

Legislative  
Assembly  
of Ontario



Assemblée  
législative  
de l'Ontario

# **OFFICE OF THE INTEGRITY COMMISSIONER**

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**REPORT**

**OF**

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

**RE: THE HONOURABLE LISA MACLEOD,  
MINISTER OF CHILDREN, COMMUNITY AND SOCIAL  
SERVICES**

**TORONTO, ONTARIO**

**May 23, 2019**

# **RE: THE HONOURABLE LISA MACLEOD**

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## **EXECUTIVE SUMMARY**

This report relates to a request made by Michael Coteau, the Member of Provincial Parliament for Don Valley East, under section 30 of the *Members' Integrity Act, 1994* (the “**Act**”) about the Honourable Lisa MacLeod, Minister of Children, Community and Social Services and Member of Provincial Parliament for Nepean.

Mr. Coteau alleged that Minister MacLeod and her political staff contravened section 4 of the Act and parliamentary convention by engaging in threatening conduct against the Ontario Association for Behaviour Analysis (ONTABA). The alleged threatening conduct consisted of the Minister and her staff requesting that ONTABA provide a quote in support of the government’s proposed policy changes to an autism program, failing which there would be “four long years for the organization.” It was further alleged that Minister MacLeod told the organization that if they did not support her policy change “a communication that behavior [sic] analysts are self-interested would be released from her office.”

Minister MacLeod categorically denied that she had any intention to threaten ONTABA in the manner alleged by Mr. Coteau. Although she publicly apologized if her comments made anyone feel threatened or uncomfortable, she denied that the apology was a concession that anything untoward had occurred.

Section 4 of the Act prohibits a member of the Assembly from using her office to influence a decision to be made by another person so as to further the member’s private interest. The private interest alleged in this case was favourable media coverage for the Minister’s policy change to the autism program. I determined that this was not a private interest and therefore, that there could not be a breach of section 4 of the Act even if the allegation was proven to be true following an inquiry.

I found no indication that the circumstances of this case fall within any of the recognized categories of parliamentary convention. In fact, a prior decision of this Office that dealt with allegations similar to those of this case suggests that parliamentary convention does not apply. As a result, I was not prepared to extend the application of the concept of parliamentary convention to the allegations against Minister MacLeod.

Accordingly, I found that there are insufficient grounds to conduct an inquiry into this matter.

## **I. BACKGROUND**

- [1] On February 19, 2019, Mr. Coteau sent a letter to me pursuant to section 30 of the Act requesting that I investigate and provide my opinion regarding the conduct of Minister MacLeod and her political staff. Upon receipt of this letter my staff contacted Mr. Coteau's office and advised them that the process for making a request under section 30 as required by my Office's procedures was that Mr. Coteau must swear an affidavit, file it with the Speaker and provide my Office with a copy.
- [2] On March 4, I still had not received anything from Mr. Coteau so I wrote to him reviewing the procedure for initiating a section 30 request and inquired as to whether he still wished to proceed with the matter. His staff contacted my Office and assured us that the affidavit would soon be completed. On March 8, I received a copy of Mr. Coteau's affidavit with a stamp indicating that it had been filed with the Speaker on the previous day.
- [3] On March 12, I forwarded a copy of Mr. Coteau's affidavit to Minister MacLeod and invited her to provide me with her submissions as to whether I should commence an inquiry under section 31 of the Act. On March 20, I received a letter from Minister MacLeod containing her submissions. I sent Minister MacLeod a further letter on April 5, seeking clarification on one aspect of her response. Minister MacLeod responded on April 12. I will now outline the substance of Mr. Coteau's request and the Minister's two responses in the next section.

## **II. MR. COTEAU'S REQUEST AND MINISTER MACLEOD'S RESPONSES**

- [4] Mr. Coteau's affidavit alleged that Minister MacLeod and her political staff engaged in threatening conduct against ONTABA and that this conduct constituted a contravention of section 4 of the Act or of Ontario parliamentary convention. The alleged threatening conduct consisted of the Minister and her staff requesting that ONTABA provide a quote of support for the Minister's policy change to an autism program, failing which there would be "four long years for the organization", according to a media report relied on by Mr. Coteau. It was further alleged on the basis of the same media report that Minister MacLeod told the organization that if they did not support her policy change "a communication that behavior [sic] analysts are self-interested would be released from her office." Mr. Coteau alleged that the Minister's subsequent comments in a radio interview are consistent with her having taken this position with ONTABA members.
- [5] Mr. Coteau alleged that by pressuring a non-profit stakeholder to support her policy announcement, Minister MacLeod breached section 4 of the Act which prohibits a

member of the Assembly from using her office to influence the decision to be made by another person so as to further the member's private interest. The private interest alleged in this case was favourable media coverage for the Minister's policy change.

- [6] Mr. Coteau also alleged that Minister MacLeod's staff breached the conflict of interest rules applicable to public servants who work in a minister's office.
- [7] Finally Mr. Coteau alleged that Minister MacLeod breached Ontario parliamentary convention by failing to conduct her duties of office consistent with the principles set out in the preamble to the Act "in a manner that promotes public confidence in the integrity of each member, maintains the Assembly's dignity and justifies the respect in which society holds the Assembly and its members and to act with integrity and impartiality that will bear the closest scrutiny."
- [8] Minister MacLeod acknowledged meeting with members of ONTABA as one of many stakeholders with whom she and ministry officials met during development of changes to the autism program. The Minister further acknowledged that this was an emotional time because changes to the policy had a direct impact on ONTABA and its members and dealt with programs relating to very vulnerable children. Minister MacLeod denied having any intent to threaten ONTABA members, but subsequently she realized that her comments were received differently than she had intended. For that reason she stated that she issued a public apology without conceding that something "untoward" had in fact occurred, as alleged in Mr. Coteau's affidavit.
- [9] I wrote to Minister MacLeod and asked for her recollection as to what, in fact, was said at the meeting and by whom. She replied that to the best of her recollection neither she nor her staff requested a quote of support. She wrote that her reference to the potential for "four long years" was an expression of disappointment at the response to her program proposals and was not linked to any discussion for a supportive quote. Similarly, Minister MacLeod stated that to the best of her recollection neither she nor any member of her staff communicated any intention to position behaviour analysts as self-interested should they refuse to support her policy changes. The Minister disagreed that her subsequent comments in the radio interview referenced by Mr. Coteau supported his allegation.

### **III. LEGISLATIVE FRAMEWORK**

- [10] 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.

[11] When a matter is referred to me I may then conduct an inquiry and report my opinion to the Speaker in accordance with section 31 of the Act. Alternatively, I may refuse to conduct an inquiry if I am of the opinion that the referral was frivolous, vexatious, not made in good faith or that there are either no or insufficient grounds for an inquiry as set out in section 31(5) of the Act.

#### **IV. OPINION**

[12] I find that there are insufficient grounds to conduct an inquiry into this matter.

[13] Section 4 of the Act provides that:

4. A member of the Assembly shall not use his or her office to seek to influence a decision made or to be made by another person so as to further the member's private interest.

[14] The private interest alleged in this case is favourable media coverage for the Minister's policy change to the autism program. This would be a political interest, and not a private interest, as that term has been consistently defined by Integrity Commissioners in this jurisdiction and jurisdictions across Canada.

[15] I have canvassed the distinction between private interest and political interest previously. Ironically, in one opinion,<sup>1</sup> Mr. Coteau was one of the respondents who was found to have had a political interest in certain fundraising activities, but not a private interest.

[16] Therefore the allegation in this case, even if proven following an inquiry, would not constitute a breach of section 4 since no private interest of Minister MacLeod was ever engaged.

[17] Mr. Coteau has also alleged that the Minister's staff may have breached subsections 6(1) and (2) of O.Reg. 382 /07, the Conflict of Interest Rules for Public Servants (Ministers' Offices), under the *Public Service Act of Ontario, 2006 (PSOA)* which provide:

6(1) When performing his or her duties to the Crown, a public servant shall not give preferential treatment to any person or entity.

6(2) When performing his or her duties to the Crown, a public servant shall endeavor to avoid creating the appearance that preferential treatment is being given to a person or entity that could benefit from it.

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<sup>1</sup> Report re the Honourable Bob Chiarelli, the Honourable Michael Coteau and the Honourable Yasir Naqvi, December 8, 2016, para. 64.

- [18] In a novel argument, Mr. Coteau submits that the PSOA “would likewise apply to prohibit the inverse, namely the creation of an appearance that punitive or biased treatment directed towards a person or entity that fails to express a sufficiently supportive view of the minister’s initiatives.” I am not persuaded by this argument, however given the ultimate disposition I propose to make in this case I find it unnecessary to decide that issue. Before leaving the matter I will point out that, in the opinion referenced above, I did examine the position of ministers’ staff both from the perspective of the minister to whom the actions of the staff may, in some circumstances, be attributed and from that of the ministers’ staff who are subject to a possible inquiry and discipline under the PSOA, although as I explained in that opinion, the remedy may be more illusory than real.
- [19] Mr. Coteau has alleged, in the alternative, that the conduct of Minister MacLeod and her staff constituted a breach of parliamentary convention.
- [20] Parliamentary convention was a unique addition to the Act when it was introduced. Subsequently only two other jurisdictions, Prince Edward Island and Nunavut, have included it in their conflict of interest legislation. Other jurisdictions have declined to do so, in part, because it is a principle which is difficult to define. There is no definition contained in the Act itself. It has been left to Ontario’s Integrity Commissioners to grapple with the concept on a case-by-case basis. Out of this process a body of jurisprudence has developed so that legislators have some guidance on what rules, customs and practices have been well-enough accepted and established that they can attain the status of being a parliamentary convention.
- [21] The first Integrity Commissioner, the Honourable Gregory T. Evans, led an all-party group that drafted the legislation that included parliamentary convention. In his first annual report following passage of the Act he said the following:
- The words “*Ontario parliamentary convention*” are new in legislation of this nature. They apply to certain activities previously carried out by Ontario Parliamentarians which are now accepted by them as being inimical to the proper administration of government in our democratic society. Parliamentary conventions result from practices and customs and may not be the same in every jurisdiction.<sup>2</sup>
- [22] Commissioner Evans elaborated on the meaning of Ontario parliamentary convention in his report concerning Dianne Cunningham, the Member of Provincial Parliament for London North and Minister Responsible for Women’s Issues, in circumstances not

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<sup>2</sup> 1994-1995 Annual Report of the Office of the Integrity Commissioner, p. 6.

dissimilar to the ones under consideration in this case.<sup>3</sup> I will discuss the Cunningham Report later in this opinion. Commissioner Evans stated:

The concept of a parliamentary convention is not new although it has now received statutory recognition by being included among the provisions of the *Members' Integrity Act, 1994*. Parliamentary conventions are, in general, practical guidelines or directives concerned with the manner in which members discharge their legislative functions and have been accepted and approved by the Legislature as being procedures which maintain public trust and confidence in the institution of Parliament.<sup>4</sup>

[23] In the same report Commissioner Evans explained the process by which parliamentary conventions are developed:

Parliamentary conventions usually evolve over a period of time. When certain situations continue to arise and the legislators reach a consensus as to their disposition, they are then classified as conventions and serve as precedents which may be adopted to determine future cases of a similar nature.<sup>5</sup>

[24] In a subsequent opinion, Commissioner Evans emphasized the importance of precedent in establishing parliamentary convention when he cited a passage from a paper prepared by Eugene Forsey, a retired Senator and constitutional scholar who defined parliamentary convention as follows:

Conventions have been defined as extra-legal rules of structure or procedure or principle established by precedent, consolidated by usage and generally observed by all concerned.<sup>6</sup>

[25] In 2001, the Honourable Coulter A. A. Osborne, former Associate Chief Justice of Ontario, was appointed as Integrity Commissioner and in 2002 he offered the following definition of Ontario parliamentary convention:

Parliamentary convention is not defined in the *Act*. A convention is a generally accepted rule or practice— established by usage or custom (see Blacks Law Dictionary). Parliamentary convention refers that which is generally accepted as a rule or practice in the context of norms accepted by parliamentarians. The elements of parliamentary convention are framed by the core principles which provide the general foundation for the *Act* as set out in the *Act's* preamble (the reconciliation of private interests and public duties).

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<sup>3</sup> Report re: Dianne Cunningham, Member for London North, December 13, 1995 (“Cunningham Report”).

<sup>4</sup> *Ibid*, p. 1.

<sup>5</sup> *Ibid*, p. 2.

<sup>6</sup> Report re: the Honourable Allan Leach, Minister of Municipal Affairs and Housing, June 25, 1997, p. 6-7.

I think it is accepted that there are limits on what members can do in their personal affairs and what they can do for friends, relatives, constituents etc. Some of those limits are established by parliamentary convention. For example, it is generally accepted that members' personal business should be kept separate from business undertaken by the member in connection with the members' duties and responsibilities as a member of the Provincial legislature. This is reflected in the *Act's* preamble's reference to the reconciliation of private interests and public duties.<sup>7</sup>

- [26] Applying that definition, he found that Deputy Leader of the Official Opposition and Member of Provincial Parliament for Windsor West Sandra Pupatello's action of using a government contract for courier services for the benefit of a friend was a breach of parliamentary convention. Similarly in his report about Dave Levac, Member of Provincial Parliament for Brant, Commissioner Osborne found that Mr. Levac had breached Ontario parliamentary convention when he abused his right to inspect a correctional institution by providing access to the institution to a reporter under the guise of being one of Mr. Levac's assistants.<sup>8</sup> Commissioner Osborne relied on the preamble to the Act to inform his view that parliamentary convention had been breached by the member's participation in this venture.
- [27] This approach to parliamentary convention, based on the opinion of the Integrity Commissioner, would appear to be a departure from the precedent-based application used by Commissioner Evans. In fact, Commissioner Osborne acknowledged that his interpretation of parliamentary convention introduced elements of uncertainty but he stated that "I think Members generally accept the principle that acting in a way that breaches Parliamentary Convention ought to be prohibited by the Act."<sup>9</sup>
- [28] Commissioner Lynn Morrison, who succeeded Commissioner Osborne in 2007, accepted the definition of Ontario parliamentary convention that had been put forward by him in the Pupatello Report in her own reports dealing with parliamentary convention, particularly with respect to the inappropriate use of members' constituency offices. In her report regarding Ted Chudleigh, Member of Provincial Parliament for Halton, Commissioner Morrison relied on Commissioner Osborne's statement in the 2004-2005 Annual Report of this Office that "it is inappropriate to permit any partisan activities in

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<sup>7</sup> Report re: Sandra Pupatello, Deputy Leader of the Official Opposition and Member for Windsor West, December 12, 2002, paras. 25-26 (the "Pupatello Report").

<sup>8</sup> Report re: Dave Levac, Member of Provincial Parliament for Brant, July 23, 2003.

<sup>9</sup> 2003-2004 Annual Report of the Office of the Integrity Commissioner, p. 3.



the [constituency] office” because it represents all constituents and is paid for by the Legislative Assembly.<sup>10</sup>

- [29] In the Chudleigh Report, Commissioner Morrison had to determine whether Mr. Chudleigh had breached parliamentary convention by using the same website address for his constituency office and his riding association. In addition to citing Commissioner Osborne’s statement, she also relied on statements in the Legislative Assembly’s Members’ Handbook concerning the limitation of funding support from the Global Budget only to members’ websites that have non-partisan and non-political content only. She then came to the conclusion that the non-partisan nature of a constituency office should be extended to virtual constituency offices, that is constituency services offered on the Internet.
- [30] Since I became the Integrity Commissioner in 2016 I have had to deal with only two alleged breaches of Ontario parliamentary convention. In May 2016, I received a complaint that Marie-France Lalonde, Member of Provincial Parliament for Ottawa-Orleans, breached the parliamentary convention against using government resources for partisan purposes when the Liberal Caucus Services Bureau issued a news release containing partisan messaging about an upcoming provincial by-election. I found that there was an insufficient connection with Ms. Lalonde and the conduct being complained of for me to conduct an inquiry.<sup>11</sup>
- [31] In July 2016, Patrick Brown, Member of Provincial Parliament for Simcoe North and Leader of the Official Opposition, was alleged to have breached parliamentary convention by using government resources at Queen’s Park for fundraising purposes. There was no issue from Mr. Brown that, if proven, this would constitute a breach of parliamentary convention; however, on the facts I found that his political party’s fundraising brochure was a mistake by the entity engaged by the party to raise funds, that Mr. Brown was unaware of the offer contained in the brochure and that he had no oversight authority over the staff who made the offer.<sup>12</sup>
- [32] In the Brown Report, I reviewed previous decisions dealing with Ontario parliamentary convention and placed them into six categories:

1. **Advocacy:** Ministers and Parliamentary Assistants are prohibited from appearing before or having communication on behalf of a private party with any agency, board or commission which falls under the jurisdiction of the minister.

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<sup>10</sup> Report re: Ted Chudleigh, Member of Provincial Parliament for Halton, December 11, 2008, para. 19 (the “Chudleigh Report”).

<sup>11</sup> Report re: Marie-France Lalonde, Member of Provincial Parliament for Ottawa-Orleans, July 8, 2016.

<sup>12</sup> Report re: Patrick Brown, Member of Provincial Parliament for Simcoe North and Leader of the Official Opposition, July 14, 2016.

**2. Judicial interference:** Members are not permitted to interfere in judicial processes in any way. The prohibition includes not interfering with police activities, advocating to the judiciary, or publicly commenting on matters before the judiciary.

**3. Interference with public service:** Ministers and their offices do not advocate directly to public servants from other ministries about constituent issues, but must go through the responsible minister.

**4. Management of trust account:** Ministers granted permission to hold certain assets in trust accounts must do so in a manner that promotes public confidence.

**5. Assisting others in a manner that interferes with public duties:** Members must ensure that constituent representation and activities members normally engage in are done in a manner that does not undermine the member's public duty.

**6. Using government resources for partisan purposes:** Government resources, including constituency offices, telephones, computers, and the salaried time of staff, should be used to assist constituents and not for matters related to partisan politics.<sup>13</sup>

(The decisions on which I relied for these categories are footnoted in the Brown Report; I have not reproduced these footnotes in this report.)

[33] These categories were not intended to be exhaustive, since, as stated by Commissioner Evans in the Cunningham Report, the principle of parliamentary convention is expected to evolve.<sup>14</sup> Nevertheless, in her March 20 response Minister MacLeod made reference to these recognized categories of conduct and submitted that Mr. Coteau's failure to connect the alleged conduct to any recognized category was fatal to his complaint. She cited Commissioner Robert C. Rutherford's report on Michael Harris to that effect.<sup>15</sup> However, Commissioner Osborne's reasoning in the Pupatello Report suggests that the complaint need not be specific as to which parliamentary convention was alleged to have been breached.<sup>16</sup>

[34] I believe that in the interests of certainty, Integrity Commissioners should be cautious about declaring a certain activity to be contrary to parliamentary convention. Some conduct or behaviour might be so egregious that a parliamentary convention against it might be readily presumed. However, without precedent or a motion from legislators

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<sup>13</sup> Ibid. p. 2.

<sup>14</sup> Cunningham Report, *supra* note 3 at p. 2.

<sup>15</sup> Report re: Michael Harris, Premier of Ontario, December 27, 2000.

<sup>16</sup> Pupatello Report, *supra* note 7 at p. 10-11.

expressing their view on a matter or something like the Members' Handbook to inform the Commissioner's opinion, the identification of practices becomes a matter solely within the discretion of the Integrity Commissioner. In my view, this situation would result in uncertainty for members in being able to determine, in advance, where the line should be drawn.

- [35] An example of this conundrum is the current practices of members in the use of social media. I am sure that there are some members who regard the hyper-partisan tweets and posts of other members as not being in keeping with the principles set out in the Preamble of the Act, particularly the provisions about maintaining the Assembly's dignity and justifying the respect in which society holds the Assembly and its members. I suggest that it would be a difficult task for an Integrity Commissioner to discern which generally accepted rules and practices should govern a member's use of social media as a parliamentary convention. The answer would be better found by the members themselves in a committee struck for the purpose of exploring the issue. Members could take advantage of their right to an opinion from the Integrity Commissioner under section 28 of the Act or they could simply request me to assist them in their deliberations.
- [36] As for the conduct complained of in this case there is no precedent disapproving of this type of interaction between a minister, her staff and a stakeholder group. In fact, as I noted above, there is a precedent which points the other way. In the Cunningham Report there was an allegation that Ms. Cunningham had contravened parliamentary convention by threatening three agencies serving victims of domestic violence to audit and withdraw funding from groups or agencies that were not seen to be working with the government or who voiced strong opposition to government funding cuts.
- [37] Commissioner Evans was of the view that there existed no precedent approved by the Legislature applicable to these circumstances, and declined to conduct an inquiry.<sup>17</sup> I do not think it is necessary that there be a precedent in every case before the Integrity Commissioner can accept jurisdiction to conduct an inquiry. Nevertheless in the face of this prior rejection of jurisdiction in circumstances very similar to the ones alleged here, and with no other indication that these circumstances fall within any of the recognized categories of parliamentary convention, I am reluctant to extend the definition of parliamentary convention to include the circumstances of this allegation.

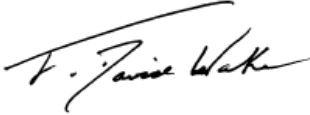
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<sup>17</sup> Cunningham Report, *supra* note 3 at p. 2.

## CONCLUSION

[38] I find that there are insufficient grounds to conduct an inquiry into Mr. Coteau's request of March 7, 2019.

DATED at Toronto this 23<sup>rd</sup> day of May, 2019.

A handwritten signature in black ink, appearing to read "J. David Wake". The signature is written in a cursive style with a prominent flourish at the end.

The Honourable J. David Wake  
Integrity Commissioner