unintentionally failing to account for something that needed to be included in a disclosure statement, I would have corrected the oversight immediately. I sincerely apologize if that was the case.”

LEGISLATIVE OVERVIEW & 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. A fundamental purpose of proactive disclosure obligations is to ensure transparency and accountability for those holding public office.

Upon being elected to office, some members are surprised that they must disclose their “private interests” to the Commissioner. Members are often more surprised that they are also required to disclose the “private interests” of the member’s family. The requirement to disclose information to the Commissioner that would otherwise be considered private is one of many sacrifices members must make to ensure transparency and accountability in our democracy.

Section 20 (e) of the Act defines a private interest as:

(i) an asset, liability or financial interest,

(ii) a source of income,

(iii) a position of director or officer in a corporation or association,

(iv) membership of a board, commission or agency of the Crown in right of Canada or a province, or a municipality, and

(v) an office, commission or employment in the service of the Government of Canada or a province, at the nomination of the Crown in right of Canada or a province, or an officer of the Crown in right of Canada or a province;

Section 20(e) broadly defines what a private interest is for the purpose of the Act. It includes any “asset, liability, or financial interest.” This would include such things as personal loans, lines of credit, mortgages, lease obligations, income tax arrears, or credit card debts. All private interests must be reported to the Commissioner.

Section 36 of the Act is entitled, “Disclosure Statement” and states:

36. (1) Every elected member and appointed minister shall,

(a) within 60 days of his or her election or appointment; and

(b) before the second April 1 occurring after the date of his or her election or appointment; and

(c) before each April 1 subsequent to the date referred to in paragraph (b), file with the commissioner a disclosure statement in the form set by the commissioner.

By operation of s.36(1) every elected member and appointed minister shall file with the Commissioner a form established by the Commissioner within 60 days of being elected or appointed.

The details of what must be included in a disclosure statement is set out in s.36(2) which states:

36 (2) The disclosure statement shall contain,

(a) a full statement of the member's private interests other than personal property referred to in subparagraph 20(a)(iv) where the possession, ownership or use of that property does not give rise to the possibility of a conflict of interest;

(b) the audited financial statement of the assets, financial interests and liabilities of

(i) a corporation in which the member and the member's family together hold 10% or more of the shares,

(ii) a partnership in which the member and the member's family together hold a 10% or more interest, and

(iii) a partnership or corporation controlled by a partnership or corporation referred to in subparagraph (i) or (ii);

(c) a statement, to the best of the member's knowledge, information and belief, of each private interest of the member's family.

With respect to what must be disclosed with respect to the member's family, s. 36(3) governs and states:

36 (3) The statement referred to in paragraph (2)(c) shall contain

(a) a full statement of the private interests of the member's family;

(b) the audited financial statement of the assets, financial interests and liabilities of

(i) a corporation in which the member's family holds 10% or more of the shares,

(ii) a partnership in which the member's family holds a 10% or more interest, and

(iii) a partnership or corporation controlled by a partnership or corporation referred to in subparagraph (i) or (ii).

If there is a material change to the information required to be disclosed to the Commission under s.36(1) or s.36(3), by operation of s.36(4) this information must be disclosed to the Commissioner in writing within 60 days. Section 36(4) states:

(4) A material change to information required to be disclosed to the commissioner under this section, shall be reported to the commissioner in writing by the member not more than 60 days after the change occurs.

The legislature has struck a balance between public interest disclosure and personal privacy by including s.37 in the Act. This section states:

37. (1) The commissioner shall prepare a public disclosure statement for each member, which shall be submitted to the member for review.

(2) The public disclosure statement shall identify each private interest other than an excluded private interest of the member and the member's family disclosed to the commissioner by the member, but shall not show the amount or the value of a private interest.

(3) An interest may be qualified in the public disclosure statement by the words "nominal", "significant" or "controlling" where in the opinion of the commissioner it would be in the public interest to do so.

(4) The public disclosure statement of each member shall then be placed on file at the office of the commissioner, and made available for public inspection during normal business hours.

Pursuant to s.37, the Commissioner must prepare a public disclosure statement for each member, however by operation of s.37(2) the public disclosure statement shall not show the amount or the value of the private interest(s). Rather, s.37(3) provides the Commissioner with a statutory discretion to describe the interest as “nominal”, “significant”, or “controlling”, when it is in the public interest to include such a description. The public interest disclosure statement prepared by the Commissioner is then provided to the member before being filed at the Commissioner’s office for public inspection.

The Act promotes accountability and transparency by making members responsible for disclosing their personal assets and liabilities to avoid a conflict of interest. By disclosing the nature of the member’s private interest(s), but not the specific amount or value, the public is aware, or ought to be aware, if a member is participating in debate or decision making which may place them in a conflict of interest. The specific amount or value of the private interest is not required to be disclosed publicly because if the member participates in a decision involving a private interest they are in a conflict of interest, irrespective of the value of that interest.

The importance of the proactive disclosure obligations cannot be overstated and is highlighted in the oath 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;"

Guidance with respect to what constitutes a material change in circumstances which must be disclosed to the Commissioner is found in the Peschisolidi Report prepared by the federal Conflict of Interest and Ethics Commissioner. The Peschisolidi Report arose out of a member failing to disclose private interests and failing to report a material change in the information required to be provided to the Commissioner within 60 days of the change. At paragraph 46 Commissioner Dion provides the following guidance with respect to the meaning of "material change":

[46] A change that affects the information required to appear on a Member's public Disclosure Summary is always considered "material." For instance, a new income greater than \$10,000, the acquisition of an asset or liability that exceeds \$10,000, or a reduction in the value of an asset or a liability that brings it below the \$10,000 threshold are all material changes for which a statement must be filed. Given that when such a change occurs, the Member's Disclosure Summary is no longer accurate, the Code also requires the Commissioner to include the statement in the Member's summary, in order to restore the accuracy of the information that is available to the public

Any change in a member's financial circumstances that requires a change to the information provided to the Commissioner is material. Upon such a change occurring, the member must report it to the Commissioner within 60 days to "restore the accuracy of the information that is available to the public."

The evidence establishes that MHA Tibbs misunderstood his disclosure obligations and failed to report a change of information required to be provided to the Commissioner. This change had a material impact upon his liabilities and was required to be disclosed within 60 days to the Commissioner. It was not, and therefore MHA Tibbs violated s.36(4) of the Act.



RECOMMENDATION

Section 45 of the Act grants the Commissioner with a statutory discretion to make various recommendations if a member has violated Part II of the Act. The use of the word “may” in s.45 means that recommendations from the Commissioner are not mandatory.

The facts of this case demonstrate administrative non-compliance with the Act. There was no private interest furthered and no evidence that the member acted contrary to the public interest.

The member was cooperative throughout and sincerely apologized for his error and has since provided updated disclosure. This Report should be a reminder for all members to maintain accurate disclosure statements at all times.

It is not in the public interest to punish MHA Tibbs in the circumstances of this case and consequently I am not recommending any of the penalties stated under s.45(1).