

Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

OFFICE OF THE INTEGRITY COMMISSIONER



REPORT OF THE HONOURABLE J. DAVID WAKE INTEGRITY COMMISSIONER

Re: Randy Hillier, Member of Provincial Parliament for
Lanark–Frontenac–Kingston
(MPP Hillier No. 2)

Toronto, Ontario
April 13, 2022

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EXECUTIVE SUMMARY

This report relates to a request made by Peggy Sattler, Member of Provincial Parliament for London West, under section 30 of the *Members' Integrity Act, 1994* regarding Randy Hillier, Member of Provincial Parliament for Lanark–Frontenac–Kingston.

Ms. Sattler alleges that Mr. Hillier breached Ontario parliamentary convention by posting on social media the names and faces of individuals who had recently become seriously ill or passed away and including a claim that COVID-19 vaccines were involved in these cases.

Although there was no precedent of Mr. Hillier's conduct to base a finding that there had been a breach of parliamentary convention, I have held in the past that some conduct or behaviour might be so egregious that a parliamentary convention against it might readily be presumed. In this case I found that Mr. Hillier's posting on social media of the names and faces of individuals and claiming, without foundation, that the COVID-19 vaccine was involved in their illnesses and deaths amounted to a breach of parliamentary convention that might readily be presumed. In coming to that conclusion, I considered four factors: 1) the conduct itself was objectionable, 2) members of the Legislative Assembly of Ontario acted swiftly and categorically in their censure of Mr. Hillier's conduct, 3) Mr. Hillier issued a public apology to the families involved recognizing that what he had done was wrong, and 4) in his response to me he admitted that there had been mistakes made in one of his social media posts.

I rejected Mr. Hillier's position that the complaint from Ms. Sattler had been rendered moot by the Assembly's actions and by his apology. Although my recommendation that Mr. Hillier be reprimanded may have resulted in the same disposition as the Assembly's censure, the routes to that result were entirely different and establish that there is a parliamentary convention against this type of conduct, which can be relied on in the future.

In balancing the mitigating and aggravating features of this case I recommended that the Legislative Assembly of Ontario reprimand Mr. Hillier.

This report is being released simultaneously with another report relating to Mr. Hillier initiated by a section 30 request from Ian Arthur, Member of Provincial Parliament for Kingston and the Islands. That request relates to whether Mr. Hillier breached parliamentary convention and section 3 of the Act by using personal information from constituents for partisan purposes. To distinguish between the two reports, the one initiated by Mr. Arthur's request will be referred to as MPP Hillier No. 1 and the one initiated by Ms. Sattler as MPP Hillier No. 2. The inquiries relating to the reports covered different matters so separate reports are more appropriate.

I. BACKGROUND

- [1] On October 26, 2021, Peggy Sattler, Member of Provincial Parliament (“MPP”) for London West, submitted a request pursuant to section 30 of the *Members’ Integrity Act, 1994* (“**the Act**”), that I give an opinion with respect to whether Randy Hillier, Member of Provincial Parliament for Lanark–Frontenac–Kingston may have breached Ontario parliamentary convention “by posting on social media the names and faces of individuals who had recently become seriously ill or passed away, claiming the COVID vaccine was involved in their deaths.” Ms. Sattler also provided a copy of Mr. Hillier’s October 19, 2021 social media post that prompted her request, in which Mr. Hillier posted the names and faces of individuals with the heading “Vaccine Related Injuries and Deaths from Across Ontario”.
- [2] On October 28, 2021, a motion was unanimously adopted by the members of the Legislative Assembly of Ontario which expressed the Assembly’s disapproval of, and disassociated itself from, “a string of disreputable conduct” of Mr. Hillier, “most specifically his use of social media to post photographs and false and hurtful information about identified individuals.” The Assembly also called on Mr. Hillier “to publicly apologize for this behaviour and to desist from further conduct that is inappropriate and unbecoming of a member of the Legislative Assembly of Ontario.”¹
- [3] On October 29, 2021, I forwarded a copy of Ms. Sattler’s affidavit to Mr. Hillier and invited him to make submissions.
- [4] On November 3, 2021, Ms. Sattler brought to my attention a video posted to Mr. Hillier’s Twitter account on November 2, 2021, which among other things, featured a clear full-screen image of his October 19, 2021 post showing the names and faces of persons whose deaths he asserted were caused by vaccinations. The video also showed Mr. Hillier making

¹ The wording of the motion can be found through search on this webpage of the Legislative Assembly: <https://www.ola.org/en/legislative-business/status-business/government-motions>.

statements about the deaths of individuals, consistent with his October 19, 2021 social media post.

- [5] On November 5, Mr. Hillier issued a public statement with respect to his October 19, 2021 social media post, stating among other things that he “removed the post completely,” “[...] should have reached out to the affected families before commenting” and that to the individuals and families affected “I offer my most sincere regrets for the further distress my actions have caused them, and I sincerely apologize for the disruption to your lives that my actions may have caused.”²
- [6] On November 12, Mr. Hiller provided me with a response to Ms. Sattler’s request for my opinion, which I address in the Opinion section below.

II. LEGAL FRAMEWORK

- [7] Under s.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.
- [8] Upon receiving such a request, I may conduct an inquiry and report my opinion to the Speaker of the Assembly.³ 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 subsection 31(5) of the Act.
- [9] Initially I had some hesitancy about commencing an inquiry into this matter since there was no precedent for the conduct of Mr. Hillier being contrary to an established parliamentary convention. In addition, in his initial response to me, Mr. Hillier put forward an argument

² As Mr. Hillier’s Twitter account has been suspended, the apology is not available. The original link to the tweet is: <https://twitter.com/randyhillier/status/1456759397892378624>.

³ Section 31 of the *Members’ Integrity Act, 1994*.

that the subject matter and the disposition of it had been rendered moot by the Assembly passing its motion of censure calling upon him to apologize, which he claimed to have done.

[10] Nevertheless, for reasons set out in the Opinion to follow, on February 18, 2022 I decided that there was a sufficient basis for me to commence an inquiry. I provided Mr. Hillier with a Notice of Inquiry and set out the evidence, already in his possession, on which I intended to rely. I solicited any further submissions he might have to be made to me by March 8, 2022.

III. CHRONOLOGY OF EVENTS FOLLOWING NOTICE OF INQUIRY

[11] Events relating to Mr. Hillier moved quickly following the delivery of the Notice of Inquiry on February 18, 2022. On February 22, the Assembly passed a second motion censuring Mr. Hillier for a different set of social media posts. This censure demanded written apologies be published by him, and that the Speaker be authorized not to recognize the member for Lanark–Frontenac--Kingston in the chamber until the Speaker received copies of his apologies and was satisfied of their sincerity.

[12] Simultaneously with this inquiry I was conducting another inquiry as a result of a request from Ian Arthur, MPP for Kingston and the Islands, for my opinion under s. 30 of the Act as to whether Mr. Hillier breached parliamentary convention and s.3 of the Act by using personal information, obtained through his constituency office's case work, for partisan purposes by sending constituents material on behalf of or related to No More Lockdowns Canada and the People's Party of Canada.

[13] Mr. Hillier and his staff had been interviewed in relation to that inquiry, which will be the subject of a separate report being released simultaneously with this one.⁴ There still remained outstanding information requests flowing from Mr. Hillier's interview. On

⁴ Because two reports regarding Mr. Hillier are being released on the same date, to differentiate the reports and for ease of future reference, I will refer to this report as MPP Hillier No. 2 and the other report as MPP Hillier No. 1.

February 25, I requested that Mr. Hillier satisfy the commitments he had made to provide this information.

[14] On March 3, Mr. Hillier announced that he would not be running in the next provincial election.

[15] On March 4, Mr. Hillier wrote to me in response to my requests relating to both inquiries. He confirmed that he had publicly announced that he would not be seeking re-election in the upcoming provincial election. He also made reference to the most recent motion of the Assembly and stated that he understood that at the conclusion of my inquiries recommendations would be attached to my reports to which he would not be able to respond unless the Assembly rescinded its censure motion. He apologized for not being able to meet the requirements which I had conveyed to him and that he was unable to complete my requests. Without going into the personal reasons put forward in his letter, I was left with the clear impression that he was withdrawing from any further participation in each of the investigations I was conducting.

[16] In these circumstances I wrote to Mr. Hillier on March 10 confirming my understanding that he would not provide any further submissions or information relating to either inquiry. I also advised him that in light of his position I would not be providing him with a draft summary of the evidence gathered in either inquiry and that I would proceed to reach my opinion with respect to each matter and make my reports accordingly.

[17] On March 8, Twitter suspended Mr. Hillier's account and his previous posts were rendered inaccessible to the public.

[18] On March 28, Mr. Hillier was arrested on multiple criminal charges related to his alleged activity in demonstrations in downtown Ottawa, sometimes referred to as the truckers' convoy. Mr. Hillier was released on a \$35,000 bond and among the conditions of his release were restrictions on his ability to post on social media concerning COVID-19 vaccines or mask mandates or the anti-vaccine cause.

[19] As of April 12, my staff observed that the same video that Ms. Sattler brought to my attention as posted to Mr. Hillier’s Twitter account on November 2, 2021 and containing a screenshot of his October 19, 2021 post, remained posted and visible on a different social media platform used by Mr. Hillier.

IV. OPINION

[20] The request from Ms. Sattler for my opinion centres on whether Mr. Hillier breached parliamentary convention “by posting on social media the names and faces of individuals who had recently become seriously ill or passed away, claiming the COVID vaccine was involved in their deaths”.

[21] At the time I received Ms. Sattler’s request, there was no prior written decision of an Integrity Commissioner or clear expression from Ontario parliamentarians establishing that the conduct exhibited by Mr. Hillier was a breach of parliamentary convention.

[22] Three years ago, in my Report re: the Honourable Lisa MacLeod,⁵ I reviewed previous reports dealing with Ontario parliamentary convention and how different commissioners had interpreted the concept. Commissioner Gregory Evans emphasized the importance of precedent in establishing parliamentary convention,⁶ whereas Commissioner A. Coulter Osborne took a different approach. While acknowledging a convention is a “generally accepted rule or practice,” he stated that the elements of parliamentary convention are framed and informed by the core principles set out in the Act’s preamble and proceeded to issue a number of reports finding breaches based on his interpretation of the preamble.⁷

[23] In her affidavit, Ms. Sattler references the Act’s preamble, particularly the section whereby members are expected to maintain the dignity of the Assembly. In her view Mr. Hillier’s conduct “failed to meet the standard of an elected Member to maintain the dignity of the

⁵ Report re: the Honourable Lisa MacLeod, May 23, 2019 [“MacLeod Report”].

⁶ Report re: the Honourable Allan Leach, June 25, 1997, at pp. 6-7.

⁷ Report re: Sandra Pupatello, December 12, 2002 [“Pupatello Report”] at para. 25 and Report re: Dave Levac, July 23, 2003 at para. 30.

Assembly.” The problem with this approach is that it mistakes the purpose of the preamble. It is not a substantive section of the Act which a member can be found to have breached. Preambles are aspirational statements and can be used to interpret substantive sections of the Act,⁸ including, but not limited to, the conflict of interest provisions prescribed in the Act that regulate some activities of members and cabinet ministers. Commissioner Osborne extended their use to interpreting the concept of parliamentary convention which is referenced several times but not defined in the Act.⁹ However, while preambles are a useful interpretive tool, they are not themselves substantive provisions – or the source or basis of any particular parliamentary convention.

[24] In the MacLeod Report, after reviewing the jurisprudence on parliamentary convention, I was left with the view that in the absence of precedent or a motion from the Assembly the identification of practices amounting to parliamentary convention could become an exercise solely in the discretion of the Integrity Commissioner. This would result in uncertainty for members as to where the line should be drawn. In the interest of certainty, I said that Integrity Commissioners should be cautious before declaring a particular activity to be contrary to parliamentary convention. However, I did contemplate that some conduct or behaviour might be so egregious that a parliamentary convention against it might readily be presumed.¹⁰

[25] The question for me to determine now is whether Mr. Hillier’s specific conduct in posting images and personal details of individuals who had recently become ill or passed away, with a claim or implication that these outcomes were a result of receiving a vaccine against COVID-19, without checking for a basis for this claim, was so egregious that a parliamentary convention against it might be readily presumed.

⁸ Report re: Patrick Brown, April 26, 2018 [“Brown Report”] at para. 270.

⁹ Pupatello Report at paras. 25-26.

¹⁰ MacLeod Report at para. 34.

[26] In making that determination I have considered four factors:

- a. First, on its face the conduct itself was objectionable. Mr. Hillier posted the names and faces of individuals with the heading “Vaccine Related Injuries and Deaths from Across Ontario.” The essence of the conduct in question was the posting of their names and faces in this way without their consent or their families’ consent and without checking his facts relating to the real cause of their illnesses or deaths. The distress caused to the families involved by the invasion of their privacy in this manner should have been considered by him before he made the posts.
- b. Second, the reaction of Mr. Hillier’s colleagues in the Assembly was swift and categorical in their censure of him in the unanimous motion which expressed their disapproval of his conduct and “most specifically his use of social media to post photographs and false and hurtful information about identified individuals.”
- c. Third, Mr. Hillier’s public apology acknowledged that what he had done was wrong when he stated that he “had removed the post completely” and “I offer my most sincere regrets for the further distress my actions have caused them [the families], and I sincerely apologize for the disruption to your lives that my actions may have caused.”
- d. Fourth, in Mr. Hillier’s letter to me on November 12, he stated that he had apologized to “these families whose loved ones were inaccurately identified in the original post” and acknowledged that there had been mistakes that appeared in one of his social media posts.

[27] This admission in his letter suggests to me that he appreciates that what he did was wrong, though he maintains that what he did was not a breach of parliamentary convention. I think this position results from other criticisms of his conduct in Ms. Sattler’s affidavit to which he was responding. Ms. Sattler relied on the Act’s preamble citing the expectation that members will maintain the dignity of the Assembly. She then cited other ways in which Mr. Hillier had publicly questioned the safety and utility of the COVID-19 vaccine. This may be

fair comment on her part, but it does not mean that those actions by Mr. Hillier amount to a breach of parliamentary convention. In fact, it would be a dangerous precedent if that were so and would engage freedom of speech concerns. It was to this line of criticism that Mr. Hillier directed his response, in which he raised valid points about the need for members to ask bold questions, gather evidence to inform their lawmaking, challenge public policy choices and offer alternatives.

[28] Ms. Sattler’s criticisms of Mr. Hillier’s general questioning of or opposition to the COVID-19 vaccine were unrelated to what I see as the central issue in this case, and that is whether Mr. Hillier’s posting on social media of the names and faces of individuals who had recently become seriously ill or passed away, implying without foundation a connection between their deaths and the COVID-19 vaccine, was so egregious that a breach of parliamentary convention might readily be presumed.

[29] Applying the four factors recited above I have concluded that a breach of parliamentary convention has been made out.

[30] Before leaving Ms. Sattler’s affidavit and Mr. Hillier’s response, I note that Ms. Sattler specifically criticized Mr. Hillier for issuing a public statement on October 20, 2021 calling on the Commissioner of the Ontario Provincial Police to launch a criminal investigation into whether the vaccine was related to the specific illnesses and deaths set out in his objectionable post. While I agree with Mr. Hillier that any citizen has the right to request that the police investigate a matter, absent malice or the laws against public mischief, I regard the action in this case as an aggravating feature in that it shone an unwanted light onto the families who were grieving at the time. This can be considered with respect to the penalty phase of this opinion.

[31] In his letter to me of November 12, Mr. Hillier stated that Ms. Sattler’s complaint “has already been adjudicated and a decision cast by a motion of the House that was adopted on October 28.” He further asserted that a penalty had already been applied in the form of

House censure and that he had issued a public apology which was one of the elements of the motion passed by the Assembly.

[32] Essentially Mr. Hillier is suggesting that the request for my opinion under the Act has been rendered moot as a result of the Assembly's motion of censure and his public apology. The doctrine of mootness in legal jurisprudence was set out by the Supreme Court of Canada in its decision *Borowski v. Canada (Attorney General)*,¹¹ which held that a court may decline to decide a case which raises merely a hypothetical or abstract question. The Court's analysis, in my view, was correctly set out in the headnote of the decision as follows:

The approach with respect to mootness involves a two-step analysis. It is first necessary to determine whether the requisite tangible and concrete dispute has disappeared rendering the issues academic. If so, it is then necessary to decide if the court should exercise its discretion to hear the case. (In the interest of clarity, a case is moot if it does not present a concrete controversy even though a court may elect to address the moot issue.)

[33] Allowing that there is a distinction between a matter litigated in court and my role in conducting an inquiry under the Act to determine whether there has been a breach of parliamentary convention and, if so, the recommendation of a penalty, nevertheless I do find the Supreme Court's analysis helpful, particularly the recognition of a discretion to address an issue even if it has been rendered moot.

[34] In the present matter, however, I do not find that the central issue before me has been rendered moot by the Assembly's actions. The Assembly may have authority to pass a motion of censure but that is only a declaratory exercise without an enforcement provision. Similarly, the Assembly's motion on February 22 again censuring Mr. Hillier for a different set of social media posts and authorizing the Speaker not to recognize Mr. Hillier in the chamber until he received apologies from him and was satisfied of their sincerity, is dependent on the Speaker's discretion for enforcement.

¹¹ 1989 CanLII 123 (SCC), 1 SCR 342

[35] My authority, by contrast, is based on the Act. I can recommend an escalating series of penalties up to and including that the member's seat be declared vacant. It is only after the Assembly receives my recommendation and accepts it that the members have a path to discipline one of its members with this ultimate sanction.¹²

¹² Section 34 of the Act sets out the process to be followed with respect to any penalty flowing from a request made under s.30:

34 (1) Where the Commissioner conducts an inquiry under subsection 31 (1) or (2) and finds that the member has contravened any of sections 2 to 4, 6 to 8, 10 to 12 or 14 to 18, has failed to file a private disclosure statement or a statement of material change within the time provided by section 20, has failed to disclose relevant information in that statement or has contravened Ontario parliamentary convention, the Commissioner shall recommend in his or her report,

- (a) that no penalty be imposed;
- (b) that the member be reprimanded;
- (c) that the member's right to sit and vote in the Assembly be suspended for a specified period or until a condition imposed by the Commissioner is fulfilled; or
- (d) that the member's seat be declared vacant. 1994, c. 38, s. 34 (1).

(1.1) In the case of an inquiry respecting a matter referred by a member that is continued in accordance with subsection 31 (4.2) or (4.3) in respect of a former member, if the Commissioner finds a contravention or failure referred to in subsection (1), the Commissioner shall recommend in his or her report,

- (a) that no penalty be imposed; or
- (b) that the former member be reprimanded. 2010, c. 5, s. 16.

(2) The Assembly shall consider and respond to the report within 30 days after the day the report is laid before it. 1994, c. 38, s. 34 (2).

(3) If the Commissioner recommends that a penalty be imposed, the Assembly may approve the recommendation and order that the penalty be imposed, or may reject the recommendation, in which case no penalty shall be imposed. 1994, c. 38, s. 34 (3).

(4) Despite section 46 of the *Legislative Assembly Act*, the Assembly does not have power to inquire further into the contravention, to impose a penalty if the Commissioner recommended that none be imposed, or to impose a penalty other than the one recommended. 1994, c. 38, s. 34 (4).

(5) The Assembly's decision is final and conclusive. 1994, c. 38, s. 34 (5).

(6) If the member's seat is declared vacant, section 25 of the *Legislative Assembly Act* applies, with necessary modifications. 1994, c. 38, s. 34 (6).

[36] If I choose to confine my recommendation to a reprimand, the end result may be the same as the vote of censure made by the Assembly but the routes to that result are entirely different. As long as a more severe sanction remains available to me than what the Assembly has already done, then the issue of penalty is not a moot one. Even if it were, I would be justified in exercising discretion to make clear that what transpired in this case was a breach of parliamentary convention. That finding and the recommended penalty can be relied on as a precedent in a future case involving similar circumstances.

[37] Turning now to the question of the appropriate penalty in this matter, I have a concern with respect to how effective Mr. Hillier's apology was. Mr. Hillier claimed in his public statement that he removed the post which gave rise to this complaint "completely". Nevertheless, on November 2, 2021, a video was posted to Mr. Hillier's Twitter account which, among other things, featured a clear full-screen image of his October 19, 2021 post showing the names and faces of the persons whose deaths and illnesses he asserted were caused by vaccinations. While the October 19 post itself may have been taken down, my staff determined that the video remained on Mr. Hillier's Twitter account the last time they checked on February 4, 2022. They also checked as recently as April 12, 2022 and confirmed that the video was still posted to another one of Mr. Hillier's social media platforms.

[38] I had wanted to question Mr. Hillier about the video and why it still remained on at least two social media accounts months after his apology and his claim that he had removed the offensive post "completely", but in light of his position not to participate any further in this inquiry, the question will remain unanswered since I have decided not to expend more time or resources on this matter to compel him to respond. It may have been left posted through inadvertence, but I am not in any position to give him the benefit of the doubt. Fortunately, the video is no longer available to be seen on Twitter, since this platform has suspended Mr. Hillier's account. However, it remains visible on his account on at least one other social media platform.

[39] I considered crafting a recommendation that Mr. Hillier's right to sit and vote in the Assembly be suspended until the video in question is taken down on all his accounts from

all his social media platforms. However, because of the uncertainty involved in trying to predict whether Twitter, a private company will maintain Mr. Hillier's suspension or for the legislature to try to police Mr. Hillier's activities on what is currently an unknown number of platforms, I decline to make that recommendation. I do recommend to Mr. Hillier personally that he remove the video from all social media platforms he uses. I believe his current conditions of release reduce the need for me to make any further recommendation to the Assembly in that regard.

[40] In reaching my recommendation to the Assembly with respect to the penalty, I have considered as mitigating circumstances Mr. Hillier's apology, his removal of his October 19 post itself from his social media accounts, his early co-operation with my office in providing a detailed response to Ms. Sattler's concerns and his stated intention not to seek re-election. As aggravating factors, I have considered his failure to remove from his social media accounts a video containing an image of his October 19 post, his publicizing of his request that police investigate the deaths of these individuals, and the fact that he has also been found to have been in breach of parliamentary convention in the circumstances set out in the other report being released simultaneously with this one. Multiple breaches should be considered as an aggravating feature when penalty is concerned.

[41] Taking all of this into account, I recommend that the Assembly reprimand Mr. Hillier, under subsection 34(1)(b) of the Act.

[42] This is second time I have had to recommend that the Assembly issue a reprimand and again, it has occurred on the eve of an election. As I noted on that earlier occasion,¹³ while the Act requires the Assembly to consider my report within 30 days after the day that the report is laid before it, there is little time for that to occur before the 42nd Parliament comes to end. In these circumstances, my report will remain a sessional paper of the 42nd Parliament and can be brought forward by a future parliament for debate should there be any desire to do so.

¹³ Brown Report at para. 278.

V. CONCLUSION

[43] In conclusion, I find that Mr. Hillier breached Ontario parliamentary convention by posting to social media under the heading “Vaccine Related Injuries and Deaths from Across Ontario” the names and faces of individuals without their consent or their families’ consent and without checking his facts relating to the real cause of their illnesses or deaths.

[44] I recommend to the Assembly that Mr. Hillier be reprimanded for his failure to comply with Ontario parliamentary convention.

Dated at Toronto this 13th day of April, 2022.

A handwritten signature in black ink, appearing to read "J. David Wake". The signature is written in a cursive style with a large, sweeping initial "J".

The Honourable J. David Wake
Integrity Commissioner