



**OFFICE OF THE INTEGRITY  
COMMISSIONER**

**REPORT**

**of**

**THE HONOURABLE GREGORY T. EVANS  
COMMISSIONER**

**RE: MR. MICHAEL HARRIS, M.P.P.,  
NIPISSING**

**TORONTO, ONTARIO  
MAY 9, 1996**

**REPORT**  
**of**  
**THE HONOURABLE GREGORY T. EVANS**  
**INTEGRITY COMMISSIONER**

**RE: MR. MICHAEL HARRIS, M.P.P., NIPISSING**

**BACKGROUND**

On April 22, 1996, inquiries were made by Mr. Dave Cooke, M.P.P., N.D.P. House Leader and Ms. Lyn McLeod, M.P.P., Leader of the Official Opposition, for opinions whether Mr. Michael Michael Harris, M.P.P., has contravened certain provisions of the Members' Integrity Act, 1994 or Ontario parliamentary convention.

Mr. Cooke alleged violations of sections 2, 4 and 6 of the Act and the preamble. A copy of Mr. Cooke's letter is attached as Appendix "A".

Ms. McLeod alleged violations of sections 6(1), 6(3), 20(2)(b) of the Act, and a copy of her letter is attached as Appendix "B".

The alleged infractions refer to certain payments made on behalf of Mr. Harris by the Progressive Conservative Nipissing Riding Association ("Riding Association") and the PC Ontario Fund ("Fund"). As the two complaints refer to the same alleged violations, my opinion will refer to both except where otherwise stated.

**ISSUES**

I shall deal first with Mr. Cooke's request. Other than a general allegation that Mr. Harris used "tax-subsidized" political contributions for his personal use which were not included in his Public Disclosure Statement, no particulars were provided with respect to the alleged violations of s.2 and s.4 of the Members' Integrity Act. The alleged violation of s.6 will be dealt with in the opinion requested by Ms. McLeod.

Section 2 is the conflict of interest prohibition while s.4 is the undue influence prohibition. The first involves a "decision in the execution of his... office" which furthered his own private interest or improperly furthered another's private interest, while the latter is the "use of his... office to seek to influence the decision of another" to achieve the same results. In the absence of a specific allegation, I do not believe that these sections are applicable except insofar as they may be included in s.6.

That the contributions are "tax-subsidized" should not be surprising as the Election Finances Act, which places a limit on contributions to political parties and constituency associations, recognizes the right of citizens to support political parties. While it monitors campaign expenses of parties and registered candidates, it does not regulate the disbursement of funds received by riding associations and political parties except during elections. It also supervises the reimbursement from public funds of certain election expenses of candidates who receive at least 15% of the popular vote in their electoral district. Any surplus is paid to the constituency association. A somewhat similar provision applies to each registered political party. The Commission on Election Finances requires the riding associations and the provincial associations to file complete statements of revenue and disbursements.

In addition, the Income Tax Act grants a rather generous tax credit (when compared to charitable contribution benefits) to all taxpayers who contribute to registered candidates, constituency associations and parties. This benefit encourages the taxpayer to become involved in political parties and political campaigns. It is sometimes referred to as an example of "participatory democracy", but irrespective of what it is called, it is a benefit to politicians from the public purse.

Mr. Cooke referred to paragraphs 3 and 4 of the preamble to the Act. The preamble is not an essential part of the Act, and neither enlarges or conveys powers. Such clauses are frequently found at the beginning of a statute of this nature, explanatory of the reasons for its enactment and the objects sought to be accomplished. These precatory clauses are words of hope and anticipation as distinguished from positive commands or directions and may be helpful in the interpretation of ambiguities in the statute.

Ms. McLeod requested an opinion on the specific allegation set out in Appendix "B" and referred to certain prior decisions which I shall later distinguish from the matter under consideration.

The Members' Integrity Act is legislation enacted to advance public confidence in the integrity of each member and thereby maintain the dignity of the Assembly and earn the respect which society holds for the Assembly and its members. It is concerned mainly with the manner in which members perform the duties which flow from their offices and the integrity and impartiality which they demonstrate in their decisions, particularly in those situations in which personal interests and public interests are involved.

A member of the public who is elected as a member of the Legislative Assembly of Ontario is usually a member of one of the three officially recognized political parties in Ontario. Following an election, each member takes an oath of office and members of the Executive Council take an additional oath prior to being admitted as a member of the Executive. In theory at least, the member puts aside his/her duties to the party and becomes the servant of the public.

Upon assuming office, certain responsibilities devolve upon every member. Appointment to the Executive Council imposes additional duties attached to the particular portfolio assumed. The member is now a legislator charged with the duty and responsibility of acting in the best interests of the public generally, while still retaining his or her partisan political identity. In the role of a legislator, he or she, in the performance of the duties attached to that position, must demonstrate fairness and impartiality to all citizens irrespective of political affiliation.

A member, in his or her role as a partisan political activist, is concerned with the interests and advancement of the party and his or her personal success. To achieve those objectives the members engage in fundraising activities to provide financial stability to the local riding associations and the provincial political association which will, in turn, assist the sitting member to be re-elected and the election of other party supporters in the expectation of forming the government and implementing party policies. A strong and active party affiliation is part of our democratic form of government which envisages more than one political party and thereby provides the electorate with a choice at the polling booth.

I have attempted to demonstrate that an elected member in the role of a partisan politician has an interest in promoting himself or herself and the party, however, when that member is performing the duties associated with the performance of that member's duties and responsibilities as a member of the Assembly or of the Executive Council, the roles are separate and distinct.

When performing his or her duties of office, the member is a legislator acting in a fiduciary capacity for the benefit of all citizens with respect to the trust and confidence which the relationship demands.

Section 6(1) of the Members' Integrity Act, 1994 reads as follows:

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 office.

What mischief is it designed to prevent? In legislative parlance, the word "mischief" is used to signify the evil or danger which a statute is intended to cure or avoid.

Clearly the mischief to be avoided is the corruption of a member by the acceptance from another person of a fee, gift or personal benefit with the intent to give some advantage inconsistent with the member's official duties and the rights of others. The corrupt conduct must be "connected directly or indirectly with the performance of his or her duties of office". In other words, with the member's duties as a legislator and not in the capacity of a partisan political activist.

The section is somewhat similar to s.119(1)(a) of the Criminal Code of Canada which, in part, reads as follows:

Everyone who being a member of the legislature of a province, corruptly accepts any money, valuable consideration...for himself...in respect of anything done or omitted or to be done or omitted by him in his official capacity...is guilty of an indictable offence. (*emphasis added*)

The difference is that in the penal statute, there must be the mental element, i.e. the intent to act corruptly by doing or omitting to do something in his official capacity. The similarity is that both refer to the performance of his duties of office, that is, acting in his official capacity as a member of the legislature.

The particular circumstances under which a gift or personal benefit may be received by the member while performing the responsibilities of office are defined in s.6(2)(b) of the Act which states that s.6(1) does not apply to

- (a) compensation authorized by law;
- (b) a gift or personal benefit that is received as an incident of the protocol, customs or social obligations that normally accompany the responsibilities of office.

Subsections 6(3) and (4) set out the requirements for filing and disclosure:

- (3) Within 30 days of receiving a gift or personal benefit referred to in clause (2)(b) that exceeds \$200 in value, the member shall file with the Commissioner a disclosure statement in the form provided by the Commissioner, indicating the nature of the gift or benefit, its source and the circumstances under which it was given and accepted.
- (4) Subsection (3) also applies to gifts and benefits if the total value of what is received from one source in any 12-month period exceeds \$200.

In this case, the essential requirement to establish a violation under s.6(1) is proof that the benefits are connected directly or indirectly with the performance of Mr. Harris' duties of office, that is, as a legislator.

The purpose of s.6(1) is to prohibit a member of the Assembly from accepting a bribe or an illegal gratuity as the price of influencing the member in the discharge of his/her official duties, to take or not take some action which will benefit the person giving the bribe and contrary to the member's responsibilities of office.

Mr. Harris advised me during a telephone conversation that the alleged benefits were voluntary contributions made by his Riding Association and the Fund either as reimbursements for legitimate

expenses incurred by him on behalf of the Riding Association or in the case of the housing lease, a shared accommodation with the Fund for their mutual advantage as indicated in a letter dated November 14, 1995 from Donald D. Weiss, Executive Director of P.C. Ontario Fund, attached as Appendix "C". Mr. Harris further further stated that in either event, they are unrelated to the performance of his responsibilities of office as a legislator.

## FINDING OF FACT

There is no dispute that Mr. Harris' Riding Association has paid for a membership in his name in the North Bay Golf and Country Club and has reimbursed him for other expenses incurred as a member and also that the Fund contributes to the rental of the shared housing accommodation which he occupies.

### Golf Club Membership

I have some difficulty in appreciating in what manner the acceptance of a Golf Club Membership by Michael Harris, paid for by his Riding Association, is connected directly or indirectly with his office as a member or Premier. Golfing is not a part of his legislative duties. The benefit is received in his capacity as a party worker who through his election as a member and/or member of the Executive Council has brought honour and recognition to his Riding Association and the Executive Board wishes to show its appreciation. Party funds were spent and recorded with the Commission on Election Finances.

If the Golf Club had given Mr. Harris a free membership, then it would fall into the same category as a gift of a yacht club membership, given by a Yacht Club corporation to a member. In that case, Mr. Harris could not have accepted the free membership without violating s.6(1). The membership which Mr. Harris received, whether it was a gift from the Riding Association or a reimbursement for expenses incurred by him does not alter the character in which it was received--that is, as a member of the Riding Association and not in respect of his duties as a legislator.

### Housing Upgrade

Similarly, the housing up-grade of \$7,260 provided by his Riding Association is unrelated directly or indirectly to the performance of his legislative duties. If the Riding Association saw fit to provide this benefit in recognition of his political success, in what manner is it connected with the performance of his legislative duties?

While personal and corporate contributions to a riding association are limited by the provisions of the Election Finances Act, there does not appear to be any restrictions on the distribution of such funds apart from a prohibition against payments to municipal candidates for office and federal political parties. All contributions and disbursements by local riding associations and provincial political parties in Ontario are filed with the Commission on Election Finances and are available for public inspection.

In my opinion, s.6(1) has no application with respect to the golf club membership or the housing upgrade.

### Housing Rental Agreement

Mr. Harris' principal residence is in North Bay. The contribution being paid by him for his share of the rent in Toronto is the normal accommodation subsidy to which out of Toronto area members



are entitled by the Legislative Assembly. The Fund retains the right to use the premises for receptions and meetings to advance the political interests of the Provincial Association. Undoubtedly, this is a favorable arrangement for Mr. Harris, but in what manner is it connected with the performance of his duties as the Premier?

I do not agree with Ms. McLeod's contention that the arrangement with respect to his current housing costs should be considered as "income" and subject to disclosure under s.20(2)(b) of the Act. In Black's Law Dictionary "income" is defined as the return in money from one's business, labor or capital invested, gains, profits, salary, wages, etc.

This definition has been consistently followed by this office when dealing with income in the disclosure forms. There is no suggestion that the contributions provided to Mr. Harris are other than voluntary, without any constraining conditions, and from sources which comply with the provisions of the Election Finances Act. The type of contributions and their value are subjective matters to be determined in the discretion of the Riding Association and the Fund.

In view of my opinion that s.6(1) does not apply to this situation, it follows that there is no legal requirement under the Members' Integrity Act, to disclose contributions from the Riding and Provincial Associations. Whether such disclosure would be prudent is another matter. However, I should point out that during my tenure in office, no member of the Assembly has made such disclosure to this office. Also, according to financial statements filed with the Commission on Election Finances, other such payments have been made to members. I presume that such information being available to the public at the Commission, members felt that further disclosure would be redundant.

The propriety of a member accepting a gift or benefit is sometimes difficult to determine. Part of the problem arises from the inability of this office to ascertain with any certainty exactly what benefits were considered to be proper prior to the Members' Integrity Act, 1994 (formerly, the Members' Conflict of Interest Act, 1988) being enacted. They only come to light when a new member is elected to the legislature and requests an opinion on a matter which members who have been in office for some time have never requested an opinion, assuming such benefit to be proper. A list of these assumed proper "perks" of office are as difficult to ascertain as information about the contents of the budget prior to its disclosure in the Assembly.

Accordingly, rulings have been made on an "ad hoc" basis endeavoring to formulate a consistent body of rulings. In general, complimentary memberships in golf clubs, curling clubs, etc. provided by private donors are not permitted. Tickets and passes to sporting events, theatres, etc. are in the same category unless there is a pre-existing relationship with the donor, or they fall within the Minister's jurisdiction.

Ms. McLeod referred to previous rulings of this Commission contained in the Annual Reports. Of necessity, these anonymized reports are brief in order that the member requesting an opinion is not identified and they are intended to raise the awareness of members and their staffs. They are not the complete opinion.

Her suggestion that the source of the benefit is not relevant in the decisions reached is inaccurate. When a new member is offered a free membership in a club with which he/she has had no previous association; an invitation to become a director of a company seeking a government grant; a trip outside the Province in the corporate jet of a company competing for a government contract--I consider these factors to be relevant.

Members receive passes and tickets from many organizations. If they are received from non-government agencies, they are approved for acceptance if they are related to the recipient's duties of office. If the apparent purpose is to "use" the office of the member as lobbying for the benefit of the donor, they are not approved. If the invitation is extended by an agency in which the

government has an interest, it is generally approved on the basis that it is a "marketing tool" and beneficial indirectly to the government and a gift form is required to be filed if the value exceeds \$200.

Is not the giving of gifts or personal benefits a problem only when there is a possibility of influencing a member in the exercise of his/her legislative duties to grant some advantage to the donor? If so, what advantage could possibly accrue to a Progressive Conservative Riding Association or the PC Ontario Fund if a gift or benefit is provided to Mr. Harris? Can it be said that in such circumstances, the public is misled if the gift or benefit is filed with the Commission on Election Finances and subject to public inspection?

The only gifts or benefits which are required to be filed with this office are those which fall under s.6(2)(b), that is, gifts or personal benefits received as an incident of protocol, customs or social obligations that normally accompany the responsibilities of office.

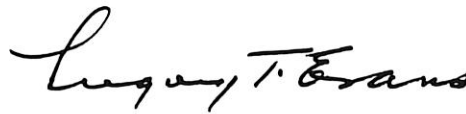
### OPINION

Section 30(5) of the Members' Integrity Act, 1994 states:

If the Commissioner is of the opinion that the referral of a matter to him or her is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an inquiry, the Commissioner shall not conduct an inquiry and shall state the reasons for not doing so in the report.

For the reasons stated, it is my opinion that s.30(5) applies and there are no grounds to hold an inquiry on the matters referred to me by Ms. McLeod and Mr. Cooke with respect to contributions received by Mr. Harris from his Riding Association and the Fund.

**DATED** at Toronto this 9th day of May, 1996.



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The Honourable Gregory T. Evans  
Integrity Commissioner

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Main Legislative Building  
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M7A 1A5  
Tel: (416) 325-8116  
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Dave Cooke  
MPP Windsor-Riverside  
New Democratic Party House Leader

Constituency  
4848 Tecumseh Road East  
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N8T 1B8  
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April 22, 1996

APR 22 1996

The Hon. G.T. Evans, WC  
Integrity Commissioner  
4th Floor, 101 Bloor St. West  
Toronto, ON M5S 2Z7

Dear Judge Evans,

I hereby request that the Integrity Commissioner give an opinion as to whether Michael Harris, the member for Nipissing, has contravened the *Members' Integrity Act* or Ontario parliamentary convention.

The member for Nipissing has acknowledged that tax-subsidized political contributions have been used to pay for his club memberships, improvements to his Toronto home and other personal expenses that furthered his private interest. These payments were made in 1992, 1993 and 1994, and similar payments may have been made in other years.

These personal benefits were not included in the member's Public Disclosure Statement. Whether Mr. Harris declared these payments as taxable income remains unclear.

I believe the Integrity Commissioner should conduct an inquiry and give an opinion, in light of the following sections of the *Members' Integrity Act*:

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.*
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 or improperly to further another person's private interest.*
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 office.*



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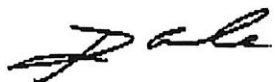
(2) Subsection (1) does not apply to,

- (a) compensation authorized by law;
  - (b) a gift or personal benefit that is received as an incident of the protocol, customs or social obligations that normally accompany the responsibilities of the office.
- (3) Within 30 days of receiving a gift or personal benefit referred to in clause (2)(b) that exceeds \$200 in value, the member shall file with the Commissioner a disclosure statement in the form provided by the Commissioner, indicating the nature of the gift or benefit, its source and the circumstances under which it was given and accepted.

This opinion should also be conducted in light of the preamble to the Members' Integrity Act, which reads in part:

- 3. Members are expected to perform their duties of office and arrange their private affairs 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.
- 4. Members are expected to act with integrity and impartiality that will bear the closest scrutiny.

Sincerely yours,



Dave Cooke, MPP  
Windsor-Riverside

OFFICE OF THE OPPONENT  
100-1000-1000-1000



BUREAU DE L'OPPOSITION  
CHEF DU PARTI LIBERAL DE L'ONTARIO

APR 23 1996

April 22, 1996

The Honourable Gregory T. Evans  
Integrity Commissioner  
4th Floor 101 Bloor Street West  
Toronto, Ontario  
M5S 2Z7

Dear Judge Evans;

I am writing pursuant to Section 30 of the Members' Integrity Act as I believe there are reasonable and probable grounds that the Member of Provincial Parliament for Nipissing, Mike Harris, has contravened the Act. Indeed, I believe a review of the statements filed with the Election Finance Commissioner will show that he has done so repeatedly and consistently over the past 15 years.

Further, Mr. Harris has been extremely evasive in answering directly whether or not he has complied with federal and provincial income tax laws by declaring as income these gifts and benefits, although I understand this is outside your purview.

I ask for your opinion on the following matters:

Golf and Country Club Membership

- Did Mike Harris contravene Section 6(1) of the Act by accepting gifts and personal benefits in the form of a \$1,047 Golf and Country Club Membership which was paid for by donors to the Nipissing Progressive Conservative Riding Association;
- Did Mike Harris contravene Section 6(3) of the Act by failing to disclose to the Commissioner gifts and personal benefits over \$200 after he accepted a \$1,047 Golf and Country Club Membership which was paid for by donors to the Progressive Conservative Nipissing Riding Association;

Housing Upgrade

- Did Mike Harris contravene Section 6(1) of the Act by accepting gifts and personal benefits in the form of a \$7,260 housing upgrade which was paid for by donors to the Nipissing Progressive Conservative Riding Association;

- Did Mike Harris contravene Section 6(3) of the Act by failing to disclose gifts to the Commissioner and personal benefits over \$200 after he accepted a \$7,260 housing upgrade which was paid for by donors to the Progressive Conservative Nipissing Riding Association;
- Did Mike Harris contravene Section 20(2)(b) of the Act by failing to disclose to the Integrity Commissioner that he accepted a \$7,260 housing upgrade which was paid for by donors to the Progressive Conservative Nipissing Riding Association;

#### Current Undisclosed Housing / Rental Arrangement

- Did Mike Harris contravene Section 6(1) of the Act by accepting gifts and personal benefits when he allowed a significant portion his current housing costs to be paid for by donors to the Ontario Progressive Conservative Party;
- Did Mike Harris contravene Section 6(3) of the Act by failing to disclose to the Commissioner gifts and personal benefits over \$200 after he allowed a significant portion his current housing costs to be paid for by donors to the Ontario Progressive Conservative Party;
- Did Mike Harris contravene Section 20(2)(b) of the Act by failing to disclose to the Integrity Commissioner that a significant portion his current housing costs are being paid for by donors to the Ontario Progressive Conservative Party. (Source, Bob Reid, Premier's Press Secretary, April 18, 1996 Toronto Sun article Tories jump on perq wagon);

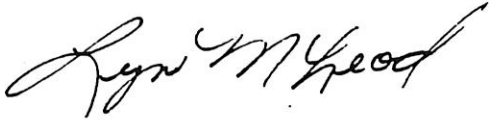
I find it difficult to construe a Golf and Country Club Membership and various housing top-ups as anything other than a gift or personal benefit and therefore income. Under no circumstances could these be considered legitimate business expenses for the Member for Nipissing on behalf of the riding association.

As you are aware, a fundamental principle of the Members' Integrity Act is that members "arrange their private affairs 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". I find it difficult to understand how any member of the public who found the word "NIL" under Gifts and Personal Benefits in Mike Harris' Disclosure Statements could be left with any confidence in the reliability of those disclosures.

In making your ruling, I would like you to consider that neither the Members' Integrity Act, nor prior "Conflict Decisions" have concerned themselves with what type of organization purchased the gift or personal benefit. The relevant questions have always been "was the gift or personal benefit received in the role of member" and "was it disclosed". Whether the provider of the gift or personal benefit was an individual, corporation, riding association or government agency has not had any apparent bearing on the Commissioner's decisions.

By accepting these gifts and personal benefits and then failing to disclose them to the Commissioner, I do not believe Mike Harris has lived up to either the letter or spirit of the Members' Integrity Act.

Sincerely;

A handwritten signature in black ink, appearing to read "Lyn McLeod". The signature is fluid and cursive, with the first name "Lyn" and last name "McLeod" clearly distinguishable.

Lyn McLeod, MPP  
Leader of the Opposition

I provide for your benefit some prior rulings on Gifts and Personal Benefits which I believe are relevant to this case:

**Annual Report 1994 - 1995**  
**CONFLICT DECISION / INQUIRY #5**

Issue:

The member/Minister has received complimentary passes from the Metro Toronto and Region Conservation Authority and the Canadian National Exhibition.

Opinion:

Accepting the pass to the Canadian National Exhibition is contrary to s.6 of the Act as it is not a benefit related to the responsibilities of his office either as a Minister of an M.P.P.

**Annual Report 1991 - 1992**  
**CONFLICT DECISION / INQUIRY # 8**

Issue:

The member/Parliamentary Assistant received a season's pass to all conservation areas in and around the member's constituency and inquired of the Commissioner as to the appropriateness of accepting such a gift.

Decision:

As the season's pass is not a benefit related to the responsibilities of the members' office, the acceptance of the season's pass would contravene s.6(1) of the Act, creating a conflict of interest.

**Annual Report 1990 - 1991**  
**CONFLICT DECISION / INQUIRY #4**

Issue:

The member was offered a complimentary membership in the local Yacht Club.

Decision:

The member was advised the acceptance of a gift of membership in the Yacht Club contravenes s.6 of the Act.





APPENDIX "C"

## PC ONTARIO FUND

November 14, 1995

Michael D. Harris  
400 Banbury Road  
Willowdale, Ontario  
M2L 2C2

Dear Mr. Harris:

With the full knowledge and concurrence of the board of directors of the PC Ontario Fund, I am authorized on behalf of the Fund to confirm to you that the Fund is the assignee-lessee of a lease of 400 Banbury Road, Willowdale, Ontario for a term expiring September 14, 1997.

I understand that you and your family believe that this property will be a satisfactory temporary family residence in the Toronto area and will also serve as an appropriate location for entertaining political colleagues and other visitors from inside and outside Ontario who will call on you as leader of the Party and Premier of the Province.

In order that the Fund is reimbursed by you for that portion of the lease and occupation costs which are directly related to the personal use and enjoyment that you and your family make of the premises, the Fund will expect you to reimburse the Fund an aggregate of \$1304.50 per month on the 10th day of each month commencing on November 10, 1995 and ending on August 10, 1997.

Based upon the above understanding, the Fund will continue to pay the full rent under the lease and keep the lease in good standing.

On September 15, 1996 you and the Fund will review these arrangements and will make such adjustments (if any) as are necessary to give full effect to the general understanding reflected in this letter.

Yours very truly,

A handwritten signature in dark ink, appearing to read "D. Weiss", written in a cursive style.

Donald D. Weiss  
Executive Director

Accepted and agreed to: