

Legislative
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OFFICE OF THE INTEGRITY COMMISSIONER



REPORT

OF

**THE HONOURABLE J. DAVID WAKE
INTEGRITY COMMISSIONER**

**RE: THE HONOURABLE BOB CHIARELLI
AND THE HONOURABLE CHARLES SOUSA**

TORONTO, ONTARIO

August 9, 2016

RE: THE HONOURABLE BOB CHIARELLI AND THE HONOURABLE CHARLES SOUSA

EXECUTIVE SUMMARY

This report relates to a complaint made by Jagmeet Singh, the Member of Provincial Parliament (MPP) for Bramalea-Gore-Malton under section 30 of the *Members' Integrity Act, 2004* (the “**Act**”) against Bob Chiarelli, then Minister of Energy and currently Minister of Infrastructure, and Charles Sousa, Minister of Finance (“the **Ministers**”).

The complaint alleges that the Ministers contravened section 6 of the Act by receiving a fee, gift or personal benefit connected with their attendance at a fundraising event on December 7, 2015 (“the **Event**”) and their involvement in the decision-making process related to the privatization of Hydro One. It is my opinion that while the Ministers may have received political benefits from their attendance at the Event, they did not receive any personal benefits and accordingly did not contravene section 6 of the Act.

I also considered the issue of whether the Ministers breached the conflict of interest provisions set out in section 2 of the Act. While the Act applies to actual conflicts of interest, it does not seem to apply to apparent conflicts of interest. An apparent conflict of interest exists when there is a reasonable apprehension, which reasonably well-informed persons could properly have, that a conflict of interest exists. As the Ministers did not receive any personal benefits from their attendance at the Event, I am not able to conclude that the Ministers were in an *actual* conflict of interest. Given the language in the Act, I do not have the authority to conclude that an apparent conflict of interest is prohibited under the Act. I would encourage the Legislature to review the Act with a view to clarifying whether it should apply to the *appearance* of conflicts of interest.

I. LEGISLATIVE FRAMEWORK

- [1] Under section 30(1) of the Act, a member of the Legislative Assembly of Ontario who has reasonable and probable grounds to believe that another member has contravened the Act or Ontario parliamentary convention may request that I give an opinion on the matter. When a matter is referred to me by a member, I may then conduct an inquiry, in accordance with section 31 of the Act, after providing reasonable notice to the member whose conduct is concerned.

II. TIMELINE OF COMPLAINT AND RESPONSE

- [2] My Office first became aware of this complaint on April 6, 2016 when an affidavit from Mr. Singh (the “**Affidavit**”) was received alleging that the Ministers contravened section 6 of the Act by accepting donations to attend an Event from financial institutions involved in the privatization of Hydro One.
- [3] On April 7, I sent the Ministers a copy of the Affidavit and invited them to make submissions regarding the substance of the complaint, which were subsequently received on April 19.
- [4] On April 22, I invited Mr. Singh to comment on the Ministers’ submissions, which he did on May 4, 2016.

III. THE INQUIRY PROCESS

- [5] My staff interviewed the Ministers separately. Ali Ghiassi, Chief of Staff for Minister Sousa, and Andrew Teliszewsky, Chief of Staff for Minister Chiarelli, also attended the interviews with their respective Ministers and provided information.

- [6] My staff conducted separate telephone interviews with John Sherrington, former Vice Chairman, Global Investment Banking at Scotiabank and Dwight Duncan, former Deputy Premier and Minister of Finance.
- [7] After my staff's requests to interview Bobby Walman, former Chief Fundraising Officer for the Ontario Liberal Party (the "**Liberal party**"), went unheeded, I issued a summons to compel his attendance. Jack B. Siegel, counsel for the Liberal party then intervened and made arrangements for Mr. Walman to appear with him at my office where an interview then took place.
- [8] My staff also requested and received information from Vince Borg, President of the Liberal party.
- [9] I reviewed comments made by John Gerretsen, former Attorney General, on June 27, 2016 before the Standing Committee on General Government.

IV. THE FACTS

Hydro One Offering

- [10] In their submissions, the Ministers outlined the process by which decisions about the Hydro One offering were made. Each Minister advised that in 2014 the provincial Cabinet began reviewing government assets that were deemed to be underperforming.
- [11] Then in April 2015, Cabinet made a decision to broaden ownership of Hydro One to raise capital for the province through an Initial Public Offering (IPO).¹ As members of Cabinet, each Minister was involved in deliberations about proceeding with the Hydro One IPO. Minister Chiarelli sat on the Premier's Advisory Council on Government Assets. The Advisory Council consisted of approximately 20 individuals, including four

¹Ontario, Initial Report, Report by the Premier's Advisory Council on Government Assets (Toronto: 2015), <<https://www.ontario.ca/page/initial-report-premiers-advisory-council-government-assets>>.

ministers, representatives of the Premier's Office, the Secretary of the Cabinet, and deputy ministers as well as financial consultants. Minister Sousa was not a member of the Advisory Council. The Advisory Council recommended the government broaden ownership of Hydro One to raise capital for the province through public offerings.

- [12] As part of the IPO process, the government created two selection panels to select the financial institutions that would be involved in the IPO. The first panel selected the book runners for the IPO, which are the main underwriters and coordinators in securities issuances. The second panel selected the syndicates, which are the other underwriters involved in securities issuances.
- [13] Each Minister indicated that he did not participate in the selection of members of the panels, book runners or syndicates.
- [14] The selection panel for the book runners included representatives of the Ministry of Energy, the Secretariat for the Premier's Advisory Council on Government Assets, the Ontario Financing Authority and three independent advisors with expertise in financial and securities matters. The evaluation criteria and the process for selecting the book runners were communicated to eight banks which were invited to compete on the basis that they represented the major Canadian dealers and reflected international interest in the transaction. Each of the eight participant banks submitted a proposal responding to specific topics requested by the panel and also met with the panel. Written responses to any inquiries from all participants were shared with all firms. Each panel member reviewed the submissions individually based on pre-determined evaluation criteria prior to discussing the matter as a group.
- [15] Based on the panel's recommendations, the Ministry of Energy announced the selection of the Royal Bank of Canada Capital Markets (RBC) and Scotiabank Global Banking and Markets (BNS) as book runners.

[16] The selection panel for the underwriting syndicate included representatives of the Ministry of Energy, the Secretariat for the Premier’s Advisory Council on Government Assets and the Ontario Financing Authority, two independent advisors and a representative of Hydro One Inc. RBC and BNS participated in the process on a non-voting basis. The Ministers advised that while 44 investment banks received a written invitation letter to participate in the syndicate selection process, only 33 proposals were received with two additional banks indicating limited interest. The panel considered information that was set out in the proposals, and a summary of the proposals provided by RBC and BNS, as well as publicly available information. Each panel member completed an assessment of the potential syndicate banks in a standard format and made initial recommendations individually prior to meeting for discussion as a group on August 17, 2015. The following 14 underwriters were ultimately selected:

- | | |
|-----------------------------|------------------------------|
| 1. BMO Nesbitt Burns | 8. Canaccord Genuity Corp. |
| 2. CIBC World Markets | 9. Desjardins Securities |
| 3. TD Securities | 10. GMP Securities |
| 4. National Bank Financial | 11. Raymond James Ltd. |
| 5. Barclays Capital Canada | 12. Dundee Securities |
| 6. Credit Suisse Securities | 13. Industrial Alliance |
| 7. Goldman Sachs Canada | 14. Manulife Securities Inc. |

[17] Denis Desautels, former Auditor General of Canada, served as a special advisor to the Minister of Energy to review each panel’s processes. He concluded that the processes were fair and that no conflict of interest issues were identified.

[18] A first public offering occurred on October 29, 2015.

[19] Each Minister advised that it is the government’s intention to offer ownership of Hydro One in several separate tranches.

[20] Following the first offering, the Ministry of Energy established the Investment and Governance Secretariat (the “**Secretariat**”). The Secretariat created the Investment Advisory Committee (the “**Committee**”) to provide advice on the timing and size of subsequent offerings. Based on the Committee’s advice, the Secretariat provides recommendations to the Treasury Board which are then provided to Cabinet.

- [21] Cabinet elected to proceed with a secondary offering by way of a “bought” transaction where securities would be purchased by underwriters which would then sell them to other institutions or retail investors.
- [22] The 14 underwriters involved in the original IPO were asked to provide a price for the second offering. If the price proposed was not acceptable, a competitive process would have been engaged whereby the six largest Canadian financial institutions would have been invited to submit bids.
- [23] The price proposed was in fact accepted and the second offering occurred on April 7, 2016. Thirteen of the 14 original underwriters were involved in the second offering. Goldman Sachs Canada was no longer involved and Laurentian Bank was added as the 14th underwriter.²
- [24] The process for future offerings has not yet been determined.

The Event

- [25] John Sherrington was contacted by the Liberal Party of Ontario some time in November, 2015, and was asked to be the honorary chair of the Event to raise money for the Liberal Party.³ It would be an invitation-only event called “An evening with Hon. Bob Chiarelli, MPP and Hon. Charles Sousa, MPP.” Mr. Sherrington indicated that he was asked to chair the Event because he was affiliated with Scotiabank, one of the two lead banks on the Hydro One IPO.
- [26] Minister Chiarelli indicated he did not recall when he first became aware of the Event. He clarified that while he has been involved in a number of fundraising events for the Liberal party he has had a limited role in the organization of these events. Typically his role is to decide the type of event to be held and then a team of volunteers is responsible for organizing the event. Minister Chiarelli stated that these volunteers can also be

² Representatives of Laurentian Bank were not in attendance at the Event.

³Mr. Sherrington has since retired from his position as Vice Chairman, Global Investment Banking at Scotiabank.

members of his Queen's Park or constituency office staff. However, fundraising-related work is done on the staff's own time and using non-government resources. Minister Chiarelli's chief of staff, Mr. Teliszewsky, volunteered to assist with the Event.

[27] Minister Sousa advised that he had no role in organizing the Event. He was invited to attend by staff from Minister Chiarelli's office. As a result, Minister Sousa indicated that he did not know who would be attending the Event. He did not invite any guests himself, or contact any guest either before or after the Event.

[28] The invitation for the Event was designed by the fundraising team of the Liberal party. Mr. Walman confirmed that his team also helped organize the logistics of the Event, including marketing, event management, cashing and attributing the taxable portion of the receipts and generating the tax receipts. He confirmed that all money raised was paid to the Liberal party. The invitation for the Event is attached as Appendix A to this report.

[29] Both Mr. Sherrington and Mr. Teliszewsky were responsible for sending the invitation to guests of the Event. Mr. Teliszewsky emphasized that this work was done in a volunteer capacity, on his personal time, using non-government resources. Mr. Teliszewsky indicated that Mr. Sherrington "worked his Rolodex" to invite individuals from his professional network.

[30] In deciding whom to invite to the Event, Mr. Sherrington explained that as the Event was held a month after the closing of the IPO, it was reasonable to invite all of the participants, including the banks and law firms involved, as "an appreciation of the transaction, nothing more nothing less." He indicated that the invitees were not obligated to attend.

[31] Mr. Sherrington sent the invitation as an email attachment but could not recall if there was any language in the body of the email.⁴ He said if there was language in the body of

⁴ As Mr. Sherrington has retired from his position at Scotiabank, he does not have access to his email.

the email, it would likely have only said “pleased to enclose.” Mr. Teliszewsky advised that neither he nor Minister Chiarelli had seen or had any role in reviewing emails sent by Mr. Sherrington to invitees of the Event.

[32] Mr. Sherrington said he did not have any contact with Minister Chiarelli or Minister Sousa about the Event but only communicated with Mr. Teliszewsky and the Liberal party. Minister Chiarelli confirmed that he did not have any discussions with Mr. Sherrington about the Event.

[33] The Event was attended by 24 individuals from various financial institutions, unions, government relations firms and representatives from the energy sector who paid \$7,500 each. None of the members of the selection panel, Secretariat or the Committee involved with the Hydro One offerings was present at the Event. Nine of the 16 banks involved in either the IPO or subsequent Hydro One offerings had representatives at the Event. Mr. Teliszewsky indicated information relating to the Event was reported to Elections Ontario.⁵

[34] Minister Sousa indicated that his role at the Event included greeting guests, thanking them for their donations to the Liberal party and moving among the tables along with Mr. Chiarelli during the meal. Minister Chiarelli indicated that he communicated with attendees of the Event in the same manner as he communicates with any stakeholder, namely by asking what the ministry is doing right or wrong and asking them how they view issues within the energy sector. Minister Chiarelli said the only discussions he had about the Hydro One offerings were social in nature about the success of the IPO.

[35] Mr. Sherrington confirmed that both Ministers made some general comments to the guests, but that these comments were not about matters that were confidential or related

⁵ The names of some of the 24 attendees appear on the website of Elections Ontario. While the Elections Ontario website lists the amount and source of donations made to each political party, the name of all the attendees of the Event is not readily apparent, especially in cases where the tickets were bought by an individual, union or corporation other than the attendee.

to the Hydro One offerings. Mr. Sherrington described the Event as an “evening of pleasantries and appreciation.”

[36] Mr. Sherrington spoke candidly about the prevalence of such fundraising events. He indicated these types of events were put on regularly by all political parties and that it would not be unusual for representatives of financial institutions to attend. Mr. Sherrington doubted that any guests would discuss business-related matters at such events because of the presence of their competitors. He also pointed out that the structure of the Event was based on a similar event that he attended a year earlier as a guest which had featured two other ministers.

[37] Neither the Ministers nor Mr. Sherrington solicited any further donations.

Fundraising Targets

[38] On June 27, 2016, John Gerretsen, former Attorney General, appeared before the Standing Committee on General Government and made the following comments about fundraising targets that existed during the time when he was in Cabinet:

The suggestion that was made to me, I think, when I was first Minister of Municipal Affairs and Housing, was, “Can you raise about \$20,000?” Of course, I never raised, except for once—I tried a fundraiser here for the provincial party and it didn’t go all that far. I’ve always tried to raise it in Toronto, because in Toronto a fundraiser is totally different than any you have in your own local riding. In your local riding, you basically get people who believe in you. Yes, they believe in your party as well, but they believe in you. You know as well as I do that at the fundraisers in Toronto you get the lobbyists. One day they’re at the red event, the next day at the blue event, and the next day at the orange event...

When I was Attorney General, I think I was asked to raise \$50,000 in my last year. I don’t know whether I ever did it or not; I just let my staff look after it. They’d make calls from the Liberal offices on St. Mary Street to get people to—not local fundraising; I think locally I only had about four of five fundraisers during the entire period of time—maybe a few more; maybe half a dozen during my 19 years. What I used to do, quite frankly, is send a begging letter around December 1 to tell people what their tax advantages were if they donated before the end of the year. That usually raised me enough money that saw the association carry out its obligations or its stuff over the next year or so.⁶

[39] On March 29, 2016, a newspaper article about fundraising quoted Dwight Duncan, former minister of finance, as saying “I assume they’re still doing that thing, where

⁶Ontario, Legislative Assembly, Standing Committee on on General Government in Transcript (27 June 2016) at G1254 and G1255 (Chair: Grant Crack), <http://www.ontla.on.ca/committee-proceedings/transcripts/files_pdf/27-JUN-2016_G060.pdf>.

ministers have a certain amount, a responsibility to produce” and “As minister of finance you are in a portfolio where people want to see you, and they’ll pay for it.”⁷

[40] Mr. Duncan explained to my staff that as the minister of finance he was in demand by many of his colleagues and that he felt an obligation to help with the party’s fundraising. However, he was clear that he did not have any fundraising targets. Lastly he clarified that he was personally tired of fundraising, not because it was something that he was compelled to do, but because it took up a lot of time.

[41] Both Ministers indicated that they were not aware of any fundraising targets that they were required to meet. They said they are not required to raise a certain amount of money nor had they been warned about the consequences of not raising enough money for the Liberal party.

[42] Mr. Walman was also not aware of any fundraising targets for members or ministers during the time that he was Chief Fundraiser.

[43] Vince Borg, Chair of the Liberal party indicated that it is his experience that there are no fundraising targets for members. He further explained that:

The Ontario Liberal Party certainly expects assistance from its elected members in raising the money necessary to finance both its own central operations and those at the local riding level, but it neither imposes targets upon them nor does it penalize members whose level of support is less than hoped for. Having said that, riding organizations and the elected members affiliated with them have always been encouraged to raise money both at local and central levels to eliminate debt from a previous election, or to start raising money for ongoing operations related to volunteer activities for in-between elections, or an upcoming election, and the annual budget setting process of the party requires sufficient dialogue so that all of us can have realistic expectations as to the level of fundraising support to be expected from all participants.

[44] Mr. Teliszewsky explained that representatives of the Liberal party may inquire about a scheduled event to be able to forecast revenues and make financial projections. He indicated that in his view these inquiries have been mischaracterized as targets.

⁷Martin Regg Cohen, “Escalating fundraising demands part of the system at Queens Park”, The Toronto Star (29 March 2016), <<https://www.thestar.com/news/queenspark/2016/03/29/escalating-fundraising-demands-part-of-the-system-at-queens-park-cohn.html>>.

V. THE ISSUE

[45] As set out in the request, I considered whether the Ministers contravened section 6 of the Act by receiving a fee, gift or personal benefit connected to their involvement in the decision-making process related to the privatization of Hydro One.⁸

VI. OPINION

Gifts or Personal Benefit

[46] The prohibition against members accepting certain gifts or personal benefits is set out in section 6(1) of the Act. This section reads:

6. (1) A member of the Assembly shall not accept a fee, gift or personal benefit that is connected directly or indirectly with the performance of his or her duties of office⁹.

[47] The Affidavit provided by Mr. Singh alleges that the Ministers' involvement in the Event led to a contravention of section 6 of the Act. Mr. Singh seems to be suggesting that the donations made by attendees of the Event were connected to the decisions each Minister made relating to the Hydro One offerings. If this is true, in order for there to be a contravention of section 6, the Ministers must have received a gift or personal benefit from the attendees.

[48] In considering whether the Ministers accepted a gift or personal benefit from the attendees of the Event, I am guided by reports issued recently by my colleagues in Alberta and British Columbia about elected officials in their respective provinces participating in fundraising activities. In my view, this issue is receiving attention that is long overdue.

[49] In Alberta, Ethics Commissioner Marguerite Trussler recently published an opinion on whether the Premier of Alberta violated the *Conflicts of Interest Act* by attending a

⁸ While the affidavit of Mr. Singh makes reference to the *Legislative Assembly Act*, as Integrity Commissioner I have no jurisdiction to provide an opinion about its application.

⁹ *Members Integrity Act*, 1994 c.38, s.6(1).

proposed invitation-only \$1,000 a person fundraiser.¹⁰ The Alberta prohibition against accepting gifts is similar to that in Ontario.¹¹ Commissioner Trussler concluded that the Premier “would not have personally financially benefited from the fundraiser” and therefore would not have received anything that furthered her private interest and accordingly would not be in breach of the Alberta Act.¹²

[50] In British Columbia, Conflict of Interest Commissioner Paul Fraser was asked whether the Premier of British Columbia’s participation in party fundraising events constituted the acceptance of an illegal gift.¹³ The British Columbia prohibition against accepting gifts is similar to that in Ontario.¹⁴ Commissioner Fraser concluded that the Premier did not receive a personal benefit and therefore did not receive an illegal gift. In doing so, he drew a distinction between a “private interest” and a “political interest” as follows:

While it is likely that some portion of the funds raised at the events in question may be used to promote the election prospects of the Premier and others representing the Liberal Party, this is a general, political interest. Such a wide political benefit is not to be regarded as synonymous with a personal benefit. It is too remote and speculative to be considered a “private interest” for the purposes of the Act. For a private interest to exist there must be a direct and personal benefit accruing to the Member, rather than an indirect and political one.¹⁵

[51] Commissioner Fraser went on to suggest at paragraph 67 of his opinion that “something more direct and tangible is required to be considered a ‘personal benefit’.”

[52] The attendees of the Event donated money to the Liberal party and as such no doubt gave the Ministers a “political benefit”, in that the Liberal party had funds available for use. However, I am not able to conclude that the attendees of the Event gave a gift or personal

¹⁰Report of the Investigation into allegations involving Premier Rachel Notley, March 14, 2106 at page 6, <<http://ethicscommissioner.ab.ca/media/1564/march-14-2016-allegations-involving-premier-rachel-notley.pdf>>.

¹¹ Section 7(1) of the Alberta *Conflicts of Interest Act* C-23 reads: A Member breaches this Act if the Member or, to the knowledge of the Member, the Member’s spouse or adult interdependent partner or minor child accepts from a person other than the Crown a fee, gift or other benefit that is connected, directly or indirectly, with the performance of the Member’s office.

¹² *Ibid.*

¹³ Opinion in the matter of applications by David Eby, MLA (Vancouver-Point Grey) and Duff Conacher with respect to alleged contraventions of the *Members’ Conflict of Interest Act* by the Honourable Christy Clark, MLA (Westside-Kelowna) and premier of British Columbia, May 4, 2016 at para. 65 to 67, <<http://www.coibc.ca/down/opinion/opinion-clark-2016-MAY-04.pdf>>.

¹⁴ Section 7(1) of the British Columbia’s *Members’ Conflict of Interest Act* c.287 reads: A member must not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of his or her duties of office.

¹⁵ Opinion *supra* 13 at para. 46.

benefit to the Ministers because there is no that the donated money was ever in either Minister's possession or control.

[53] Mr. Singh suggests that the Liberal party gave the Ministers some "personal benefit" in exchange for the attendees of the Event giving money to the Liberal party. He appears to rely on media reports about the existence of fundraising targets for the Liberal party to support his position.

[54] When it comes to political parties, there is a tendency to view political donations negatively; I think this is a mistake. As former Conflict of Interest Commissioner of British Columbia Ted Hughes wrote in a 1993 opinion about whether political donations could create the appearance of a conflict of interest, "in our system of parliamentary democracy, campaign contributions are to be encouraged and fostered and must be seen in a positive light as an interest accruing not only to a political party but also to the public generally."¹⁶ While political donations are important in that they create healthy political parties, there necessarily need to be rules about how donations are obtained to protect the integrity of the democratic process.

[55] Before I could consider the impact of fundraising "targets" on the Ministers' obligations under the Act, it was necessary to understand how the term was being used by the Liberal party. The word "target" is defined in the Oxford dictionary as an "objective or result towards which efforts are directed."¹⁷

[56] It would not be unusual for an organization such as the Liberal party, which relies on donations to fund its operations, to attempt to determine or project how much money needs to be raised to fund those operations. Indeed, it was suggested by Mr. Teliszewsky that the fundraising targets referred to in the media were aspirational goals that the

¹⁶ Opinion of the Commissioner of Conflict of Interest on a citizen complaint of alleged contravention of the Members' Conflict of Interest Act by the Honourable Robin Blencoe, August 16, 1993, at page 29, <http://www.coibc.ca/down/opinion/opinion_blencoe_1993.pdf>. In this opinion, Commissioner Hughes considered whether campaign contributions could constitute a private interest.

¹⁷ The Oxford English Dictionary, sub verbo "target", <<http://www.oxforddictionaries.com/definition/english/target>>.

Liberal party hoped to reach in its fundraising initiatives. I considered whether these goals became mandatory fundraising requirements imposed on the Ministers with consequences or benefits associated with meeting such requirements.

[57] I have reviewed the comments of former Cabinet Ministers John Gerretsen and Dwight Duncan which appeared in the media and have been interpreted as proof in support of the existence of mandatory fundraising requirements imposed on the Ministers. Having read the full comments of Mr. Gerretsen during his appearance before the Standing Committee on General Government, and receiving clarifying information provided by Mr. Duncan to my Office, I cannot reach the conclusion that they were subject to mandatory fundraising requirements.

[58] I have found no proof of any consequences or benefits associated with the Ministers meeting any mandatory fundraising requirements. During the inquiry the Ministers, Mr. Walman, Mr. Teliszewsky and Mr. Borg indicated that there were no mandatory fundraising requirements for the Ministers. I accept their position even though I am disappointed that this Office had to take the extraordinary steps to summon Mr. Walman to provide information related to this inquiry.

[59] In light of the absence of any proof of there being any mandatory fundraising requirements, I cannot conclude that either Minister received a gift or personal benefit from their involvement in the Event.

Conflicts of Interest

[60] In light of the concerns raised by Mr. Singh that the Ministers' decisions related to the Hydro One offerings were affected by donations received by the Liberal party at the Event and the Ministers' submissions about conflicts of interest, I considered the application of section 2 of the Act. This section reads:

2. A member of the Assembly shall not make a decision or participate in making a decision in the execution of his or her office if the member **knows or reasonably should know** that in the making of the decision there is **an opportunity** to further the member's private interest or improperly to further another person's private interest.[emphasis added]¹⁸

[61] The Ministers have suggested that there is no actual conflict of interest because there was no opportunity for them to further their private interests or those of any other person during the rigorous decision-making process relating to the Hydro One offerings.

[62] I accept the Ministers' submissions about the control mechanism introduced into the decision-making process relating to the Hydro One offering, including the use of an external reviewer. Given this process and the absence of any proof that the Ministers' private interests were advanced by their involvement in the Event, I am not able to conclude that the Ministers were in an *actual* conflict of interest.

[63] I also considered whether the Ministers' involvement in the Event created an *appearance* of a conflict of interest. The appearance of a conflict has an impact on the trust and confidence the public has in government.

[64] I found the definition for an apparent conflict developed by Justice W. D. Parker in his report, following an inquiry into conflict of interest allegations against Sinclair Stevens, to be particularly helpful. Justice Parker found that "*an apparent conflict of interest exists when there is a reasonable apprehension, which reasonably well-informed persons could properly have, that a conflict of interest exists.*"¹⁹

[65] It is conceivable that a reasonably well-informed person could have reasonable concerns about a \$7,500 per person fundraising event, held one month after the conclusion of a

¹⁸ *Members Integrity Act, 1994 c.38, s. 2.*

¹⁹ Parker, W. D., *Commission of Inquiry into the Facts of Allegations of Conflict of Interest concerning the Honourable Sinclair M. Stevens*, (Ottawa: Supply and Services Canada, 1987). Justice Parker's definition was incorporated into the *Members' Conflict of Interest Act* of British Columbia in June 1992 and continues to be informative. Mr. Stevens did not accept Justice Parker's 1987 findings that he had been in a conflict of interest, and challenged the report in court on the basis that Justice Parker did not have the authority to develop a definition of actual and apparent conflicts of interest. In December 2004, the Federal Court set aside the Parker Report because Justice Parker had failed to provide Mr. Stevens with a chance to respond to definitions and conclusions before the report was released. See *Stevens v. Canada (Attorney General)*, 2004 FC 1746 (CanLII), <<http://canlii.ca/t/1jgtz>>.

significant transaction, chaired and attended largely by individuals affiliated with organizations that benefited from that transaction.

[66] However, the Ministers suggested that I not address the issue of the appearance of conflict of interest because the language of the Act deals only with *actual* conflicts of interest, not the perception or appearance of conflicts.

[67] In their submissions about the limitations of the Act, the Ministers relied on an opinion of former Integrity Commissioner Gregory T. Evans.²⁰ In that 1991 opinion, Commissioner Evans considered whether Frances Lankin, Member of Provincial Parliament, was in a conflict of interest because she had been selected to negotiate on behalf of the government with the Ontario Public Service Union. She had previously been employed as a labour relations negotiator prior to her election as a member of the Legislature. Commissioner Evans concluded that Ms. Lankin received no personal benefits from using her negotiation skills, and that any benefit that could result would be a benefit of general public application. The Commissioner then went on to discuss the appearance of a conflict and said “*the Act does not concern itself with a perceived conflict of interest as opposed to an actual conflict.*”²¹

[68] The language of the conflict of interest provision that was in place under the Act at the time of the opinion of Commissioner Evans was different than the language in the current Act. The main differences are that in 1991 the Act required a member to have (1) actual knowledge of a conflict and (2) limited the scope of a conflict to only those decisions that furthered a member’s interest. The Act as written now does not require the Commissioner to establish that a member had actual knowledge about a conflict, but rather that the member “reasonably should have known.” Additionally, under the current Act, a member may also be in conflict if, in making a decision, there is an opportunity to further *another* person’s interest *improperly*.

²⁰ Report Re: the Honourable Frances Lankin, May 2, 1991, <<http://www.oico.on.ca/docs/default-source/commissioner's-reports/re-the-honourable-frances-lankin-may-2-1991.pdf?sfvrsn=6>>.

²¹ *Ibid.*

[69] Despite this change in language, it is not clear to me that the Legislature intended the conflict provisions of the Act to apply to the appearance of conflicts of interest. As such, I am unable to conclude that the Ministers contravened section 2 of the Act, as it is written. I would encourage the Legislature to review the Act with a view to clarifying whether it should apply to the *appearance* of conflicts of interest.

Appropriateness of Conduct

[70] The Affidavit raises larger issues about the appropriate means by which political parties may raise funds and the role of Ministers' staff in those efforts. These concerns have been raised in a number of other jurisdictions as well. It would be inappropriate for me to comment on the specific conduct of Ministers' staff in this report because my jurisdiction under section 30 of the Act extends only to providing an opinion about whether a member contravened the Act. Similarly, while I do not take a position on what the fundraising rules should be, as this is a question of public policy and is the subject of Bill 201, *Election Finances Statute Amendment Act, 2016* currently before the Standing Committee on General Government, it is evident that more clarity is needed.

VII. CONCLUSION AND RECOMMENDATIONS

It is my opinion that Minister Chiarelli and Minister Sousa did not breach the Act.

DATED at Toronto this 9th day of August, 2016.



The Honourable J. David Wake
Integrity Commissioner

Appendix A: A copy of the invitation sent to invitees for the Event

