



OFFICE OF THE INTEGRITY COMMISSIONER

REPORT

of

**THE HONOURABLE GREGORY T. EVANS
COMMISSIONER**

**RE: THE HONOURABLE JOHN SNOBELEN, MINISTER OF
EDUCATION,
THE HONOURABLE MICHAEL HARRIS, PREMIER,
AND
THE HONOURABLE BRENDA ELLIOTT, MINISTER OF THE
ENVIRONMENT AND ENERGY**

**TORONTO, ONTARIO
JANUARY 9, 1996**

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

**RE: THE HONOURABLE JOHN SNOBELEN, MINISTER OF EDUCATION,
THE HONOURABLE MICHAEL HARRIS, PREMIER, AND
THE HONOURABLE BRENDA ELLIOTT, MINISTER OF THE ENVIRONMENT
AND ENERGY**

INTRODUCTION

In a fax dated December 14, 1995, Mr. Dave Cooke, the Member for Windsor Riverdale, requested an opinion whether The Honourable John Snobelen, the Member for Mississauga North and Minister of Education, had contravened the Members' Conflict of Interest Act (sic) or Ontario Parliamentary convention. A copy of the letter is attached as Appendix "A".

On the following day, December 15th, I replied by a faxed letter stating that the request was vague and the allegation unsupported. A copy of the letter is attached as Appendix "B".

On December 18th, by letter with attachments, the Member from Windsor Riverside requested an opinion whether the Premier, the Minister of Environment and Energy, or a staffperson acting on behalf of the Premier or the Minister, violated the Members' Integrity Act, 1994 and specifically sections 2, 3(1) and 4 of the Act. A copy is attached as Appendix "C".

On December 20th, I acknowledge the Member's letter of December 18th with enclosures, and requested clarification, a copy of which is attached as Appendix "D".

On December 21st, the Member replied, a copy of which is attached as Appendix "E". In this letter, the Member withdrew his request of December 14, 1995 and reiterated his allegations against the Premier and the Minister of Environment and Energy.

ISSUES

Section 2 of the Members' Integrity Act, 1994 states:

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.

Section 3(1) states:

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.

Section 4 states:

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.

In his letter of December 18th (Appendix "C"), the Member for Windsor Riverside stated that:

"For the purposes of the Act, and for the purposes of this request for an opinion, the identity of those private interests is irrelevant."

In the letter of December 21st (Appendix "E"), he states that he is withdrawing his request of December 14th in which it was stated that the Minister of Education may have contravened the Act. However, he alleges that the Premier and the Minister of Environment and Energy may have contravened s. 2, 3(1) and 4, but does not allege that either of these individuals

"personally profited or sought to personally profit from a decision. In fact, I don't believe that to be the case."

Sections 2, 3(1) and 4 deal with a member benefiting either personally or improperly furthering another person's private interest.

I do not agree with the Member's interpretation of the various sections with which we are concerned. The gravamen or a material part of the alleged violation is the improper furtherance of another person's private interest by the actions of certain members.

FINDING

As the Member for Windsor Riverside has withdrawn his request for an inquiry into the alleged involvement of The Honourable John Snobelen, the Member for Mississauga North and Minister of Education, there is no need for me to deal

further with this inquiry.

With respect to the request for an inquiry regarding the Premier and the Minister of the Environment and Energy, a statute attracts strict rules of statutory interpretation and construction. Each section must be read as a whole. The words "... or improperly to further or (seek to) further another person's private interest" form an integral part of the section. Their severance from the complaint together with the withdrawal of any allegation that the Minister of Education and the Minister of Environment and Energy personally profited, leads me to the conclusion the complaint is not before me in the proper form.

For the reasons stated above, there is no evidence which would support a violation under sections 2, 3(1) or 4 of the Members' Integrity Act, 1994, and accordingly under the provisions of s.31(5), I do not propose to conduct an inquiry with respect to the complaints filed by the Member for Windsor-Riverside.

DATED at the City of Toronto in the Province of Ontario, this 9th day of January, 1996.

A handwritten signature in cursive script, reading "Gregory T. Evans", written in dark ink.

The Honourable Gregory T. Evans

APPENDIX "A"

Queen's Park
Room 375 East Wing
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M7A 1A5
Tel: (416) 325-8116
Fax: (416) 325-3261



Dave Cooke
MPP Windsor Riverside
New Democratic Party House Leader

Constituency
4848 Tecumseh Road East
Windsor, Ontario
N8T 1B8
Tel: (519) 944-4343
Fax: (519) 944-4456

Hon. G.T. Evans, QC
Office of the Integrity Commissioner
4th Floor, 101 Bloor St. W.
Toronto, Ontario
M5S 2Z7

December 14, 1995

I hereby request that the Integrity Commissioner give an opinion as to whether John Snobelen, the member for Mississauga North and Minister of Education, has contravened the Members' Conflict of Interest Act or Ontario parliamentary convention.

News reports have indicated that the Premier's office was involved in the process leading to a reversal of a decision by the Ministry of the Environment and Energy relating to permission to build a garbage transfer station in the City of Toronto.

This decision has the potential to benefit a company formerly owned by Mr. Snobelen and now headed by his wife, Valerie Snobelen, which has a contract to haul waste from the transfer station, according to the news reports.

I believe the Integrity Commissioner should conduct an inquiry and give an opinion, in light of sections 2 and 3 of the Members' Conflict of Interest Act, relating to conflict of interest and insider information, and in light of the preamble, which states 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
Integrity Commissioner



Bureau du
commissaire à l'intégrité

The Honourable Gregory T. Evans
Q.C., LL.D., K.C.S.G.
Commissioner

L'honorable Gregory T. Evans
C.R., LL.D., Ch.O.S.G.
Commissaire

COPY

CONFIDENTIAL

December 20, 1995.

Mr. Dave Cooke, M.P.P.,
Room 375, East Wing,
Main Legislative Building,
Queen's Park,
Toronto, Ontario,
M7A 1A5

Dear Mr. Cooke:

I acknowledge your letter of December 18, 1995 together with enclosures, in which you request an opinion whether the Premier, the Minister of Environment and Energy or a staff person acting on behalf of the Premier or the Minister has violated Sections 2, 3(1) and 4 of the *Members' Integrity Act, 1994*.

I assume that this request replaces the request involving the same issue, set out in your fax dated December 14, 1995. In that letter you requested an opinion as to whether John Snobelen, the Minister of Education, has contravened the *Act*. You are now requesting an opinion with respect to the Premier and the Minister of the Environment and Energy. If my assumption is correct, it will be necessary that you so advise me and notify the Speaker that you are withdrawing the December 14th request.

Section 2 deals with a decision by a member knowing 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"

Section 3(1) deals with a member using insider information

"to further or seek to further the member's private interest or improperly to further or seek to further another person's private interest."

Section 4 deals with a member using influence with respect to 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."

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Mr. Dave Cooke, M.P.P.
Page 2.

December 15, 1995

One problem with the request submitted by you states that it is based on news reports. A news report by itself is not a solid foundation upon which to base a belief that a contravention has occurred. Without some form of documentation, it is simply a journalist's opinion derived from sources which may or may not be accurate. The credibility of the individuals providing the information to journalists are unknown to you and accordingly you have no opportunity to assess their credibility. When a request for an opinion is filed, proper supporting documentation should be attached.

Secondly, the request is not clear whether a contravention is being alleged not only against John Snobelen but also against the Premier because of some involvement by his office which lead to a reversal by the Ministry of the Environment and Energy of a decision previously made by it.

Thirdly, your fax does not indicate whether the request has been provided to the Speaker as required by s.30(3).

If you see fit to refile your request in compliance with the Act, I shall consider it promptly.

Yours very truly,

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December 18, 1995

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

Dear Mr. Evans:

Thank you for your letter of December 15, 1995, regarding my letter of December 14, 1995.

Let me assure you that, in compliance with section 30 (3) of the *Members' Integrity Act, 1994*, I have provided the Speaker with a copy of my letter to you dated December 14, 1995, and I will also provide the Speaker with a copy of this letter.

Attached to this letter are three documents:

- a) a copy of a letter dated October 25, 1995, from A. M. Pennanen of the Approvals Branch of the Ministry of Environment of Energy, to Mr. Ben Shepherd of the Metro Toronto Department of Works, informing Mr. Shephard that Metro's application for a Certificate for Approval # 8-3262-95 cannot be approved.
- b) a copy of a letter dated December 1, 1995, from W. Ng of the Approvals Branch of the Ministry of Environment and Energy to Joan King, Metro Councillor, informing Ms King that Metro's application for Certificate of Approval # 8-3262-95 will be granted.
- c) an internal memo from the Ministry of Environment and Energy, dated November 7, 1995, which describes a request from the Office of the Premier to the Ministry to explain the reason for the denial and provide further information on the issue.

It is my submission that there exists reasonable and probable grounds that the *Members Integrity Act, 1995*, has been violated. As outlined in Section 30(1) of the Act, I request that you give an opinion on whether the Premier, the Minister of Environment and Energy, or a staffperson acting on behalf of the Premier or the Minister, have violated the Act. Specifically, it is my submission that there has been a violation of sections 2, 3(1), and 4 of the Act.

All three sections of the Act prohibit members of the Assembly from participating in a decision, using privileged information, or using the influence of office improperly in order to "further another person's private interest". For the purposes of the Act, and for the purposes of this request for an opinion, the identity of those private interests is irrelevant. The matter has been brought to the attention of the public, however, because the President of the company involved in Metro's application is the wife of the Minister of Education and Training and Member for Mississauga North.

If I become aware of any further information which might assist you in your deliberations, I will promptly contact your office.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dave Cooke", with a stylized flourish at the end.

Dave Cooke, MPP
Windsor-Riverside

c.c. Honourable Al McLean

SENT BY: G H & H TORONTO (D) :12- 1-95 ; 3:18PM ; GS&H COW 49th Fl. -D-

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Ministry of
Environment
and Energy

Ministère de
l'Environnement
et de l'Énergie

220 The Toronto Avenue
Toronto ON M4S 1A2

220, Avenue d'Ontario
Toronto ON M4S 1A2

APPROVALS BRANCH
Tel. (416) 440-3546

December 1, 1995

Joan King, Metro Councillor
Seneca Heights
The Municipality of Metropolitan Toronto
55 John Street, Suite 217
Toronto, Ontario
M5V 3C6

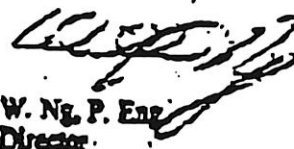
Dear Ms. King:

RE: APPLICATION FOR A CERTIFICATE OF APPROVAL (AID) NUMBER 2-3262-
95 FOR COMMISSIONERS STREET TRANSFER STATION

Further to your letter dated November 29, 1995, I am confirming that we would be in a position to issue a Certificate of Approval for the above transfer station based on all of the information available to us, including our technical assessment of the application. We will be preparing the Certificate as soon as possible in consultation with Metro staff.

I trust this letter will be of assistance to you at your meeting on December 4, 1995 but should you wish any clarification, please feel free to call me.

Yours truly,


W. Ng, P. Eng.
Director

cc. D. Eavin, Gowlings, Strathy & Henderson



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Ministry of
Environment
and Energy

Ministère de
l'Environnement
et de l'Énergie

250 Dundas Street West
Toronto ON M4S 1H2

250, avenue Dundas
Toronto ON M4S 1H2

APPROVALS BRANCH

Tel. (416) 440-3573
Fax. (416) 440-6973

October 25, 1995

Mr. Ben Shepherd
Metro Works
Solid Waste Management Division
55 John Street
Stn. 1180, 19th Floor, Metro Hall
Toronto, Ontario
M5V 3C6

Ha.

Dear Mr. Shepherd:

RE: APPLICATION FOR A CERTIFICATE OF APPROVAL (AIR) NO. 8-3262-95
FOR EXHAUST FANS FOR A WASTE TRANSFER STATION

We have reviewed a supporting document for the above noted application, entitled "Feasibility Study for Metro Toronto Department of Works on Odour Control at Commissioners Street Transfer Station" prepared by Aldworth Engineering Inc. dated July 1995.

As you are aware, this Ministry does not have a regulatory limit for odour. It is generally considered, however, that if the odour concentration exceeds 1 odour unit per cubic metre, it is very likely that odour complaints will be received because one odour unit per cubic metre is the concentration of odour at which 50 percent of the population detects an odour. Therefore, the majority of the residential and industrial neighbours of the waste transfer station will likely detect an odour if the odour concentrations are between 21 and 98 odour units per cubic metre at the surrounding areas as stated in the above feasibility study.

Please also note that odour is emitted in puffs, with peak concentrations lasting 2 to 5 seconds. The regulatory dispersion models assume that the emissions are continuous and the concentrations so computed are averaged over a period of 30 minutes. Therefore, if the regulatory dispersion models are used for odorous emissions, a conversion factor of 15 should be used. That means, the concentration of 1 odour unit per cubic metre at an averaging time of 30 minutes is equivalent to a peak concentration of 15 odour units per cubic metre at an averaging time of 2 to 5 seconds.

URGENT

DEC 1 2 1995

ANA
JAVOR

From: Barry Duffey (DUFFEYBA)
To: ENV3N03:JAVORAN,
Date: Tuesday, November 7, 1995 12:47 pm
Subject: Metro Transfer Station - 400 Commissioner's St.

URGENT

Mike Harris' office has requested a Briefing Note on the issue of our recent denial of a CofA to Metro for a transfer station @ 400 Commissioner's Street - and an article on the subject which appeared in today's Toronto Star (Province Smells a Problem with Garbage Transfer Station).

The Premier's office wants to know:

- what did Metro need to submit that they did not submit?
- had we given them any prior indications that their application might be turned down and why it might be turned down?
- what requirements would Metro now have to fulfill in order to get a CofA for the site?
- what is the background which led up to our recent denial?

George Rocoski suggested that whoever writes this speak with Cathy Grant and Ken Waldie @ Central Region

*** The Minister's office has asked to have this Briefing Note by 4:00 PM today. Given the tight turnaround, we did not commit to that schedule, however we are clearly under pressure to do so. If you cannot meet this timeline, could you please advise me immediately when you will be submitting the Note (otherwise we'll assume 4:00 today is achievable).

Questions? 323-4514

CC: ENV3N03:FRASERJE, ENV3N03:NGWI, ROCOSKGE, ENVCRN1:WA

Office of the
Integrity Commissioner



Bureau du
commissaire à l'intégrité

The Honourable Gregory T. Evans
Q.C., LL.D., K.C.S.G.
Commissioner

L'honorable Gregory T. Evans
C.R., LL.D., Ch.O.S.G.
Commissaire

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CONFIDENTIAL

December 15, 1995.

Mr. Dave Cooke, M.P.P.,
Room 375, East Wing,
Main Legislative Building,
Queen's Park,
Toronto, Ontario,
M7A 1A5

Dear Mr. Cooke:

I acknowledge your fax dated December 14, 1995 in which you requested my opinion on a matter involving the office of the Premier and the Minister of Education with respect to the reversal of a decision by the Ministry of the Environment and Energy. The decision relates to the building of a garbage transfer station in Toronto by a company formerly owned by John Snobelen, the member for Mississauga North and Minister of Education, of which wife, Valerie, is the President.

The request refers to a contravention of the *Members' Conflict of Interest Act* or parliamentary convention. This Act was repealed and replaced by the *Members' Integrity Act*, 1994 on October 4, 1995. I have assumed that your reference to sections 2 and 3 of the *Members' Conflict of Interest Act* were intended to be the same sections of the *Members' Integrity Act*.

I am endeavouring to establish a formal procedure by which complaints are received and processed in accordance with the enforcement provisions of sections 30 to 34 inclusive. In view of the serious consequences which may follow from a finding that there has been a violation by a member of the Act, it is essential that the provisions of the Act be strictly followed.

There is a responsibility upon the member making the request for an opinion as to whether another member has violated the Act to satisfy himself or herself that the grounds upon which the request is based are reasonable and probable. The written request should set out the specific sections or parliamentary convention alleged to have been contravened.

The preamble to the Act sets out the underlying principles of the Act but is not an essential part of the Act and neither enlarges or confers powers. It is a declaration by the Legislature of the reasons for passage of the statute and is helpful in the interpretation of any ambiguities within the statute to which it is prefixed. It is explanatory of the reasons for the enactment of the legislation and the objects sought to be accomplished.

.../2

Mr. Dave Cooke,
Page 2.

December 20, 1995.

In order for me to conduct an inquiry under any of these sections, it is necessary to apply the entire section and not just a part thereof. There is no suggestion in your request that the private interest of the Premier or of the Minister of Environment and Energy was furthered by the conduct alleged. I, therefore, do not agree with your statement on page 2 of your letter dated December 18th that "For the purposes of the Act, and for the purposes of this request for an opinion, the identity of those private interests is irrelevant."

If you wish to amend your request, I would be pleased to receive same.

Yours very truly,

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December 21, 1995

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

Dear Mr. Evans:

Thank you for your letter of December 20, 1995.

My letter to you dated December 18, 1995, was intended to replace the request I submitted on December 14. My allegations of a contravention of Sections 2,3(1), and 4 of the *Members' Integrity Act, 1994* apply to the Premier and the Minister of Environment and Energy, and not the Minister of Education and Training. I will notify the Speaker of my withdrawal of the December 14 request.

The connection to the Minister of Education and Training was made because the Minister formerly operated the waste management company involved in Metro's application for a certificate of approval. The President of the company is Mr. Snobelen's wife.

Sections 2, 3(1), and 4 of the Act refer to actions by Members of the Assembly which either "further or seek to further the member's private interest" or "further another person's private interest". A Member of the Assembly does not need to have sought personal advantage in order to have contravened those portions of the *Members Integrity Act, 1994*. In making my request to you for an opinion on the appropriateness of conduct, I do not believe it necessary to allege that the either the Premier or the Minister personally profited or sought to personally profit from a decision. In fact, I don't believe that to be the case.

If I can provide you with any further information which will assist you in your deliberations, I will contact your office.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dave Cooke', with a stylized flourish at the end.

Dave Cooke
MPP, Windsor Riverside

c.c. The Honourable Allan McLean
Speaker of the Assembly

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In view of the above, we cannot approve your proposal, since it is likely that the operation of the waste transfer station would result in an adverse effect, which is a violation of Section 14 of the Environmental Protection Act, R.S.O. 1990 (Act).

Therefore, we request that you revise your proposal to ensure compliance with Section 14 of the Act.

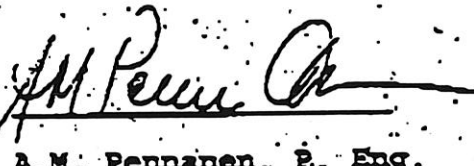
In accordance with subsection 9(2) of the Act, please provide us with all of the required information by November 10, 1995, otherwise we will close your file. Should you wish a formal decision of refusal in accordance with subsection 9(4) of the Act, please advise us in writing by the above date.

We note that if you later decide to pursue your original proposal, you will be required to resubmit the application complete with all supporting information.

We also emphasize that you are required to obtain a certificate of approval under subsection 9(1) of the Act before construction, alteration, extension or replacement of any equipment or structure that may emit or from which may be emitted a contaminant into the natural environment.

If you have any enquiries regarding the above, please do not hesitate to contact K. Wong at (416) 440-3746.

Yours truly,



A.M. Pennanen, P. Eng.
Director, Section 9
Environmental Protection Act

Encl.

c.c: Tracy Goodwin, MOEE C.R.

George Aldworth, Aldworth Engineering Inc.

Elizabeth Borek, Community Coalition to Save McCleary Park.

Marilyn Churley, MPP

Jack Layton, Metro Councillor

Peter Tabuns, City Councillor

Peter Lukas, Showline Limited

James Rank, Design Sets Assembly Ltd.

Arthur Potts

Paul Frost, Mayfair Racquet & Fitness Clubs

Donato Baldassarra, Association of Canadian Film Craftspeople

Bruce Brackett, etc...news