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Legislative Assembly of Ontario

OFFICE OF THE INTEGRITY COMMISSIONER

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REPORT

OF

**THE HONOURABLE COULTER A. OSBORNE
INTEGRITY COMMISSIONER**

**RE: MS. SANDRA PUPATELLO, DEPUTY LEADER OF
THE OFFICIAL OPPOSITION AND MEMBER FOR
WINDSOR WEST**

**TORONTO, ONTARIO
DECEMBER 12, 2002**

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**RE: MS. SANDRA PUPATELLO, DEPUTY LEADER OF THE OFFICIAL
OPPOSITION AND MEMBER FOR WINDSOR WEST**

[1] Garfield Dunlop, the member for Simcoe North, has alleged in a written complaint that Sandra Pupatello, the member for Windsor West, has breached the provisions of the *Members' Integrity Act, 1994* (the *Act*). In his letter forwarding the complaint and in his affidavit which supported it, Mr. Dunlop alleged that Ms. Pupatello, by using a courier service contracted for by the Government of Ontario to assist a friend and constituent in shipping eight boxes containing personal belongings of the constituent/friend, breached the provisions of the *Act*.

[2] Before turning to the evidence supporting the complaint and the member's position that she did nothing wrong in helping a friend as she did, I should make it clear that although the complaint referred to a Toronto newspaper's report about the courier incident at the root of the complaint and to a Claim in a Small Claims Court action in which Ms. Pupatello is one of two defendants, I do not view either source to constitute admissible evidence with respect to Mr. Dunlop's complaint. Ms. Pupatello's statement of defense in the Small Claims Court action is in a somewhat different position in that parts of her defence can validly be viewed as admissions.

[3] In investigating this matter, in addition to the evidence provided by Mr. Dunlop and Ms. Pupatello, we have interviewed:

- two employees of Purolator Courier Ltd. (Purolator)
- Financial Services, Legislative Assembly of Ontario
- Ms. Pupatello's Special Assistant at relevant times
- the Manager, Finance and Administration, of the Ontario Liberal Party's Caucus Office

- the woman who delivered the eight boxes to Ms. Pupatello in Windsor for delivery from Windsor to the Purolator depot at Queen's Park in Toronto.

[4] I have also obtained and reviewed the Purolator contract with the Government of Ontario.

The Evidence Relevant to the Complaint

[5] In early 2001, one Mary Anne McCulloch, then a friend of Ms. Pupatello, had separated from her husband and intended to move to London England. Ms. Pupatello has stated, and I accept, that at that time Ms. McCulloch's life was in some turmoil. It is for that reason that Ms. Pupatello attempted to assist her. In January 2001 Ms. Pupatello agreed to, and did, store some of Ms. McCulloch's furniture in her home.¹ She later agreed to help Ms. McCulloch ship some of her personal belongings from Windsor to Toronto and then from Toronto to London England.

[6] In late January 2001, shortly before she left for England, Ms. McCulloch became concerned about some of her personal belongings which she had apparently left at a storage facility in Tecumseh, Ontario. Ms. Pupatello stated in her affidavit that she suggested to Ms. McCulloch that she might consider having her stored belongings shipped to England after she had arrived there. Ms. Pupatello explained to Ms. McCulloch that she had done this with some of her belongings when she lived in South Africa. Ms. Pupatello also told Ms. McCulloch that to be of assistance she would be willing to drive what she then thought was one box containing Ms. McCulloch's personal belongings from Windsor to Toronto and to then deliver this box to the Purolator depot located at Queen's Park where Ms. Pupatello's office is also located. According to Ms. Pupatello, Ms. McCulloch asked what the Toronto–London courier cost might be and if there was a relevant discount. Ms. Pupatello stated in her affidavit that she told Ms. McCulloch that she would, "...inquire into what might be available to her." [Pupatello

¹ I will make no further reference to the furniture or Ms. McCulloch's allegations about it on the simple basis that no aspect of the furniture arrangements and the dispute arising from those arrangements has anything to do with Mr. Dunlop's complaint. I refer to the furniture only because it is part of the narrative.

affidavit paragraph 9]. The Queen's Park Purolator depot is not a general retail outlet. It provides courier service for government needs under a contract with the Government of Ontario in a manner that I will describe in more detail shortly.

[7] Ms. Pupatello heard nothing more about Ms. McCulloch's belongings which were stored in Tecumseh until February 16 or 17, 2001 when Ms. McCulloch's sister telephoned her and discussed shipping what was stored in Tecumseh to London England. Ms. McCulloch's sister asked whether Ms. Pupatello could drive what was in storage from Windsor to Toronto for shipping to London by courier. Since Ms. McCulloch was in England at this time, arrangements about shipping her belongings to England were left to be dealt with by Ms. McCulloch's sister and Ms. Pupatello. Clearly, the idea was to ship Ms. McCulloch's belongings from Toronto to London England through the Purolator depot located at Queen's Park.

[8] At this point, Ms. Pupatello's office staff (I assume on Ms. Pupatello's instructions) contacted Purolator's Queen's Park courier depot to inquire, as Ms. Pupatello put it in her affidavit, "...if such services could be accessed for shipping an item outside of my office's business shipping, and what the cost of shipping would be."

[9] Purolator advised Ms. Pupatello's office that personal (as opposed to government) shipping was done frequently by members. Purolator explained that if the shipment was not part of government business, it should be marked as "Personal", so that the member, not the government, would in the final analysis pay Purolator's invoice for that part of the courier arrangements that was personal. Purolator also told Ms. Pupatello's office that the shipping cost would depend on the weight and volume of the shipped material. Thus, the cost of shipping could not be determined until Purolator weighed and measured the material to be shipped.

[10] Ms. Pupatello has stated that once she was satisfied that there was nothing improper involved in the contemplated shipping, she arranged to have Ms. McCulloch's sister deliver what was to be shipped to England to Ms. Pupatello's home in Windsor.

The idea was that Ms. Pupatello would drive Ms. McCulloch's boxed belongings to Queen's Park in Toronto and then deliver the boxes to the Queen's Park Purolator depot for shipment to London England.

[11] As it turned out, Ms. McCulloch's sister arrived at Ms. Pupatello's Windsor home with eight somewhat large boxes. As I have stated Ms. Pupatello expected to be involved in the shipping of one box. Be that as it may, Ms. Pupatello drove Ms. McCulloch's eight boxes from Windsor to Toronto. When Ms. Pupatello arrived at the Queen's Park members' parking area, Sean Hamilton, who was her Special Assistant at the time, helped move the eight boxes from Ms. Pupatello's car to the Queen's Park Purolator depot.

[12] Ms. Pupatello's office later called the Liberal Caucus Office to address the personal, as opposed to government, shipping issue. According to the Caucus Office's Manager, Finance Administration, Ms. Pupatello's office's contact about the shipping occurred after Ms. McCulloch's boxes had been couriered from Toronto to London England. In any case, Ms. Pupatello's office was told that the Legislative Assembly Financial Services' policy was clear – when using the government courier for personal purposes, the shipping documentation should clearly be marked “Personal”. Once again the clear purpose of this advice was to ensure that personal expenses were paid personally, not by the government, that is by the taxpayers.

[13] Purolator's International Bill of Lading referable to the 8 box international shipment to London England shows Ms. Pupatello as the “Sender” and Ms. McCulloch as the “Receiver”. The Bill of Lading does not specify the shipment as “Personal”, however, I am satisfied that from the beginning Ms. Pupatello intended that the courier charges for transporting Ms. McCulloch's eight boxes to England would be paid for by Ms. McCulloch, not the taxpayers.

[14] Purolator's invoice dated March 2, 2001, covering the month of February 2001, refers to six courier transactions linked to Ms. Pupatello's office. One of them concerned

the shipping of Ms. McCulloch's eight boxes from Toronto to London England for \$3,176.99. The other courier transactions through Ms. Pupatello's office totaled \$36.10.

[15] On March 14, 2001, the Financial Services Branch sent a memorandum to Ms. Pupatello which dealt with the \$3,176.99 Purolator invoice. The memorandum stated, in part:

The enclosed Purolator Courier invoice for the amount of \$3,176.99 is for your personal charge and has been paid on your behalf on Batch #C002193.

Please make a cheque for the said amount to the Legislative Assembly General Fund and forward it to Finance Branch, Whitney Block, Room 2630.

After she received the Purolator invoice to which I have referred, Ms. Pupatello contacted Ms. McCulloch about paying that part of the invoice covering the shipment of Ms. McCulloch's 8 boxes to London. According to Ms. Pupatello's affidavit Ms. McCulloch then said that she thought the Purolator bill would be no more than \$500.00. When payment of the \$3,176.99 was not forthcoming, Ms. Pupatello contacted Ms. McCulloch's father about payment. On April 9, 2001 Ms. McCulloch's father provided a cheque payable to the Legislative Assembly – General Fund for \$3,176.99.

[16] On July 29, 2002 Ms. McCulloch started a Small Claims Court action against Ms. Pupatello and another person who was involved with the storage of Ms. McCulloch's furniture. Insofar as it relates to the eight-box international shipment to which I have referred, Ms. McCulloch seeks damages from Ms. Pupatello of \$2,676.99, representing the difference between the actual Purolator invoice of \$3,176.99 and \$500.00 which Ms. McCulloch says was the represented cost of the shipment by courier from Toronto to London England.

[17] I have absolutely nothing to say about the merits of the Small Claims Court claim because in my view it has nothing to do with the central issue whether Ms. Pupatello in

her dealings with Purolator on Ms. McCulloch's behalf breached the provisions of the *Act*.

The Purolator - Government of Ontario Contract

[18] The Ontario government has, and had in 2001, a contract with Purolator in the form of a "standing agreement" for, within Ontario, interprovincial and international courier services. The standing agreement is managed at the government end by Management Board's Strategic Procurement Branch, Shared Services. Under the standing agreement Purolator provided pre-printed bills of lading. Those bills identify the Ministry or member using the Purolator service. Purolator submits invoices monthly to the Office of the Legislative Assembly. If a member uses the courier services provided under the standing agreement, the member's name appears on the Bill of Lading and the invoice. Invoices from Purolator are processed for payment through the Legislative Assembly Financial Services office.

[19] I do not think it is necessary to review the standing agreement's pricing structure in any detail. All that need be said is that goods shipped under the agreement are generally shipped at a cost significantly below retail. This is clearly because of the volume of material couriered by the government of Ontario, including the broader public service.

[20] Under the standing agreement, courier rates are divided into, within Ontario, interprovincial and international. The international rate structure was applicable to the eight-box shipment to England made in Ms. Pupatello's name. Information received from Purolator establishes that the Ontario government rarely ships heavy packages to England and perhaps because of that there is something of an anomaly in the standing agreement fee structure as it relates to some international shipments. To illustrate, the standing agreement fee structure provides that the government rate for a thirty-pound shipment to England is \$207.00. This is less than the general public rate. However, at forty pounds there is a cross-over (described by Purolator as a fluke) which results in the government rate under the standing agreement being higher than the general public rate. The general

import of this appears to be minimal since the average weight for international shipments under the standing agreement is one to two pounds.²

[21] Lastly, since the Purolator standing agreement is with the Ontario government, transactions under the agreement do not require the payment of GST. Thus, the invoice submitted to and processed by the Legislative Assembly, Financial Services includes no GST charge. Including GST on the McCulloch shipment to England would have increased the cost of shipping her eight boxes by \$222.39.

Analysis

[22] Mr. Dunlop's complaint alleges that Ms. Pupatello breached unspecified provisions of the *Act* or parliamentary convention. In his complaint Mr. Dunlop clearly set out the facts upon which he contends that Ms. Pupatello breached the *Act* or parliamentary convention by involving herself in shipping Ms. McCulloch's 8 boxes to England under the Purolator – Government of Ontario standing agreement. In her answer Ms. Pupatello submitted that in the particular circumstances she did not breach sections 2, 3 or 4 of the *Act*. These sections provide:

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.
3. (1) A member of the Assembly shall not use information that is obtained in his or her capacity as a member and that is not available to the general public to further or seek to further the member's private interest or improperly to further or seek to further another person's private interest.
(2) A member shall not communicate information described in subsection (1) to another person if the member knows or reasonably should know that the information may be used for a purpose described in that subsection.

² Six pounds is the average weight for parcels shipped in Ontario and three pounds is the average weight for parcels shipped to the United States.

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.

[23] I agree with Ms. Pupatello that none of sections 2, 3 or 4 apply on the facts of this matter. Sections 2 and 4 refer to furthering a member's private interest or improperly furthering a third party's private interest. However, sections 2 and 4 are premised on the member making a decision (section 2) or influencing a decision (section 4). Here there was no "decision" as contemplated by either section 2 or section 4. Nor do I think section 3 of the *Act* is engaged. In my opinion it would be something of a statutory interpretation stretch to conclude Ms. Pupatello used information that was not available to the general public to improperly further Ms. McCulloch's private interest. Any member of the public may contact Purolator and other courier services to inquire about the cost of shipping goods overseas. Indeed, it would appear from my discussion of this matter with Ms. McCulloch's sister that Ms. McCulloch did make some general inquiry as to the cost of shipping her belongings to England. In any case it would appear that Ms. Pupatello did not know much, if anything, about the standing agreement price schedule.

[24] However I do not think that the issue whether Ms. Pupatello breached the provisions of the *Act* ends with a consideration of sections 2, 3 and 4 of the *Act*. The *Act* clearly incorporates the standards imposed by parliamentary convention within its necessarily general terms. Indeed, section 28 permits members to obtain an opinion from this office, "...respecting a member's obligations under this *Act* and under Ontario parliamentary convention." (Emphasis added). Section 30(1), which controls the process under which Mr. Dunlop issued this complaint, specifically refers to breaches of parliamentary convention. Section 30(5) and (6) also refers to a breach of parliamentary convention in addition to the specific conflict provisions of the *Act*. In addition, the penalty provisions of the *Act* refer to breaches of parliamentary convention in the context of what penalties the Integrity Commissioner may impose for breaches of specific sections of the *Act* or of parliamentary convention. Finally, parliamentary convention is also used in the *Act* to justify some action by members on behalf of constituents. See section 5 of the *Act*.

[25] 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).

[26] 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.

[27] As with most things there are variations on the theme and exceptions. Although as a matter of general policy the Financial Services Branch of the Office of the Legislative Assembly discourages members' personal expenditures being processed through that office, it is accepted that for the convenience of members some personal business can be mixed with government business, provided that the cost of the personal business is paid for by the member. This exception explains why Purolator told Ms. Pupatello's staff that what the Purolator office obviously thought was a personal shipment to England for Ms. Pupatello could be included in government materials being couriered if the boxes were marked personal.

[28] This is precisely what Ms. Pupatello contends happened here. In her answer to the allegations made by Mr. Dunlop, Ms. Pupatello notes that having inquired about, "the propriety of shipping goods personally for Ms. McCulloch" and being given the OK by Purolator Ms. Pupatello did nothing wrong since Ms. McCulloch did not receive a

preferential rate and in the end reimbursed the Legislative Assembly Financial Services Branch for the cost of what Ms. Pupatello views as a personal transaction.

[29] The problem with this view of the facts is that the transaction here was not personal; that is to say it was not Ms. Pupatello's boxes but rather the boxes of her friend, Ms. McCulloch, that were shipped to England under the Purolator - Government of Ontario standing agreement to which I referred earlier. The best that can be said about the shipment of Ms. McCulloch's eight boxes to England is that Ms. McCulloch, not the taxpayers generally, paid the Purolator invoice and that Ms. McCulloch did not receive a preferred rate. She did, however, receive the applicable rate under the Purolator – Government of Ontario standing agreement.

[30] In my opinion, although parliamentary convention permits a member to assist a constituent in certain circumstances, it does not extend to legitimize a member assisting a friend or a constituent in piggy backing on a government contract, manifestly intended to provide for Government of Ontario courier needs even where the friend or constituent receives no financial gain in the transaction.

[31] There is also the collateral problem of GST payment. As I have said, goods shipped under the standing agreement do not attract GST because the shipment is assumed to be a Government of Ontario shipment and thus exempt from GST payment. Personal transactions and, of course, transactions for a third party should attract GST payment.

[32] I therefore conclude that in participating as she did as Ms. McCulloch's agent in couriating Ms. McCulloch's eight boxes to England, Ms. Pupatello acted contrary to parliamentary convention. The protocol established by the Legislative Assembly Financial Services Branch for personal transactions may have been followed, however, it was not applicable for the simple reason that the eight-box shipment in question was not a personal shipment by the member. It was a shipment for a third party who was never intended to be a part of the standing agreement courier arrangements.

[33] I have no doubt that Ms. Pupatello was doing no more than trying to assist a friend and constituent whose life was in some disarray at the time. Both Ms. Pupatello and Ms. McCulloch must have thought that Ms. McCulloch's boxes could be shipped to England at a lower cost under the government contract with Purolator. As it turned out, by what Purolator views as a fluke, they were both wrong in that regard. However, in my view, the core issue is not how much was gained or lost but rather whether this kind of third party participation in a Government of Ontario contract, facilitated in the circumstances by Ms. Pupatello, was appropriate. It is my view the clear answer to that question is that Ms. Pupatello's participation in the Purolator - Government of Ontario contract solely for the benefit of a friend and constituent was inappropriate. It constitutes a breach of parliamentary convention.

[34] I think it would be unfair to characterize this as other than an error in judgment made in good faith in the particular circumstances. Notwithstanding the breach of parliamentary convention that I have found I would recommend that no penalty be imposed.

[35] In something of a postscript I would add that members of all parties should take great care in respecting the limits on what assistance they can reasonably render to friends, constituents etc. The line between private interest and public duty must be respected. If a third party is the intended beneficiary of a member's assistance, the member should give careful thought to the scope of that assistance.

DATED at Toronto, this 12th day of December, 2002.

The Honourable Coulter A. Osborne