

Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

OFFICE OF THE INTEGRITY COMMISSIONER

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REPORT

OF

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

**RE: ROBERT RUNCIMAN, MPP,
MEMBER FOR LEEDS-GRENVILLE**

**TORONTO, ONTARIO
OCTOBER 25, 2006**

RE: ROBERT RUNCIMAN, MPP, MEMBER FOR LEEDS-GRENVILLE

The Facts

[1] On April 24, 2004, Louise Russo, an innocent bystander, was shot in what appears to have been a drive-by shooting at a North York sandwich shop. Ms. Russo was not the intended target. As a result of the shooting, Ms. Russo suffered a severe spinal chord injury. She is confined to a wheelchair and will be so confined for the rest of her life.

[2] In due course, as a result of the tragic events of April 24th, four men were charged with a number of offences, including conspiracy to commit murder. In early April 2006, counsel for the four accused and Crown Counsel entered into plea negotiations before The Honourable Mr. Justice Watt, an experienced Superior Court of Ontario trial judge. During these plea negotiations, the evidence indicates payment of restitution by the accused persons was part of the discussions.

[3] Before the plea related negotiations, including their restitution component, were completed, the fact that a substantial restitution payment to Ms. Russo was part of the plea bargaining process was referred to in media reports. The restitution sum most frequently referred to in media reports was \$2.5 million. In short order, the issue of restitution in the Russo matter also became the subject matter of discussion in the Legislative Assembly of Ontario. This was followed by discussion of the propriety of such an arrangement outside the Legislature.

[4] One of those commenting on the propriety of the restitution component of the plea discussions was Robert Runciman, the Member for Leeds-Grenville and Opposition Critic for the Ministry of the Attorney General. Mr. Runciman's out-of-the-Legislature comments form the factual basis for the complaint under s.30 of the *Members' Integrity Act*, the crux of which is that Mr. Runciman breached parliamentary convention, and thus the *Members' Integrity Act*, by commenting directly on a matter that was before the courts. To put it another way, the complaint alleges that he breached the *sub judice* rule. The complainant is Mario Sergio, Member for York-West. Apparently Ms. Russo resides in Mr. Sergio's riding.

[5] I should further note that on April 7, 2006, I received a letter of complaint purportedly under the *Members' Integrity Act* from Ms. Russo's counsel, Harry McMurtry. Mr. McMurtry's letter was written during the course of the plea bargaining process, which at that time had not been completed. Thus the issue of restitution had not been finalized. In his letter, Mr. McMurtry focused on comments made by Mr. Runciman in the Legislature. He contended that Mr. Runciman's comments breached Standing Order 23(g). I will refer shortly to the provisions of Standing Order 23(g). For now, I leave Mr. McMurtry's letter by setting out the central allegation:

MPP Runciman, a former Solicitor General, is attempting to seriously interfere with the administration of justice in relation to a matter pending before the courts. This is causing great distress to Ms. Russo. At this moment, she feels she is at risk of being further victimized if Mr. Runciman further interferes with the prosecution of the accused.

[6] Very shortly after receiving Mr. McMurtry's letter, I contacted him by telephone and advised him that the *Members' Integrity Act* provided me with jurisdiction to respond to complaints from Members of Provincial Parliament, not the public. I suggested that if Ms. Russo had wished to pursue the issue generally raised in Mr. McMurtry's letter, she or her counsel should contact a Member of the Legislative Assembly and have the complaint made through that Member. As it turned out, Mr. Sergio filed the complaint.

[7] I further advised Mr. McMurtry that I had no jurisdiction over comments made by Members in the Legislature. That is the Speaker's responsibility. The Speaker's jurisdiction, at least in part, comes from Standing Order 23(g) to which I have made reference earlier. It provides:

In a debate, a Member shall be called to order by the Speaker if he or she:

(g) refers to any matter that is the subject matter of a proceeding

(i) that is pending in a court or before a judge or judicial determination, or

(ii) that is before any quasi-judicial body constituted by the House or under the authority of an Act of the Legislature where it is shown to the satisfaction of the Speaker that further reference would create a real and substantial danger of prejudice to the proceeding.

[8] The provisions of Standing Order 23(g) are slightly broader than the common law *sub judice* rule which has long been recognized as part of parliamentary convention. The Standing Order does, however, reflect the essence of the *sub judice* rule which generally

prohibits members from referring to any matter that is the subject matter of an on-going criminal or civil proceeding.¹

[9] Mr. Runciman contended that his comments as an opposition critic were “appropriate and responsible”. He further contended that the *sub judice* rule should be more strictly applied with members of the Executive Council. He based this submission on the capacity of members of the Executive Council to influence decision making. In his response to the complaint, Mr. Runciman took no issue with the material filed as part of Mr. Sergio’s complaint. There is, therefore, no doubt, that while the criminal prosecution arising from the events that caused Ms. Russo’s injuries was ongoing, Mr. Runciman commented both in and outside the Legislature on the propriety of payment of substantial restitution to her by the four accused persons.

[10] The comments to which I refer were not in the abstract. They related directly to the payment of compensation to Ms. Russo by the accused persons.

¹ It is not necessary to consider the *sub judice* rule as it may relate to quasi-judicial agencies, boards and commissions, or commissions of inquiry.

[11] A brief reference to some of the comments made by Mr. Runciman will suffice. At various times Mr. Runciman, in referring to the Russo restitution order said outside the Legislature:

- “This is dirty money... and this is a horrible, horrible precedent.”
- “I know that the defence lawyer when I talked to him yesterday were (sic) very concerned that it would jeopardize the deal. My bottom line here is that this deal has to be jeopardized. It has to be thrown out.”
- “I think there’s a question whether this is another deal with the devil, or devils.”
- “...I think it’s really setting a sort of price on the situation. What you are doing is getting a reduced sentence if you’ve got money, I mean, that is the message that it sends out. And this is dirty money. I think that’s a pretty safe assumption here.”

[12] When he was asked by a reporter how Ms. Russo could be reasonably compensated if the restitution funds then being discussed were removed from consideration, Mr. Runciman said:

It’s upsetting, but I think it [the restitution funds] has to come off the table. I think it’s a horrible precedent. I know that she’ll be upset. Her family members will be upset and I’m upset that she isn’t being appropriately addressed in terms of her needs. I think we have to find a way to do that, and an appropriate way to do that and not through dealing with organized crime.

[13] In fairness, I should point out that Mr. Runciman made it clear that he thought that Ms. Russo deserved to be compensated. His position on that issue was that changes should be made at the level of the Criminal Injuries Compensation Board so that

compensation significantly greater than the current Board compensation levels could be made to seriously injured victims of criminal activity such as Ms. Russo.²

[14] On this subject, after referring to the Criminal Injuries Compensation Board, Mr. Runciman said:

We should have some kind of terms of reference so that people like Ms. Russo and others who have very, very serious injuries as a result of these criminal activities should be provided with compensation and not have to go to hired killers and organized crime to provide these funds. ...We should be stepping up and assisting her and I think there are tools to do that right now – we just have to make the necessary legislative changes.”

[15] The plea bargaining process involving Crown and defence counsel eventually led to the production of an Agreed Statement of Facts, a joint submission on sentence and guilty pleas from the accused persons. The entire process was under the control and supervision of Justice Watt. The joint submission included a term requiring payment of \$2,000,000 to Ms. Russo. Justice Watt correctly referred to this payment as a restitution order. He said in his Reasons for Sentence:

There is a second component to the joint submission unique to the convictions recorded on count 3. The submission is for a restitution order in the amount of \$2,000,000, to be composed of monies already paid into court, in favour of Mrs. Louise Russo. The statutory authority for the order is s.738(1)(b) of the *Criminal Code*.

² The maximum Criminal Injuries Compensation payment is now \$25,000 with access to an annuity of \$1,000 a month to a maximum of \$365,000.

[16] As Justice Watt noted, the statutory authority for a restitution order is s.738(1)(b) of the Criminal Code. He also aptly noted that a restitution order gives effect to one of the objectives of sentencing as spelled out in s.718 of the Code – “to provide reparations for harm done to victims or to the community.” [see s.718(d)]

[17] Justice Watt concluded that Ms. Russo was a person entitled to restitution under s.738(1)(b) of the Code since she suffered bodily harm as a result of the accuseds’ criminal conduct. He also concluded that the proposed restitution (\$2 million) did not exceed her pecuniary damages. Lastly Justice Watt said:

Restitution is not some “get out of jail early” card to be played to take a sentence out of a range that would otherwise be appropriate. And it will not do so here.

[18] In the end Justice Watt accepted the joint submission proffered by Crown and defence counsel. In relation to one count in the Indictment, he made a restitution order in the amount of \$2,000,000 payable to Ms. Russo.

[19] This is not a case where a member inadvertently commented on a matter which was before the courts. Here, Mr. Runciman’s comments were directed to an aspect of the criminal proceeding arising out of Ms. Russo’s shooting. In his comments, Mr. Runciman made it clear that he was opposed to the restitution order component of the then ongoing discussions between Crown and defense counsel.

Analysis

[20] Compensation (by restitution order or otherwise) of victims of criminal acts is an issue which may be considered by the Legislature as worthy of debate in the context of possible amendments to provincial legislation providing compensation to victims of crime. However, the restitution order for Ms. Russo was made under federal legislation, the Criminal Code of Canada further to Parliament's exclusive jurisdiction in the field of criminal law. Thus, a province's capacity to address the compensation of victims of crime, however it may be exercised, cannot eliminate a court's right to make a restitution order as part of the criminal sentencing process.

[21] Mr. Runciman's out of the legislature comments were, as I have said, case specific and were intended to influence the disposition of the criminal prosecution arising out of Ms. Russo's shooting. What was said, in my view, constitutes a clear violation of the *sub judice* rule, which is part of parliamentary convention as that term is referred to in the *Members' Integrity Act*. This is so however well intended Mr. Runciman's comments may have been. Parliamentary convention grants no licence to opposition critics to contravene the *sub judice* rule. Thus, I think that the contravention of the *Members' Integrity Act* set out in Mr. Sergio's complaint has been established.

[22] Section 34 (i) of the *Members' Integrity Act* sets a range of penalties consequent upon a finding that a member has "contravened parliamentary convention". Section 34 (i) provides:

- (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 Commissioner is fulfilled; or
- (d) that the member's seat be declared vacant.

[23] As far as I know this is the first time that a member has been accused of contravening the *sub judice* rule in a formal complaint made under the *Members' Integrity Act*. However, all members know, or should know, that they should not comment on a matter that is the subject matter, or part of the subject matter, of a proceeding pending before a court. Indeed, there is a standing order of the Legislature which addressed that very issue as related to comments in the Legislative Assembly.

[24] Fortunately, the criminal proceeding before Justice Watt was not affected in any way by Mr. Runciman's comments about the then contemplated restitution order. In addition, when Ms. Russo's concerns as reflected by her counsel were communicated, albeit indirectly to Mr. Runciman, comments about the matter of a restitution order for Ms. Russo's benefit stopped.

[25] Taking into account all of the circumstances, it seems to me that the finding that Mr. Runciman contravened the *Members' Integrity Act* is sufficient. Thus, I recommend in accordance with s.34(i)(a) that no penalty be imposed. I caution all members to be vigilant about raising issues concerning matters that are before a court, however well

intended a member's comments may be. Once the court process (including any right of appeal) is complete, there is no bar to reasonable discussion about issues that were before a court. Before the process is complete, public discussion of matters then before a court is off-limits from the standpoint of Members of the Legislative Assembly.

DATED at Toronto, this 25th day of October, 2006.

A handwritten signature in black ink, appearing to read "Coulter A. Osborne". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

The Honourable Coulter A. Osborne