

**OFFICE OF THE INTEGRITY
COMMISSIONER**

REPORT

of

**THE HONOURABLE GREGORY T. EVANS
COMMISSIONER**

**RE: THE HONOURABLE ALLAN LEACH
MINISTER OF MUNICIPAL AFFAIRS AND HOUSING**

**TORONTO, ONTARIO
FEBRUARY 3, 1997**

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

**RE: THE HONOURABLE ALLAN LEACH, MINISTER OF MUNICIPAL AFFAIRS
AND HOUSING**

INTRODUCTION

On November 25, 1996, Marilyn Churley, M.P.P., for Riverdale, requested an opinion whether The Honourable Allan Leach, Minister of Municipal Affairs and Housing ("Leach"), violated the Members' Integrity Act, 1994, ("Act"), as the result of certain actions taken by his Executive Assistant, John Matheson ("Matheson"). The letter is attached hereto as Exhibit "1", and the affidavit in support of the request, by J. Brian Donovan ("Donovan"), dated December 9th, 1996 is attached as Exhibit "2".

The procedure in dealing with complaints under s.30 of the Act, as set out in my memorandum to all members of the Legislative Assembly dated December 2, 1996, is as follows:

Upon receipt of the complaint and the supporting evidence, verified by affidavit, with evidence of service upon the Speaker, the Commissioner will proceed as follows:

- (1) Serve the complaint and supporting material upon the member whose conduct is in question with a request that a written reply to the allegation be filed within ten days.
- (2) Serve a copy of the reply provided upon the complainant with a request for a written response within ten days.
- (3) Upon receipt of the response, based on the material provided, the Commissioner determines either,
 - (a) that the complaint can be resolved without oral evidence and makes a report;
or
 - (b) that a hearing is required and notifies the parties of the hearing date with a request that any additional material be filed five (5) days prior to the hearing.

- (4) At the hearing, all witnesses shall give evidence on oath or affirmation.
- (5) The parties are entitled to examine and cross-examine any witness, either personally, or by an agent or counsel.
- (6) If the circumstances warrant, the Commissioner may direct that the evidence be recorded.
- (7) The Commissioner may retain counsel to assist in the presentation of evidence and argument.

Section 31(2)(a) of the Act provides that:

"the Commissioner may elect to exercise the powers of a commission under Parts I and II of the *Public Inquiries Act*, in which case those Parts apply to the inquiry as if it were an inquiry under that Act;"

Section 31(5) of the Act 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." (*emphasis added*)

On the basis of the material filed, attached to my Report and marked as exhibits herein, I have concluded that the information contained in the several affidavits is sufficient to provide the opinion requested and that a more formal inquiry is not required.

BACKGROUND

On September 26, 1996, Donovan, a lawyer associated with the law firm of Cassels Brock & Blackwell, wrote Steve Lowden, Chair of the Sub-Panel on Education Finance, known as the "Who Does What Committee", on behalf of the Parent/Staff Association of Franklin Community School ("PSA"), requesting *inter alia* information "in respect of the appointment and activities of your sub-panel on education finance". The letter, delivered on September 27th, and attached hereto as Exhibit "3", further stated that previous requests of his client to obtain information having not been answered and in view of the fact that the Sub-Panel's findings and conclusions were to be reported on October 5, 1996, he would seek instructions from his client to immediately commence judicial proceedings by way of injunction, *certiorari* and *prohibition* if the information requested in the letter was not forthcoming immediately. He also requested that the sub-committee cease its

deliberations pending resolution of the problem.

The affidavit of David Spring ("Spring"), attached hereto as Exhibit "4", deposes that he is the Senior Counsel in the Municipal and Planning Law section of the Legal Services Branch of the Ministry of Municipal Affairs and Housing and states that,

"2. The Province of Ontario, as represented by the Minister of Municipal Affairs and Housing, required assistance from advisors and consultants in reviewing the service delivery responsibilities of the municipal and provincial governments. This advisory group became known as the "Who Does What Panel". The participation of the advisors was confirmed by letter and the consultants were retained by the Minister of Municipal Affairs and Housing in his capacity as a Minister of the Crown."

He states that he received a copy of the Donovan letter (Exhibit "3") on September 27, 1996, which he circulated to his supervisor and senior officials within the Ministry. Matheson was also made aware of the letter. Spring's preliminary opinion was that the action proposed in the letter was without merit. He was instructed to prepare a reply. At the beginning of the following week, he prepared his reply and on October 1st or 2nd, telephoned Donovan to advise that he would be responding to his letter in writing. Donovan replied that he would await Spring's reply. On October 4th, prior to sending his reply, the Ministry officials provided him with a copy of Donovan's letter of withdrawal, attached hereto as Exhibit "5". Accordingly, Spring took no further action.

Matheson, in his affidavit attached hereto as Exhibit "6", deposed that he is the Executive Assistant to Leach and not a member of the legal staff of the Ministry and further,

"2. As executive assistant to the Minister, I am responsible for the planning and operations of his office. In particular, I manage his strategic communications and am responsible for the operation of his legislative agenda. Although I am a lawyer by profession, I do not act as legal counsel to the Ministry of Municipal Affairs and Housing.

3. On or about September 27th, 1996, I received a copy of a letter dated September 26th, 1996, and written by J. Brian Donovan. A copy of this letter is attached hereto as Exhibit "A". In that letter, Mr. Donovan threatened to bring an application for an injunction to "restrain further activity and deliberation" by the sub-panel on education finance of the Who Does What commission. Given the tight operational time frames under which the sub-panel was operating, I regarded the threatened injunction as a potential communications and operational challenge."

Matheson decided to confirm the identity of Donovan and information as to his experience in litigation in an attempt to evaluate the potential risk of a court action proceeding. He suspected that "Donovan" had been a classmate at law school and that he was "a highly ideological individual" who would proceed to litigation whether he received a fee or not. In fact, Donovan had been a classmate and had received a retainer of \$2,000 from the PSA.

In order to confirm the identity of Donovan, and ascertain whether the threat of litigation was serious, Matheson, on Friday, the 27th of September, phoned Hugh Donald Guthrie ("Guthrie"), a partner at Cassels Brock and Blackwell. Guthrie did not know Donovan personally, who in fact, was a fairly recent addition to the 130 member firm and so advised Matheson. Guthrie inquired as to the purpose of the inquiry and Matheson proceeded to read the Donovan letter to him. Guthrie stated that he was completely unaware of the situation. Guthrie was called to the Bar in 1954 and for some years has been the Chairman of the firm's Ethics and Professional Standards Committee.

On Monday, September 30th, Guthrie reported the situation to other senior members of the firm, none of whom were aware of the matter. The following morning, October 1st, Donovan was interviewed by two unidentified senior members of the firm who advised him he had failed to properly complete a "conflict search" which would have disclosed that the firm had a conflict. The result of the discussion was that Donovan wrote the following letter (Exhibit "5") on October 4, 1996 to Steve Lowden, Chair of the Sub-Panel, and attached to Donovan's Affidavit dated January 10, 1997, which is attached hereto as Exhibit "7":

"My letter to you and other members of the Subpanel on Education Finance of September 27, while sent on the firm letterhead of Cassels Brock & Blackwell, was unauthorized by the firm. Further, I have been advised that had the firm been aware of the letter, it would not have considered acting in this matter at all. Consequently, I am writing formally to withdraw my September 27, 1996 letter.

In any case, I can advise you that I do not verily believe that the PSA intends to proceed with an application for judicial review; however, if it does decide to proceed, Cassels Brock & Blackwell will not consider acting in the matter on their behalf."

The Sub-Panel reported on October 5th, thereby foreclosing the efforts of the PSA to make their

representation to it.

The Guthrie affidavit, attached hereto as Exhibit "8", sets out in some detail the procedure in place at Cassels Brock & Blackwell to protect against conflict of interest situations. In brief, it required, prior to the acceptance of a retainer from a new client, that an inquiry be circulated by written memorandum or electronic mail to all other lawyers in the firm and to the central records department to ascertain whether the proposed retainer might create a conflict. An adequate time for response should be allowed. A partner may accept the retainer if no adverse reply is received. An associate has a further restriction in that he should normally seek the approval or guidance of his supervising partner. The lawyer then opens a file which involves detailed instructions to the central records department, including name of client, and other relevant information.

Guthrie reviewed the records produced by the firm's Chief Administrative Officer and the only effort at compliance is the following transcript of an electronic message issued on September 27th at 9:56 a.m., and attached hereto as Exhibit "9":

"THIS MESSAGE IS BEING SENT TO SECRETARIES ONLY - PLEASE PASS
ON TO ALL LAWYERS

I have been asked to act for the Frankland Public School Parents/Staff Association to seek an immediate interim injunction and other ancillary prerogative relief against the Ontario Subpanel on Education Finance.

Please advise Brian Donovan if there is a conflict."

The priority to be given to the message was "normal". The only response recorded is that of John W. R. Day stating "Not to my knowledge".

Guthrie's affidavit further states:

"10. It is further to be noted that the conflict inquiry was issued on "27/9/96" at "9:56" a.m." (i.e. on the day following the date of the Letter). Neither I nor the "Senior Partners" of the firm referred to in paragraph 7 of Mr. Donovan's affidavit, (*Exhibit "2"*) nor many of the lawyers in the firm of whom I have made inquiries ever saw the conflict message. There is no record of the inquiry having been sent to the central records department of the firm. The firm was acting at the time and has for many years acted for several Ministries of the Government of Ontario, including the Ministry of Education & Training, and had the conflict inquiry been in proper form and issued in time for appropriate response in advance of the issuance of the

Letter, I have no doubt that I and several partners in the firm would have responded adversely to the acceptance of the proposed retainer, or would at least have initiated inquiries, because the firm had clearly, at the time, a true ethical conflict as well as a business conflict in acting contrary to the interests of the Ministry of Education & Training or any panel or sub-panel associated with that Ministry."

Both Matheson and Guthrie have denied in their respective affidavits that Matheson in any manner suggested to Cassels Brock & Blackwell that Donovan should discontinue his representation of the PSA. Mr. Leach deposed that he had no contact with anyone at Cassels Brock & Blackwell, nor did he authorize Matheson or any member of his staff to contact the law firm.

Donovan has an exceptional educational background, an outstanding scholastic record, and a relatively brief legal career since his Call to the Bar in 1993. Prior to joining Cassel Brock & Blackwell, he was associated with another large Toronto firm which no doubt had a detailed procedure to guard against conflict of interest. At Cassels, Brock & Blackwell, he was aware that a system was in place, yet his compliance efforts were minimal and ineffectual. As a parent member of the PSA and solicitor for the PSA, should have been aware that the Sub-Panel was not responding to the request from the Chair of the PSA. He knew that court proceedings most probably would be necessary to prevent the Sub-Panel from reporting on October 5, 1996, and did not take any adequate steps to comply with his firm's conflict of interest procedures until Friday, September 27th at 9:56 a.m.

When Matheson phoned Guthrie on the same date, he set in motion a chain of events that led to Donovan sending the letter dated October 4th to the Chair of the Sub-Panel subsequent to his meeting on October 1st, at which two senior partners advised him that the firm could not accept the retainer from the PSA and would not proceed with the proposed Application for Prohibition.

The Guthrie affidavit (Exhibit "8") and the Donovan affidavit (Exhibit "7"), purport to reflect what transpired when Donovan met with the two unidentified senior partners. Guthrie was not at the meeting and a considerable portion of the proposed evidence as to what transpired offends the "hearsay rule" and is not admissible. The Donovan affidavit suffers, in part, from the same prohibition and in addition, many of the statements are not relevant to the issue with which I am

concerned.

It is a reasonable presumption that the meeting was not a cordial one. There was a difference of opinion on a serious matter which affected the law firm and Donovan.

In view of the conclusion at which I have arrived, it is neither necessary nor proper that I comment further on a matter which has been referred to the Law Society of Upper Canada for investigation, at which time all material witnesses may be called to testify. Suffice it to say that whether the letter of withdrawal was voluntary or written under pressure, the members of the PSA were deprived of their right to proceed with injunctive proceedings, whether meritorious or not, without their consent.

The Preamble to the Act sets out certain principles defining in a general way the purposes and objectives of the legislation. It is the background or the context in which the public will judge the manner in which members discharge their official duties.

The 4th principle in the Preamble to the Act states,

“Members are expected to act with integrity and impartiality that will bear the closest public scrutiny.”

In reviewing the evidence, I considered the 4th principle to determine whether the comments of Leach recorded in the transcript of Hansard of November 7th, 1996, attached hereto as Exhibit “10”, in response to a question by Mrs. Lyn McLeod, Leader of the Official Opposition, with respect to the matter in issue, reflected a proper appreciation of the principle. Leach replied, in part,

“The application seemed so frivolous that my executive assistant called Cassels Brock and said, “Are you serious?” They said: “We’re not aware of this at all. We’ll get back to you.” We never heard any more about it until such time as we got a letter from the lawyer in question withdrawing the application. That’s all we know.

...

By the way, so everybody’s aware, this is the law firm of the former leader of the Liberal Party, David Peterson. If anybody thinks we’re going to call and try to intimidate a law firm like that, it is rather silly. There was absolutely no attempt to intimidate anybody. We made an inquiry whether this was serious. We didn’t hear any more after that. What the law firm does is their business. If they’re that easily intimidated, they’re not very good lawyers.”

Later on November 25th, in response to a question by Ms. Marilyn Churley, M.P.P. for Riverdale, on the same matter, and attached hereto as Exhibit "11", he replied,

"... I also think it's very appropriate that when you get a letter from a law firm that's threatening to take legal action on a process that's under way, it's an appropriate thing to do to call that law firm and inquire what this is all about. And that's what I said before. We called the law firm and said, "Are you serious?" The law firm -- The principals of the law firm said they didn't know anything about the matter and that's the last we heard of it."

The reasonable inference to be drawn from the above comments is that is not inappropriate for a Minister of the Crown, or his political staff, to communicate with the law firm which is in the process of litigating with his Ministry, to ascertain whether that law firm is "serious" about proceeding with the litigation. Any such communication, while it may seem innocuous to the Minister, may be viewed otherwise by the recipient of the inquiry.

In my opinion, such comments were inappropriate, and do not reflect a proper appreciation of the Preamble.

ISSUE

Did Leach use his office to influence a decision made or to be made by Donovan on behalf of his client, the PSA, as the result of certain actions taken by Matheson for which Leach has acknowledged responsibility, to further the Minister's private interest, i.e. the prompt report of the Sub-Panel chaired by Steve Lowden to the "Who Does What Panel" retained by Leach in his capacity as a Minister of the Crown, contrary to s. 4 of the *Members' Integrity Act, 1994*? 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."

The determination of that issue requires a consideration of the facts giving rise to the reason for the change of decision by Donovan not to proceed with court action. It is a reasonable inference that Matheson's inquiry created a situation without which the result in issue would probably not have occurred. It was a *causa sine qua non*. The immediate and direct cause (the *causa causans*) for the change of decision resulted from the meeting between Donovan and the two anonymous senior

partners at which the issue of non-compliance with the firm's conflict procedure was discussed. That confrontation resulted in the letter of withdrawal which Donovan sent to his client. Whether the decision to withdraw was consensual or otherwise, it cannot be attributed to Matheson nor *a fortiori* to Leach.

FINDING

On the evidence before me, I am satisfied that The Honourable Allan Leach, Minister of Municipal Affairs and Housing did not violate s.4 of the *Members' Integrity Act, 1994*, either personally or as a result of the activities of his Executive Assistant, John Matheson, for which he accepted responsibility.

DATED at the City of Toronto in the Province of Ontario, this 3rd day of February, 1997.

A handwritten signature in cursive script, reading "Gregory T. Evans". The signature is written in dark ink and is positioned above a horizontal line.

The Honourable Gregory T. Evans



LEGISLATIVE ASSEMBLY

MARILYN CHURLEY
MPP/DÉPUTÉE PROVINCIALE
Riverdale

November 25, 1996

Hon. G.T. Evans, Q.C.
Office of the Integrity Commissioner
4th Floor, 101 Bloor St. W.
Toronto, Ontario

OPEN LETTER

Dear Mr. Evans:

I write to ask you to investigate whether the Minister of Municipal Affairs and Housing, the Hon. Al Leach, has breached the Members' Integrity Act. While the Act speaks to the conduct of Members, we must also be aware of the public's perception of senior political staff. A Minister's executive assistant is regularly assumed to be speaking with the voice of his or her Minister. Indeed, staff are normally instructed to comport themselves as if this were the case.

In the case in question, the Minister has clearly stated that his executive assistant — the senior member of the Minister's political staff — telephoned a law firm that represented a group of parents who wished to protest the work of a subpanel operating under the Minister's mandate. The parents had written a letter stating they were considering launching legal proceedings against the government.

The Minister is on the record as saying: "The application seemed so frivolous that my executive assistant called Cassels Brock and said, 'Are you serious?'" The Minister went further, implicating himself in this intimidating action, when he said: "We made an inquiry as to whether this was a serious allegation." [Hansard, November 7, 1996]

Today in the Legislature I raised the matter again during Question Period and the Minister responded in a similar vein, deeming it appropriate for his staff to have telephoned and questioned the intent of the lawyer's clients.

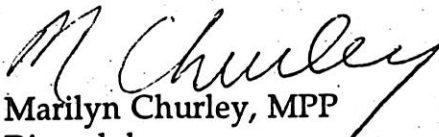
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While the Minister seems to wholeheartedly approve of his executive assistant's action, it is still unclear whether or not he directed that this action be taken, if others gave that direction or if the staff member acted on his own. Either way, as I indicated previously, senior staff are perceived to be acting on behalf of the Minister.

The result for the parents at Frankland Community School, located in my riding of Riverdale, was devastating. Their lawyer has indicated he was instructed by his superiors to drop their case, and he subsequently resigned from the firm. The parents' questions remain unanswered. The subpanel which they questioned has made its report to the Minister so that the opportunity to have questions answered or to apply for an injunction has passed.

This appears to be an abrogation of the rights of citizens, who should expect to be able to ask questions of their government and consider legal recourse without intimidation by political staff. I ask you to undertake an investigation of this event and determine whether the spirit or intent of the Members' Integrity act has been broken.

Yours sincerely,


Marilyn Churley, MPP
Riverdale

c.c. The Honourable Chris Stockwell, Speaker

**IN THE MATTER OF a Request for an
Investigation made to the Office of the Integrity
Commissioner in respect of certain conduct of the
Minister of Municipal Affairs and Housing and a
Member of his Political Staff**

AFFIDAVIT OF BRIAN DONOVAN

**I, BRIAN DONOVAN, of the City of Toronto, in the Municipality of Metropolitan
Toronto, MAKE OATH AND SAY AS FOLLOWS:**

1. I am a Barrister and Solicitor of the Bar of Ontario, called to the Bar in February of 1993. I tendered my resignation from the law firm of Cassels, Brock & Blackwell on October 28, 1996, and with effect from November 20, 1996, I ceased to be employed as an associate lawyer with that firm.
2. I have received from the Honourable Marilyn Churley, M.P.P. for Riverdale, a copy of her letter of November 25, 1996 addressed to the Honourable G.T. Evans, Q.C., Integrity Commissioner for the Ontario Provincial Parliament. A copy of Ms. Churley's letter is annexed to this my Affidavit as Exhibit "A". Ms. Churley has asked me to swear this Affidavit in order to record my knowledge of the subject matter in respect of which she has requested an investigation, for the assistance of the Integrity Commissioner in his inquiries.
3. In September, 1996, I was retained by the Parent Staff Association of Frankland Community School (the "PSA") to make formal inquiries of the Subpanel on Education Finance of the Ontario Who Does What Panel, a body chaired by Mr. David Crombie. The PSA was,

at that time, seriously concerned that a letter by Ms. Colleen D. Morris, one of its members, addressed to Mr. Steve Lowden, Chair of the Subpanel on Education Finance, had gone unanswered. A copy of Ms. Morris' letter, dated September 20, 1996, is attached to this my Affidavit as Exhibit "B".

4. Acting on my clients' instructions, I wrote a letter to Mr. Lowden, dated September 26, 1996, but delivered on September 27, 1996. The purpose of this letter was two-fold. First, I made certain specific requests for certain specific information about the Subpanel and its activities, including, but not limited to the following:

- (a) Whether the Subpanel had any formal terms of reference, and, if so, if it proposed to produce these to the public;
- (b) Whether the Subpanel proposed to receive oral depositions from any of the interests which would potentially be affected by its recommendations; and
- (c) How members of the Subpanel were chosen, whether they were paid, and what selection process was used to ensure a fair representation of interested parties in the course of the Subpanel's selection.

5. Secondly, I inquired by what legal instrument, if any, the Subpanel had been constituted, and suggested that my clients were considering an Application for Judicial Review of the Subpanel's activities, seeking orders in the nature of *certiorari* and *prohibition*, to quash the Subpanel's constitution and restrain it from reporting if it was improperly legally constituted, or if it was found to have failed to comply with any standards of procedural fairness which it

was legally bound to observe. A copy of my letter dated September 26, 1996, addressed to Mr. Lowden, is annexed to this my Affidavit as Exhibit "C".

6. By September 30, 1996, I had received no response to my letter to Mr. Lowden dated September 26, 1996. At that time, the PSA had been given to understand that the Subpanel would report its recommendations by October 5, 1996. Given the very tight time frame apparently involved, I wrote again to Mr. Lowden on September 30, 1996 again requesting a response. A copy of my second letter to Mr. Lowden is attached to this my Affidavit as Exhibit "D".

7. On October 1, 1996, I was summoned to a meeting with two Senior Partners of Cassels, Brock & Blackwell. In the course of this meeting, I was told that the firm had "received a call from the Province" in respect of my letter to Mr. Lowden dated September 26, 1996. I was also told that my letter had been very widely circulated, and that many people were very upset about it. I was told, further, that the Cassels, Brock & Blackwell law firm had been retained on various occasions by the Ontario Ministry of Education and Training. I was then instructed to write a further letter to Mr. Lowden, without the consent of my clients, withdrawing my letter to Mr. Lowden of September 26, 1996 and stating that Cassels, Brock & Blackwell would not consider representing the PSA in the matter.

8. In response, I pointed out that I had performed a conflict search within the firm, and that, in any case, my clients did not intend to seek any legal remedy against the Ministry of Education

and Training. In contrast, any Application for Judicial Review would have named as Respondent the Subpanel on Education Finance, which is not an emanation of the Ontario Ministry of Education and Training, nor, indeed, of any other Ministry of the Ontario Government. I also pointed out that I had been given a retainer in excess of \$2,000.00 in respect of the matter.

9. The Senior Partners of Cassels Brock & Blackwell with whom I was summoned to meet did, nevertheless, insist that I cease my representation of the PSA, and instructed me to write a further letter to Mr. Lowden formally withdrawing my letter of September 26, 1996, and stating that Cassels Brock & Blackwell would not consider acting for the PSA in the matter. On the instructions of these Senior Partners of Cassels Brock & Blackwell, I sent this final letter to Mr. Lowden, a copy of which is attached to this my Affidavit as Exhibit "E". On October 28, 1996, I tendered my resignation from Cassels Brock & Blackwell, in consequence of the action which I had been instructed to take.

10. While I did not know this at the relevant time, I now believe that the "call from the Province" referred to by the Senior Partners of Cassels Brock & Blackwell with whom I met on October 1, 1996 was made by John Matheson, Executive Assistant to Al Leach, Ontario's current Minister of Municipal Affairs and Housing. Attached to this my Affidavit as Exhibit "F" is a copy of an excerpt from Ontario Hansard of November 7, 1996, wherein Mr. Leach admitted in the House that his Executive Assistant had called Cassels Brock & Blackwell in respect of my letter dated September 26, 1996 to Mr. Lowden. Mr. Leach characterized the

matter as "frivolous" and stated that his Executive Assistant had asked Cassels, Brock & Blackwell "Are You Serious?"

11. Attached to this my Affidavit and marked collectively as Exhibit "G" are copies of articles in respect of this matter printed in the Globe & Mail (John Barber - November 8, 1996), and in the Toronto Star (Peter Small - November 12, 1996), which identify John Matheson as the Executive Assistant who made the telephone call to Cassels Brock & Blackwell. I have no knowledge as to whether Mr. Matheson made the telephone call of his own initiative or at the instigation of Mr. Leach.

12. I do not believe that Mr. Matheson telephoned Cassels Brock & Blackwell in order to determine whether Cassels Brock & Blackwell were "serious" about the letter, or because the letter seemed "frivolous", in that:

- (a) At no point did Mr. Matheson ever attempt to make contact with me, the author of the letter; in contrast, he apparently contacted a senior partner of Cassels Brock & Blackwell who had no knowledge of the matter; and
- (b) The letter itself consisted principally of formal requests for information about the constitution and operations of a public body, the Subpanel on Education Finance, and it is not clear how requests made by citizens through a lawyer for information about a public body can be frivolous.

13. My honest opinion is that the true purpose of Mr. Matheson's telephone call to Cassels Brock & Blackwell was to cause Cassels Brock & Blackwell to instruct me to withdraw my legal representation from the PSA (as it did) in order that the questions posed in my letter dated

September 26, 1996 would not have to be answered, and the Subpanel on Education Finance would not be subject to an Application for Judicial Review on any of the proposed grounds set out in that letter. I believe that if Mr. Matheson's true purpose in telephoning Cassels Brock & Blackwell had been as stated by Mr. Leach in the House, then Mr. Matheson would have contacted me, the author of the letter, and not my employers.

14. It is my honest opinion that Mr. Matheson's telephone call to Cassels Brock & Blackwell, whether instigated by Mr. Leach or made of his own volition, constituted a discreditable interference in the relationship between me and my clients, made for political purposes.

15. As a result of Mr. Matheson's actions, my clients have been permanently and irremediably prejudiced in whatever cause of action they may have had in the nature of injunction or *prohibition* against the Subpanel on Education Finance, in that the Subpanel has already reported its findings and recommendations. Moreover, I am advised by the PSA, and I do verily believe, that none of the questions posed in my letter dated September 26, 1996, has been answered.

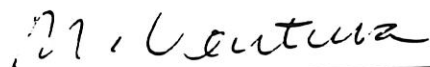
16. I swear this Affidavit at the request of the Honourable Marilyn Churley, M.P.P. for Riverdale, for the assistance of the Integrity Commissioner in his inquiries into this matter, and

for no other or improper purpose. I am, further, prepared to cooperate with the Integrity Commissioner in his inquiries in any way in which I may properly do so.

SWORN before me at the City of Toronto,
in the Municipality of Metropolitan Toronto
this 14 day of December, 1996



Brian Donovan



Commissioner for Taking Affidavits

brian.aff

**MARGARET VENTURA, a Commissioner, etc.,
Municipality of Metropolitan Toronto, for
Goodman and Carr, Barristers and Solicitors.
Expires January 19, 1999.**

This is Exhibit "A" referred to in the Affidavit
of Brian Donovan sworn before me on this 9th day
of December, 1996.

M. Ventura

.....
A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

MARGARET VENTURA, a Commissioner, etc.,
Municipality of Metropolitan Toronto, for
Goodman and Carr, Barristers and Solicitors.
Expires January 19, 1999.

Cassels Brock & Blackwell

BARRISTERS & SOLICITORS • TRADE MARK AGENTS

SCOTIA PLAZA, SUITE 1100, 100 BAY STREET, WEST TORONTO, CANADA M5H 1P2
TELEPHONE (416) 593-1100 FAX (416) 593-1101

WRITER'S DIRECT LINE: (416) 869-5452
OUR FILE NO:

VIA DELIVERY AND FAX

September 26, 1996

Mr. Steve Lowden
Chair
Sub-Panel on Education Finance
Ministry of Education & Training
Mowat Block
24th Floor
900 Bay Street
Toronto, ON M7A 1L2

Dear Mr. Lowden:

Re: Sub-panel on Education Finance

We have been consulted by the Parent/Staff Association of Frankland Community School (the "PSA") in respect of the appointment and activities of your sub-panel on education finance. Our client, the PSA, has repeatedly attempted to obtain pertinent information from your sub-panel which ought reasonably to be accessible to such a concerned organization under the circumstances. Indeed, the terms of reference of your sub-panel have been requested, which request has been refused.

Accordingly, we have advised our client that the activities and deliberations of your sub-panel are subject to judicial challenge on the basis of basic administrative law principles of administrative reasonableness and procedural fairness.

We understand that your sub-panel proposes to report its findings and conclusions on or about October 5, 1996, and that such report will have an impact upon the interests of many parties, including our client. Consequently, unless your sub-panel becomes immediately more forthcoming, we shall be seeking instructions to commence immediate judicial proceedings to restrain further activity and deliberation by your sub-panel by way of injunction, and *certiorari* to quash the sub-panel's constitution, with *prohibition* in aid to preclude the delivery of your report by the proposed October 5, 1996 deadline.

Without purporting to be exhaustive, our client's legitimate concerns include the following:

Cassels Brock & Blackwell

- 2 -

1. As indicated above, the terms of reference for your sub-panel have been requested, and this request has been refused. In contrast, we have most recently been provided (as of September 25, 1996) with a set of draft terms of reference. Are we to understand that the sub-panel on education finance has been proceeding with its investigations and deliberations to date in the absence of final terms of reference? If so, the sub-panel's activities have clearly been carried on without proper authority.

In this connection, we require immediate answers to the following questions:

- (a) Do final terms of reference for the sub-panel on education finance exist?
 - (b) If such terms of reference do exist, when were they adopted?
 - (c) If such terms of reference do exist, kindly produce a copy of same immediately.
2. By letter dated September 20, 1996, Ms. Colleen D. Morris on behalf of the PSA, requested that you notify the PSA as to the dates on which the sub-panel will be receiving deputations. Ms. Morris has received no reply. Please indicate at once when you will be receiving oral deputations from parties whose interests will obviously be affected by any recommendations which your sub-panel may make, including our client.
 3. We are distressed to have been informed that the activities of the sub-panel have been conducted under what can only be described as an aura of secrecy. Our understanding is that information in respect of the location of the sub-panel's proceedings has been denied when requested, even when such requests have been for the purpose of delivering relevant materials to the sub-panel. Such a practice is clearly unacceptable, and gives rise to an inference of bad faith.
 4. The legal authority for the appointment of the sub-panel (if any) appears to have been kept mysterious. In this connection, we require immediate answers to the following questions:
 - (a) How were the members of the sub-panel appointed?
 - (b) Are the sub-panel members paid for their work, and, if so, on what basis?
 - (c) What was the selection process utilized to ensure a fair representation of interested parties in the course of the selection of the sub-panel;

- (d) From what pool were the members of the sub-panel selected, and was the process of selection made public?
 - (e) By means of what legal instrument (if any) were the members of the sub-panel appointed?
5. The composition of the sub-panel on education finance is seriously defective, in that it fails to represent parties whose interests will clearly be affected by any report or recommendations made by the sub-panel. Most blatantly, the Metropolitan Toronto School Board is not represented. Equally, the Ontario Secondary School Teachers Federation is unrepresented. We are advised that knowledgeable members of these and other educational organizations are willing and prepared to serve on the sub-panel. None of them have been selected. Why not?

Under the circumstances, we have advised our client that any report or recommendations made by your sub-panel as presently constituted will be fundamentally defective, in that it is not clear that the sub-panel was ever properly constituted, and legitimate apprehensions of bias, and procedural and administrative unfairness, arise. I now write, further to Ms. Morris' letter of September 20, 1996 to request that your sub-panel immediately cease its activities and deliberations, pending resolution of the very serious concerns outlined above. I trust we shall receive your early and co-operative response, and that it will not be necessary to obtain the assistance of the courts to restrain the sub-panel's current activities in order to ensure a fair and equitable result.

Please govern yourself accordingly.

Yours very truly,
CASSELS BROCK & BLACKWEL



Per: J. Brian Donovan
JBD/tz

cc: Ms. Gisele Lalonde
Ms. Enid Slack
Mr. James Downey
Ms. Linda Rydholm
Mr. John Snobelen (Delivered)
Ms. Gay Young
Ms. Colleen Morris
Ms. Maria Bahadur
Ms. Jane Archibald
Mr. Chris Malkiewich (fax: 751-7079)

This is Exhibit "B" referred to in the Affidavit
of Brian Donovan sworn before me on this 9th day
of December, 1996.

M. Ventura

.....
A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

MARGARET VENTURA, a Commissioner, etc.,
Municipality of Metropolitan Toronto, for
Goodman and Carr, Barristers and Solicitors.
Expires January 19, 1999.

External Liaison, Parent Staff Association
Frankland Community School
816 Logan Ave.
Toronto, Ont. M4K 3E1.
Sept. 20, 1996.

Mr. Steve Lowden, Chair, and fellow members:
Ms Gisele Lalonde, Ms Enid Slack, Dr. James Downey and Ms Linda Rydholm,
Subpanel on Education Finance,
Ministry of Education Fax c/o Nancy Nahler: 325-6370.

Dear Mr. Lowden and fellow panel members,

Re: Request the Subpanel on Education Finance:

- stop discussion immediately;
- appoint Ann Vanstone to represent Metro Toronto education finance;
- increase the time needed to thoroughly debate the issue of education finance

We are writing to express our concern that the vitally important issue of financing our children's education is **not** being properly debated. We have been following the issue of public education finance closely and were dismayed to read the Sun., Sept. 15/96 *Toronto Star* editorial which is attached for your information.

The editors of *The Toronto Star* share our concerns and concur: Metro Toronto education finance must be represented on the Subpanel on Education Finance by Ann Vanstone, Chair of the Metro Toronto Board of Education. Demographics and democracy both demand nothing less.

Thus, we ask that all discussion and meetings of the Subpanel on Education Finance stop immediately until Ann Vanstone be appointed to this Subpanel.

Ms Vanstone is needed on the Subpanel on Education Finance to explain the complexities of educating Metro Toronto school children. We agree with John Barber of *The Globe and Mail* when he writes that to enforce a "one-size-fits-all" formula for education finance will be a disaster for all children of Metro Toronto. With the present financing of Metro Toronto schools, Metro Toronto taxpayers accept responsibility to help children who suffer from the ravages of unemployment, hunger and a host of other socio-economic problems. Metro Toronto taxpayers accept responsibility to help children whose first language is not English. Metro Toronto taxpayers accept responsibility to help children with special needs. We understand that by helping to meet these challenges unique in all of Canada, education for **all** Metro Toronto's children can flourish.

Finally, more than three weeks is needed for the Subpanel on Education Finance to thoroughly understand the unique stresses placed on educating Ontario's children.

We look forward to your response to our grave concerns and we will be contacting you shortly. Please notify us as to the dates that you will be receiving deputations.

Yours truly,

Colleen D. Morris

Colleen D. Morris
416 465-7815 (fax 416 361-0510)

attachment

c.c.: Premier Michael Harris

M.P.P. John Snobelen, Minister of Education

Ann Vanstone, Chair, Metro Toronto Board of Education

David Moll, Chair, Toronto Board of Education

Marilyn Churley, M.P.P.; Liberal Education Critic; N.D.P. Education Critic

397-2563 Enc #

This is Exhibit "C" referred to in the Affidavit
of Brian Donovan sworn before me on this 9th day
of December, 1996.

M. Ventura
.....
A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

MARGARET VENTURA, a Commissioner, etc.,
Municipality of Metropolitan Toronto, for
Goodman and Carr, Barristers and Solicitors.
Expires January 19, 1999.

Information



November 25, 1996

Hon. G.T. Evans, Q.C.
Office of the Integrity Commissioner
4th Floor, 101 Bloor St. W.
Toronto, Ontario

OPEN LETTER

Dear Mr. Evans:

I write to ask you to investigate whether the Minister of Municipal Affairs and Housing, the Hon. Al Leach, has breached the Members' Integrity Act. While the Act speaks to the conduct of Members, we must also be aware of the public's perception of senior political staff. A Minister's executive assistant is regularly assumed to be speaking with the voice of his or her Minister. Indeed, staff are normally instructed to comport themselves as if this were the case.

In the case in question, the Minister has clearly stated that his executive assistant — the senior member of the Minister's political staff — telephoned a law firm that represented a group of parents who wished to protest the work of a subpanel operating under the Minister's mandate. The parents had written a letter stating they were considering launching legal proceedings against the government.

The Minister is on the record as saying: "The application seemed so frivolous that my executive assistant called Cassels Brock and said, 'Are you serious?'" The Minister went further, implicating himself in this intimidating action, when he said: "We made an inquiry as to whether this was a serious allegation." [Hansard, November 7, 1996]

Today in the Legislature I raised the matter again during Question Period and the Minister responded in a similar vein, deeming it appropriate for his staff to have telephoned and questioned the intent of the lawyer's clients.

While the Minister seems to wholeheartedly approve of his executive assistant's action, it is still unclear whether or not he directed that this action be taken, if others gave that direction or if the staff member acted on his own. Either way, as I indicated previously, senior staff are perceived to be acting on behalf of the Minister.

.../2

The result for the parents at Frankland Community School, located in my riding of Riverdale, was devastating. Their lawyer has indicated he was instructed by his superiors to drop their case, and he subsequently resigned from the firm. The parents' questions remain unanswered. The subpanel which they questioned has made its report to the Minister so that the opportunity to have questions answered or to apply for an injunction has passed.

This appears to be an abrogation of the rights of citizens, who should expect to be able to ask questions of their government and consider legal recourse without intimidation by political staff. I ask you to undertake an investigation of this event and determine whether the spirit or intent of the Members' Integrity act has been broken.

Sincerely,

Marilyn Churley
MPP -- Riverdale

E Mail to <ndpmail@ndp.on.ca>
-opseu 593

This is Exhibit "D" referred to in the Affidavit
of Brian Donovan sworn before me on this 9th day
of December, 1996.

M. Ventura

.....
A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

MARGARET VENTURA, a Commissioner, etc.,
Municipality of Metropolitan Toronto, for
Goodman and Carr, Barristers and Solicitors.
Expires January 19, 1999.

Cassels Brock & Blackwell

BARRISTERS & SOLICITORS • TRADE MARK AGENTS

SCOTIA PLAZA, SUITE 2100, 40 KING STREET WEST, TORONTO, CANADA M5H 3C2
TELEPHONE (416) 869-5300 FAX (416) 360-8877

OUR FILE NO:
LAWYER NO:

73402-1
275

DATE: **Monday, September 30, 1996**

PLEASE SEND THE FOLLOWING DOCUMENTS TO:

FAX NO: **325-6370**

NAME: **Mr. Steve Lowden**

COMPANY: **c/o Ministry of Education and Training**

CITY: **Toronto**

TELEPHONE:

ORIGINALS SENT BY: Mail ☐ TDX ☐ Courier ☐ Not Sent ☒

FROM: **Brian Donovan**

TELEPHONE: **869-5452**

NUMBER OF PAGES INCLUDING COVER PAGE: **2**

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TIME : SEP 30 '96 10:50
 TEL NUMBER : +416-360-8877
 NAME : CASSELS BROCK 20TH

NBR	DATE	TIME	DURATION	PGS	TO	MODE	STATUS
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040	SEP. 27	12:13	00/45	2	416 480 3970	EC	NG 12
041	SEP. 27	12:16	00/44	2	416 480 3970	EC	NG 12
042	SEP. 27	12:17	00/00	0	9056602050	EC	OK 30
043	SEP. 27	12:21	02/45	8	9056602050	EC	OK
044	SEP. 27	13:11	00/00	0	4982629	EC	OK 30
045	SEP. 27	13:11	00/55	2	416 923 1064	EC	OK
046	SEP. 27	13:14	00/00	0	4982629	EC	OK 30
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050	SEP. 27	13:48	02/25	5	416 327 8605	EC	OK 30
051	SEP. 27	13:54	00/00	0	9673951	EC	OK 30
052	SEP. 27	13:54	00/00	0	9673951	G3	OK
053	SEP. 27	14:43	01/49	3	416 498 2629	G3	OK
054	SEP. 27	14:45	01/28	2	416 967 3951	G3	OK
055	SEP. 27	15:18	02/31	4	9058901970	G3	OK 30
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057	SEP. 27	15:23	00/00	0	8639500		OK 30
058	SEP. 27	15:23	00/00	0	8639500		OK 30
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078	SEP. 30	10:49	00/54	2	325 6370	EC	OK

Cassels Brock & Blackwell

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WRITER'S DIRECT LINE: (416) 869-5452
OUR FILE NO:

September 30, 1996

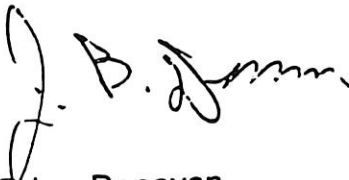
Mr. Steve Lowden
Chair
Sub-Panel on Education Finance
Ministry of Education & Training
Mowat Block
24th Floor
900 Bay Street
Toronto, ON M7A 1L2

Dear Mr. Lowden:

May we kindly have the courtesy of a response to my letter to you and other members of the subpanel of September 27, 1996.

I emphasize that our client is determined to obtain a satisfactory response to its very legitimate concerns. This letter is to put you and the subpanel on notice that you must not report your recommendations by the October 5, 1996 deadline, or otherwise, until such concerns have adequately been addressed.

Yours very truly,
CASSELS BROCK & BLACKWELL



Brian Donovan
BD/jvms

This is Exhibit "E" referred to in the Affidavit
of Brian Donovan sworn before me on this 9th day
of December, 1996.

M. Ventura
.....
A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
MARGARET VENTURA, a Commissioner, B.C.
Municipality of Metropolitan Toronto, for
Goodman and Carr, Barristers and Solicitors.
Expires January 19, 1999.

TIME : OCT 04 '96 11:28
 TEL NUMBER : +416-360-8877
 NAME : CASSELS BROCK 20TH

NBR	DATE	TIME	DURATION	PGS	TO	MODE	STATUS
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216	OCT.04	11:27	00/57	2	325 6370	EC	OK

Cassels Brock & Blackwell

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DATE: **Friday, October 4, 1996**

PLEASE SEND THE FOLLOWING DOCUMENTS TO:

FAX NO: **325-6370**

NAME: **Mr. Steve Lowden**

COMPANY: **c/o Ministry of Education and Training**

CITY: **Toronto**

TELEPHONE:

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Cassels Brock & Blackwell

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SCOTIA PLAZA, SUITE 2100, 40 KING STREET WEST, TORONTO, CANADA M5H 3C2
TELEPHONE (416) 869-5300 FAX (416) 360-8877

WRITER'S DIRECT LINE: (416) 869-5452
OUR FILE NO:

October 4, 1996

Mr. Steve Lowden
Chair
Sub-Panel on Education Finance
Ministry of Education & Training
Mowat Block
24th Floor
900 Bay Street
Toronto, ON M7A 1L2


Dear Mr. Lowden:

Re: Subpanel on Education Finance

My letter to you and other members of the Subpanel on Education Finance of September 27, while sent on the firm letterhead of Cassels Brock & Blackwell, was unauthorized by the firm. Further, I have been advised that had the firm been aware of the letter, it would not have considered acting in this matter at all. Consequently, I am writing formally to withdraw my September 27, 1996 letter.

In any case, I can advise you that I do not believe that the PSA intends to proceed with an application for judicial review; however, if it does decide to proceed, Cassels Brock & Blackwell will not consider acting in the matter on their behalf.

Yours very truly,
CASSELS BROCK & BLACKWELL



Brian Donovan
BD/jvms

This is Exhibit "F" referred to in the Affidavit
of Brian Donovan sworn before me on this 9th day
of December, 1996.

M. Ventura
.....
A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

MARGARET VENTURA, a Commissioner, etc.,
Municipality of Metropolitan Toronto, for
Goodman and Carr, Barristers and Solicitors.
Expires January 19, 1999.

122-1525.07 DRAFT 1525-1 BROUILLON kao

(Mrs McLeod)
...and their right to legal representation because of direct intimidation from your office.

Minister, these citizens believed when they came into this place today - and they are here - that they had been bullied into silence by your government. They asked in a letter to the Premier why does this government believe that it is free to manipulate the law. Do you not consider this to be a direct interference with the rights of citizens to be heard and to have legal representation? Is this not -

The Speaker: Thank you.

Hon Mr Leach: That's even a stretch for that party. We made an inquiry as to whether this was a serious allegation. The law firm said they didn't know about it.

By the way -

Interjections.

The Speaker: Order. Order. I appreciate the fact that the member asked the question. I presume you'd like to hear the answer.

Hon Mr Leach: Just by the way so everybody's aware, this is the law firm of the former leader of the party, Liberal Party, David Peterson. If anybody thinks that we're going to call and try to intimidate a law firm like that, it is rather silly. There was absolutely no attempt to intimidate anybody. We made an inquiry as to whether this was serious. We didn't hear any more after that. What the law firm does is their business. If they're that easily intimidated they're not very good lawyers.

FAMILY RESPONSIBILITY OFFICE

Ms Shelley Martel (Sudbury East): I want to return to the Attorney General with respect to the family support plan.

Minister, to date in our office we have received over 80 enquiries on cases from women and children right across Sudbury East. We received all of our cases and we reviewed them last week, and I can tell you that the overwhelming majority of those cases involved women and children who used to receive regular support payments until you cut 290 staff and closed the regional office.

Three weeks ago 10 boxes of unopened mail left the Sudbury office to be dealt with somewhere in Toronto. No doubt, thousands of other files have also come to Toronto and were probably among the boxes that we saw today on the fourth floor, totally unsecured, all over the floor in a public area.

I want to ask you today: What are you going to do since your office is completely unfunctioning at this point in time, what are you going to do to ensure that the thousands of women and

122-1520.07

DRAFT

1520-2

BROUILLON

aac

office made the call.

Hon John Snobelen (Minister of Education and Training): I want to thank the Leader of the Opposition for the question. However, this question deals with the Who Does What committee and I would defer this question to the minister to whom that committee is responsible.

Hon Al Leach (Minister of Municipal Affairs and Housing): I could add some light to this question. Yes, the Who Does What panel did receive a letter indicating that the law firm of Cassels Brock was going to impose an injunction on the Crombie subpanel on education. The application seemed so frivolous that my executive assistant called Cassels Brock and said, "Are you serious?" They said: "We're not aware of this at all. We'll get back to you." We never heard any more about it until such time as we got a letter from the lawyer in question withdrawing the application. That's all we know.

Mrs McLeod: I must confess that I am surprised that we would so quickly get an admission from the minister that his office contacted the law firm. I trust he is now aware that the results of that direct intervention in legal representation on the part of a group of citizens who wanted to raise concerns about this government's actions, that that kind of direct intervention with a law firm has not only resulted in this particular lawyer being required to drop the case, that these citizens have lost their legal representation because the lawyer was required to withdraw his representation on their behalf, that these citizens have now been denied both their right to raise their concerns and their right to legal representation because of direct intimidation from your office.

Minister, these citizens believed when they came into this place today - and they are here - that they had been bullied into silence by your government. They ask in the letter to the Premier, why does this government believe that it is free to manipulate...

L-1525 follows

122-1520.07 DRAFT 1520-1 BROUILLON aac

The Speaker: Attorney General?

1520

Hon Mr Harnick: As I have indicated to this House before, the family support plan has been a major problem in terms of the way clients -

Interjections.

The Speaker: Order. Attorney General?

Hon Mr Harnick: To conclude, I hope that the members opposite have the same passion for passing the bill that's now before the House so that we can correct the problems in the family support plan once and for all.

Interjections.

Mr Wayne Wettlaufer (Kitchener): I wish you'd shut up so we could hear.

The Speaker: Member for Kitchener, that's unparliamentary language. I ask you to withdraw.

Mr Wettlaufer: Withdraw.

* * *

Mrs Lyn McLeod (Leader of the Opposition): My question is for the Minister of Education and Training. Minister, today a group of parents from ??Frankland community school delivered this letter to the Premier. Their letter expresses their concern with an incident which they feel constitutes a serious interference with the administration of justice.

These parents, on behalf of their parent-school association, had engaged a lawyer with funds which they raised through contributions from their own pockets. They asked the lawyer, who was another parent at Franklin school, to act on their behalf in raising concerns about the subpanel on education that was set up under the Who Does What committee. These parents were prepared to challenge the legality of the work of the subcommittee, the constitution of the subcommittee and in fact were prepared to seek an injunction against the work of the subcommittee. Minister, the lawyer whom they had engaged was subsequently asked by the chairman of his law firm, a leading law firm here in the city of Toronto, to withdraw from the case. He was also instructed to write a letter to Steve Lowden of the subpanel on education in which he would withdraw the representations he had made on behalf of his clients. This requirement that he drop the case and that he write this letter was made because a call had come from the province to a senior member in the firm.

Minister, I'm sure you would agree that this ??institute does constitute a serious violation of the rights of individuals to express concerns and to have legal representation. I ask whether you are aware of this situation and I ask whether your

This is Exhibit "G" referred to in the Affidavit
of Brian Donovan sworn before me on this 9th day
of December, 1996.

M. Ventura

.....
A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

MARGARET VENTURA, a Commissioner, etc.,
Municipality of Metropolitan Toronto, for
Goodman and Carr, Barristers and Solicitors.
Expires January 19, 1999.

Province pressured law firm, says 'ethical' lawyer who quit

Call made after complaint about sub-panel secrecy

BY PETER SMALL
EDUCATION REPORTER

A Toronto lawyer says he has resigned from his law firm because it bowed to political pressure from the provincial government.

Brian Donovan said his law firm forced him to drop a parent-staff school association as a client.

Donovan says he is considering a complaint to the Law Society of Upper Canada against lawyer John Matheson, who called his firm in his role as executive assistant to Municipal Affairs Minister Al Leach.

"As an ethical lawyer, I can't operate in an environment that permits political interference of my clients," Donovan said.

Donovan represented the parent-staff association of Frank-

land Community School, an east Toronto school where he has a 3-year-old daughter, in its dispute with the provincial government's Who Does What sub-panel on education.

On Sept. 20, he wrote on behalf of the association to the panel's chair, Steve Lowden, complaining about an "aura of secrecy" surrounding its activities.

The letter demanded answers about how panel members are paid, chosen, and their terms of reference.

The letter threatened to seek a court order challenging the panel, which was set up to make recommendations on Ontario education, unless these questions were answered.

In the Legislature last Thursday, after the issue was raised by Liberal Leader Lyn McLeod, Leach acknowledged that Matheson phoned Donovan's law firm, Cassels, Brock and Blackwell, to ask about the letter.

"The application seemed so frivolous that my executive as-

yesterday on this subject.

Donovan said that after Matheson's phone call to someone in his firm, he was called to a meeting with two senior partners.

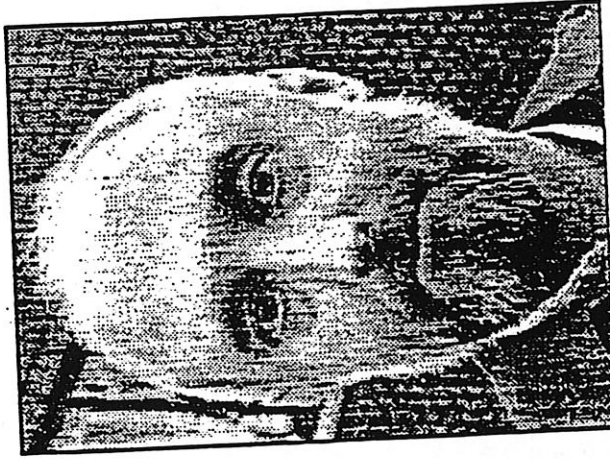
Donovan said he was ordered to write another letter in early October withdrawing the first and saying that the firm would not act for the parent-staff association.

Donovan said he obeyed because he feared for his job. Since then he found a job with another law firm and has "re-signed as a matter of principle."

Bill Burden, a partner of Cassels, Brock and Blackwell, called ridiculous any suggestion that there had been political interference of threat to his job.

He said Donovan had not done a full conflict search to see if there was a problem with taking on the Frankland parent-staff association as a client against the government.

But Donovan said he had first done a conflict of interest check and it "came back clean."



BRIAN DONOVAN: Represented Toronto school in dispute with province.

stant called Cassels Brock and said, 'Are you serious?' Leach told McLeod.

McLeod blasted Matheson's move as direct intervention in the rights of citizens to legal representation.

Matheson did not return calls

The Globe and Mail, Friday, November 8, 1996



Toronto

John Barber

Evasive Crombie still gets it right

A Sa journalist covering the city beat in the fall of 1996, I find a new occasion almost every day to curse the name Crombie. I mean, talk about Teflon: Playing Gotcha with David Crombie redefines the word futile. The man is so agile, so friendly and forthcoming and yet so brilliantly evasive.

Ask David Crombie when he plans to eat lunch and he'll reply seven different ways, with great candour and patience. But when you look at your notes later, you discover that you still don't know the answer.

As a citizen in Premier Mike Harris's Toronto in the fall of 1996, however, I am tempted every day to fall on my knees, bang my head on the floor and thank God for Mr. Crombie. If any positive reforms emerge from the huge tangle of provincial initiatives concerning property taxes, education, municipal reorganization et cetera, it will be Mr. Crombie's doing. The guy could turn Godzilla into a house pet.

Last week this time, it looked as if the government was prepared to ignore Mr. Crombie's panel as the province bulled ahead with a plan to amalgamate the municipalities that make up Metro Toronto.

Now, it has decided to wait, ostensibly to give the Metro mayors time to develop a counterproposal. A more likely reason is that the government has been brought to its senses, and realizes that it will never win necessary acceptance for any proposal unless it is worked over and built up by Mr. Crombie.

On the question of tax reform, Mr. Crombie has already demonstrated how to pull Godzilla's teeth with his recommendation that new assessments be based on a property's current use, as opposed to its

The government hasn't responded, so Mr. Crombie will repeat the recommendation in a new letter today. After seeing how the amalgamation proposal blew up, the province might now be more inclined to accept this crucial compromise.

Next week, Mr. Crombie plans to deliver recommendations on education finance. John Snobelen has certainly demonstrated his talent at inventing a crisis on this matter, to the point where every parent, teacher and trustee in Ontario — including several prominent Tories — is ready to tear his throat out. If Mr. Crombie manages to rescue the minister with a workable plan for change, he deserves the Nobel Peace Prize.

The difference in the way Queen's Park operates and the way David Crombie operates was demonstrated marvellously well during Question Period yesterday, when Liberal Leader Lyn McLeod rose to ask why the government was trying to bully the parents of Frankland Community School in Toronto.

In September, the Frankland PTA had sent a letter to Steve Lowden, chairman of the education sub-panel of the Crombie group, asking what it was up to. Getting no reply, it hired one of its members, a lawyer, to write a shirty letter demanding answers and threatening "immediate judicial proceedings."

As Municipal Affairs Minister Al Leach admitted yesterday, the letter ended up on the desk of his assistant, John Matheson. Mr. Matheson, a lawyer, decided against phoning Brian Donovan, the lawyer who wrote the letter. Instead, he phoned Mr. Donovan's superiors at prestigious Bay Street firm of

The next day, Mr. Donovan's bosses hauled him on the carpet, demanded he drop the file and write a new letter to Mr. Lowden formally withdrawing the earlier one. Mr. Donovan obeyed, but he has since resigned from the firm. "As an ethical lawyer I'm not prepared to work in an environment that permits political interference in the solicitor-client relationship," he said yesterday.

It doesn't really matter whether Mr. Donovan's letter was frivolous, as Mr. Leach claims, or what Mr. Matheson said to the bigwigs at Cassels Brock. ("Are you serious?" according to Mr. Leach.) The telling thing is the bully-boy tactic that Mr. Matheson chose to solve the problem.

None of this would have happened if the Frankland parents had decided to address their original letter to Mr. Crombie himself. The great compromiser would have hesitated off to their school, given them a soothing pep talk, telling them everything and nothing. They all would have left feeling — quite accurately — that they were an important part of a positive process of change.

is Brock & Blackwell.

IN THE MATTER OF a Request for an Investigation made to the Office of the Integrity Commissioner in respect of certain conduct of the Minister of Municipal Affairs and Housing and a Member of his Political Staff

AFFIDAVIT OF BRIAN DONOVAN

**BRIAN DONOVAN
Barrister and Solicitor
200 King Street West
Suite 2300
Toronto, On M5H 3W5**

**Brian Donovan
(416) 595-2415
(416) 595-0567 - Fax**

Cassels Brock & Blackwell

EXHIBIT " 3 "

BARRISTERS & SOLICITORS • TRADE MARK AGENTS

SCOTIA PLAZA, SUITE 1100, 100 KING STREET WEST, TORONTO, CANADA M5X 1C2
TELEPHONE (416) 593-1100 FAX (416) 593-1101

WRITER'S DIRECT LINE: (416) 869-5452

OUR FILE NO:

VIA DELIVERY AND FAX

September 26, 1996

Mr. Steve Lowden
Chair
Sub-Panel on Education Finance
Ministry of Education & Training
Mowat Block
24th Floor
900 Bay Street
Toronto, ON M7A 1L2

Dear Mr. Lowden:

Re: Sub-panel on Education Finance

We have been consulted by the Parent/Staff Association of Frankland Community School (the "PSA") in respect of the appointment and activities of your sub-panel on education finance. Our client, the PSA, has repeatedly attempted to obtain pertinent information from your sub-panel which ought reasonably to be accessible to such a concerned organization under the circumstances. Indeed, the terms of reference of your sub-panel have been requested, which request has been refused.

Accordingly, we have advised our client that the activities and deliberations of your sub-panel are subject to judicial challenge on the basis of basic administrative law principles of administrative reasonableness and procedural fairness.

We understand that your sub-panel proposes to report its findings and conclusions on or about October 5, 1996, and that such report will have an impact upon the interests of many parties, including our client. Consequently, unless your sub-panel becomes immediately more forthcoming, we shall be seeking instructions to commence immediate judicial proceedings to restrain further activity and deliberation by your sub-panel by way of injunction, and *certiorari* to quash the sub-panel's constitution, with *prohibition* in aid to preclude the delivery of your report by the proposed October 5, 1996 deadline.

Without purporting to be exhaustive, our client's legitimate concerns include the following:

Cassels Brock & Blackwell

- 2 -

1. As indicated above, the terms of reference for your sub-panel have been requested, and this request has been refused. In contrast, we have most recently been provided (as of September 25, 1996) with a set of draft terms of reference. Are we to understand that the sub-panel on education finance has been proceeding with its investigations and deliberations to date in the absence of final terms of reference? If so, the sub-panel's activities have clearly been carried on without proper authority.

In this connection, we require immediate answers to the following questions:

- (a) Do final terms of reference for the sub-panel on education finance exist?
 - (b) If such terms of reference do exist, when were they adopted?
 - (c) If such terms of reference do exist, kindly produce a copy of same immediately.
2. By letter dated September 20, 1996, Ms. Colleen D. Morris on behalf of the PSA, requested that you notify the PSA as to the dates on which the sub-panel will be receiving deputations. Ms. Morris has received no reply. Please indicate at once when you will be receiving oral deputations from parties whose interests will obviously be affected by any recommendations which your sub-panel may make, including our client.
3. We are distressed to have been informed that the activities of the sub-panel have been conducted under what can only be described as an aura of secrecy. Our understanding is that information in respect of the location of the sub-panel's proceedings has been denied when requested, even when such requests have been for the purpose of delivering relevant materials to the sub-panel. Such a practice is clearly unacceptable, and gives rise to an inference of bad faith.
4. The legal authority for the appointment of the sub-panel (if any) appears to have been kept mysterious. In this connection, we require immediate answers to the following questions:
 - (a) How were the members of the sub-panel appointed?
 - (b) Are the sub-panel members paid for their work, and, if so, on what basis?
 - (c) What was the selection process utilized to ensure a fair representation of interested parties in the course of the selection of the sub-panel;

Cassels Brock & Blackwell

- 3 -

- (d) From what pool were the members of the sub-panel selected, and was the process of selection made public?
- (e) By means of what legal instrument (if any) were the members of the sub-panel appointed?
5. The composition of the sub-panel on education finance is seriously defective, in that it fails to represent parties whose interests will clearly be affected by any report or recommendations made by the sub-panel. Most blatantly, the Metropolitan Toronto School Board is not represented. Equally, the Ontario Secondary School Teachers Federation is unrepresented. We are advised that knowledgeable members of these and other educational organizations are willing and prepared to serve on the sub-panel. None of them have been selected. Why not?

Under the circumstances, we have advised our client that any report or recommendations made by your sub-panel as presently constituted will be fundamentally defective, in that it is not clear that the sub-panel was ever properly constituted, and legitimate apprehensions of bias, and procedural and administrative unfairness, arise. I now write, further to Ms. Morris' letter of September 20, 1996 to request that your sub-panel immediately cease its activities and deliberations, pending resolution of the very serious concerns outlined above. I trust we shall receive your early and co-operative response, and that it will not be necessary to obtain the assistance of the courts to restrain the sub-panel's current activities in order to ensure a fair and equitable result.

Please govern yourself accordingly.

Yours very truly,
CASSELS BROCK & BLACKWEL



Per: J. Brian Donovan
JBD/tz

cc: Ms. Gisele Lalonde
Ms. Enid Slack
Mr. James Downey
Ms. Linda Rydholm
Mr. John Snobelen (Delivered)
Ms. Gay Young
Ms. Colleen Morris
Ms. Maria Bahadur
Ms. Jane Archibald
Mr. Chris Malkiewich (fax: 751-7079)

OF/039/tz

IN THE MATTER OF A REQUEST FOR AN INVESTIGATION MADE TO THE OFFICE OF THE INTEGRITY COMMISSIONER

IN THE MATTER OF a Request for an Investigation made to the Office of the Integrity Commissioner in respect of certain conduct of the Minister of Municipal Affairs and Housing and a Member of his Political Staff

AFFIDAVIT OF BRIAN DONOVAN

GOODMAN AND CARR
Barristers and Solicitors
200 King Street West
Suite 2300
Toronto, On M5H 3W5

Brian Donovan
(416) 595-2415
(416) 595-0567 - Fax

IN THE MATTER OF a request for an
Investigation made to the Office of the Integrity
Commissioner in respect of certain conduct of
the Minister of Municipal Affairs and Housing
and a Member of his Political Staff

AFFIDAVIT OF DAVID SPRING

I, **David Spring**, of the City of Toronto in the Municipality of Metropolitan Toronto,
MAKE OATH AND SAY AS FOLLOWS:

1. I am the Senior Counsel in the Municipal and Planning Law section of the Legal Services Branch of the Ministry of Municipal Affairs and Housing.
2. The Province of Ontario, as represented by the Minister of Municipal Affairs and Housing, required assistance from advisors and consultants in reviewing the service delivery responsibilities of the municipal and provincial governments. This advisory group became known as the "Who Does What Panel". The participation of the advisors was confirmed by letter and the consultants were retained by the Minister of Municipal Affairs and Housing in his capacity as a Minister of the Crown.
3. On Friday, September 27, I was given a copy of a letter from Brian Donovan of the firm of Cassels Brock and Blackwell which I immediately circulated to my supervisor and to senior officials within the Ministry. A copy of this letter is attached hereto as Exhibit "A".
4. After a discussion with Ministry officials in which I offered a preliminary opinion to the effect that the legal position espoused in the letter was without merit, I was instructed to prepare a reply for my signature.

5. At the beginning of the following week, I prepared such a reply, after researching the applicable law. My reply answered a number of the questions raised by Mr. Donovan in his letter of September 26, and addressed the legal issues raised by him in that letter.

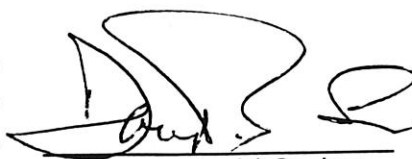
6. On October 1 or 2, I telephoned Mr. Donovan, the author of the letter referred to above, and advised him that I would be responding to this letter in writing. He replied that he would await my response.

7. On Friday, October 4, before sending my reply to Mr. Donovan, I received from a Ministry official, a copy of letter from Mr. Donovan. A copy of that letter is attached hereto as Exhibit "B".

8. As a consequence of receiving the copy of the letter referred to in paragraph 7 above, I did not send the response referred to above, and took no further action in the matter.

9. I make this Affidavit for the purpose of assisting the Integrity Commission in this matter, and for no other purpose.

SWORN before me at the City of Toronto,
in the Municipality of Metropolitan Toronto
this 2nd day of January, 1997

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)
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)
David Spring


Commissioner for Taking Affidavits

EXHIBIT "A"

WRITER'S DIRECT LINE: (416) 869-5452
OUR FILE NO:

VIA DELIVERY AND FAX

September 26, 1996

Mr. Steve Lowden
Chair
Sub-Panel on Education Finance
Ministry of Education & Training
Mowat Block
24th Floor
900 Bay Street
Toronto, ON M7A 1L2

Dear Mr. Lowden:

Re: Sub-panel on Education Finance

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Accordingly, we have advised our client that the activities and deliberations of your sub-panel are subject to judicial challenge on the basis of basic administrative law principles of administrative reasonableness and procedural fairness.

We understand that your sub-panel proposes to report its findings and conclusions on or about October 5, 1996, and that such report will have an impact upon the interests of many parties, including our client. Consequently, unless your sub-panel becomes immediately more forthcoming, we shall be seeking instructions to commence immediate judicial proceedings to restrain further activity and deliberation by your sub-panel by way of injunction, and *certiorari* to quash the sub-panel's constitution, with *prohibition* in aid to preclude the delivery of your report by the proposed October 5, 1996 deadline.

Without purporting to be exhaustive, our client's legitimate concerns include the following:

1. As indicated above, the terms of reference for your sub-panel have been requested, and this request has been refused. In contrast, we have most recently been provided (as of September 25, 1996) with a set of draft terms of reference. Are we to understand that the sub-panel on education finance has been proceeding with its investigations and deliberations to date in the absence of final terms of reference? If so, the sub-panel's activities have clearly been carried on without proper authority.

In this connection, we require immediate answers to the following questions:

- (a) Do final terms of reference for the sub-panel on education finance exist?
 - (b) If such terms of reference do exist, when were they adopted?
 - (c) If such terms of reference do exist, kindly produce a copy of same immediately.
2. By letter dated September 20, 1996, Ms. Colleen D. Morris on behalf of the PSA, requested that you notify the PSA as to the dates on which the sub-panel will be receiving deputations. Ms. Morris has received no reply. Please indicate at once when you will be receiving oral deputations from parties whose interests will obviously be affected by any recommendations which your sub-panel may make, including our client.
3. We are distressed to have been informed that the activities of the sub-panel have been conducted under what can only be described as an aura of secrecy. Our understanding is that information in respect of the location of the sub-panel's proceedings has been denied when requested, even when such requests have been for the purpose of delivering relevant materials to the sub-panel. Such a practice is clearly unacceptable, and gives rise to an inference of bad faith.
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 - (c) What was the selection process utilized to ensure a fair representation of interested parties in the course of the selection of the sub-panel?

- (d) From what pool were the members of the sub-panel selected, and was the process of selection made public?
 - (e) By means of what legal instrument (if any) were the members of the sub-panel appointed?
5. The composition of the sub-panel on education finance is seriously defective, in that it fails to represent parties whose interests will clearly be affected by any report or recommendations made by the sub-panel. Most blatantly, the Metropolitan Toronto School Board is not represented. Equally, the Ontario Secondary School Teachers Federation is unrepresented. We are advised that knowledgeable members of these and other educational organizations are willing and prepared to serve on the sub-panel. None of them have been selected. Why not?

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Please govern yourself accordingly.

Yours very truly,
CASSELS BROCK & BLACKWEL



Per: J. Brian Donovan
JBD/tz

cc: Ms. Gisele Lalonde
Ms. Enid Slack
Mr. James Downey
Ms. Linda Rydholm
Mr. John Snobelen (Delivered)
Ms. Gay Young
Ms. Colleen Morris
Ms. Maria Bahadur
Ms. Iane Archibald
Mr. Chris Malkiewich (fax 751-7079)

Cassels Brock & Blackwell

BARRISTERS & SOLICITORS • TRADE MARK AGENTS

SCOTIA PLAZA, SUITE 2100, 40 KING STREET WEST, TORONTO, CANADA M5H 3C2
TELEPHONE (416) 869-5300 FAX (416) 360-8877

David
for Don

EXHIBIT "B"

WRITER'S DIRECT LINE (416) 889-5452
OUR FILE NO:

October 4, 1996

Mr. Steve Lowden
Chair
Sub-Panel on Education Finance
Ministry of Education & Training
Mowat Block
24th Floor
900 Bay Street
Toronto, ON M7A 1L2

Dear Mr. Lowden:

Re: Subpanel on Education Finance

My letter to you and other members of the Subpanel on Education Finance of September 27, while sent on the firm letterhead of Cassels Brock & Blackwell, was unauthorized by the firm. Further, I have been advised that had the firm been aware of the letter, it would not have considered acting in this matter at all. Consequently, I am writing formally to withdraw my September 27, 1996 letter.

In any case, I can advise you that I do not believe that the PSA intends to proceed with an application for judicial review; however, if it does decide to proceed, Cassels Brock & Blackwell will not consider acting in the matter on their behalf.

Yours very truly,
CASSELS BROCK & BLACKWELL

J. B. Donovan

Brian Donovan
BD/jvms

IN THE MATTER OF A REQUEST FOR AN INVESTIGATION MADE TO THE OFFICE OF THE INTEGRITY COMMISSIONER

**IN THE MATTER OF a Request for an
Investigation made to the Office of the
Integrity Commissioner in respect of
certain conduct of the Minister of
Municipal Affairs and Housing and a
Member of his Political Staff**

AFFIDAVIT OF DAVID SPRING

Cassels Brock & Blackwell

EXHIBIT " 5 "

BARRISTERS & SOLICITORS • TRADE MARK AGENTS

SCOTIA PLAZA, SUITE 2100, 40 KING STREET WEST, TORONTO, CANADA M5H 3C2
TELEPHONE (416) 869-5300 FAX (416) 360-8877

WRITER'S DIRECT LINE (416) 889-5452
OUR FILE NO:

EXHIBIT "B"

October 4, 1996

Mr. Steve Lowden
Chair
Sub-Panel on Education Finance
Ministry of Education & Training
Mowat Block
24th Floor
900 Bay Street
Toronto, ON M7A 1L2

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In any case, I can advise you that I do not believe that the PSA intends to proceed with an application for judicial review; however, if it does decide to proceed, Cassels Brock & Blackwell will not consider acting in the matter on their behalf.

Yours very truly,
CASSELS BROCK & BLACKWELL



Brian Donovan
BD/jvms

IN THE MATTER OF a request for an
Investigation made to the Office of the
Integrity Commissioner in respect of certain
conduct of the Minister of Municipal Affairs
and Housing and a Member of his Political
Staff

AFFIDAVIT OF JOHN MATHESON

(Exhibit "A" to the Affidavit of Allan F. Leach)

I, JOHN ANGUS MATHESON, of the City of Etobicoke in the Municipality of Metropolitan Toronto, make oath and do solemnly swear as follows:

1. At all times relevant to these proceedings, I was the executive assistant to the Honourable Allan F. Leach, Minister of Municipal Affairs and Housing. I am also a barrister and solicitor called in 1993 to the Bar of Ontario. As such, I have knowledge of the matters hereinafter deposed to:
2. As executive assistant to the Minister, I am responsible for the planning and operations of his office. In particular, I manage his strategic communications and am responsible for the operation of his legislative agenda. Although I am a lawyer by profession, I do not act as legal counsel to the Ministry of Municipal Affairs and Housing.
3. On or about September 27th, 1996, I received a copy of a letter dated September 26th, 1996, and written by J. Brian Donovan. A copy of this letter is attached hereto as Exhibit "A". In that letter, Mr. Donovan threatened to bring an application for an injunction to "restrain further activity and deliberation" by the sub-panel on education finance of the Who Does What commission. Given the tight operational time frames under which the sub-panel was operating, I regarded the threatened injunction as a potential communications and operational challenge.

4. Later that day, I attended a meeting with *inter alia*, David Spring, Senior Counsel to the Ministry of Municipal Affairs and Housing at which time that letter was discussed. Mr. Spring informed me that in his preliminary opinion, the basis of the potential legal action against the Education Sub-Panel was ill-founded and without legal merit.

5. After the meeting I remained concerned that notwithstanding what I believed to be a lack of legal merit with respect to the position expressed in the Donovan letter, the process of litigation itself might lead to an interruption in the on-going work of the sub-panel pending a final determination of the matter.

6. I believed that in addition to the legal merits, the factor most relevant in assessing the risk that the matter would go to court was the identity and experience of their legal counsel.

7. With respect to the identity and experience of counsel, I believed that I knew the author of the letter. There was a Brian Donovan known to me who had been a classmate at the University of Toronto Law School. I was uncertain as to whether this was the same person, however, because it was then my understanding that Donovan had recently left the firm of Goodman & Carr to practise at Osler, Hoskin & Harcourt.

8. In my view the identity of Mr. Donovan was relevant to the assessment of the case in that based on my personal knowledge of him, I honestly believed Donovan to be a highly ideological individual who would be very interested in the case for ideological reasons. If it were him, I believed that he would be likely to advance the case even on a pro bono basis.

9. In the hope of obtaining more information that would indicate whether or not the threat of litigation was serious, I called Don Guthrie, a partner at Cassels Brock who was known to me as a colleague. I contacted him for the purpose of confirming whether Mr. Donovan was the same Donovan known to me, notwithstanding that my last information was that he was still employed at Osler, Hoskin and Harcourt.

10. With respect to the allegations contained in paragraphs 12 and 13 of the Affidavit of J. Brian Donovan, sworn December 9, 1996, I deny that at any time I impliedly suggested to Mr. Guthrie that Cassels, Brock should discontinue its representation of the Association. In fact when I called I inquired into Mr. Donovan's seniority at the firm. Mr. Guthrie confirmed that Mr. Donovan had recently joined the firm. I then asked if he was about 38 years old, with grey hair and beard. Mr. Guthrie informed me that he had never met Mr. Donovan and did not know his appearance.

11. Mr. Guthrie then asked why I was interested in Mr. Donovan. I told him that Mr. Donovan had threatened to bring an application for an injunction relating to the activities of the Who Does What panel and that I was trying to find out more about him, and whether the threat was meant seriously, as it appeared to be frivolous based on its absence of legal merit.

12. Mr. Guthrie told me that he was not aware of the threatened injunction. I read a copy of Mr. Donovan's letter to Mr. Guthrie. Mr Guthrie expressed his discomfort with the tone of the letter.

13. After my call to Mr. Guthrie, I made two further calls to receptionists at Goodman and Carr and Osler Hoskin and Harcourt, who confirmed that no one else by the name of Brian Donovan worked at those firms. Based on those calls, and my call to Mr. Guthrie, I concluded that the author of the letter and the person known to me were one and the same.

14. Accordingly, on my assumption based on all of the above that the author of the letter and the Brian Donovan known to me from law school days were one and the same, I planned the next week around the likelihood that an application to the Courts would be made, which might present an impediment to the timeliness of the sub-committee's presentation of its recommendations.

15. On or about October 5, 1996 I received a copy of a letter dated October 4, 1996 (Exhibit "B" to this Affidavit), wherein Mr. Donovan revoked his letter of September 26, 1996.

16. With respect to the allegation contained in paragraph 13 of the Donovan Affidavit, I did not contact Mr. Donovan directly because I am employed by the Minister in a political and not a legal function. Any formal communication with Mr. Donovan in respect of the latter's letter of September 26 was to be undertaken by our senior counsel, Mr. David Spring. As has already been explained herein, my call to Mr. Guthrie was to find out information about the identity and experience of Mr. Donovan.

17. My decision to call Mr. Guthrie was made on my own and without any knowledge of the Hon. Allan F. Leach, M.P.P.

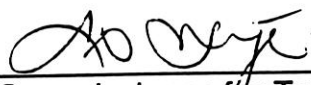
18. I swear this affidavit for the assistance of the Integrity Commissioner in his inquiries into this matter, and for no other or improper purpose.

SWORN before me at the City of Toronto,)

in the Municipality of Metropolitan Toronto)

this 2nd day of January 1997)


John A. Matheson



Commissioner for Taking Affidavits

BRIAN DONOVAN

SAME DAY COURIER

PRIVATE & CONFIDENTIAL

January 10, 1997

The Honourable G.T. Evans, Q.C.
Office of the Integrity Commissioner
101 Bloor Street West
Suite 1301
Toronto ON M5S 2Z7

Dear Mr. Evans:

RE: *Al Leach*

RE: *John Matheson*

The Honourable Marilyn Churley, M.P.P. for Riverdale, has provided me with copies of the Affidavits of Mr. Leach, Mr. Matheson, Mr. Spring and Mr. Guthrie, which have been delivered to you in connection with the above-noted matter. At the request of Ms. Churley, I deliver to you now my Supplementary Affidavit in response to these materials.

I hope that this will be of assistance to you in your investigations. I emphasize, again, that I am prepared to cooperate in your investigation in any manner in which I may properly do so.

Trusting that the above is satisfactory, I remain,

Yours very truly,

Brian Donovan
Pek: AK

Brian Donovan
BD*ak
Encl.

**IN THE MATTER OF a Request for an
Investigation made to the Office of the Integrity
Commissioner in respect of certain conduct of the
Minister of Municipal Affairs and Housing and a
Member of his Political Staff**

AFFIDAVIT OF BRIAN DONOVAN

**I, BRIAN DONOVAN, of the City of Toronto, in the Municipality of Metropolitan
Toronto, MAKE OATH AND SAY AS FOLLOWS:**

1. I am a Barrister and Solicitor of the Bar of Ontario, called to the Bar in February of 1993. I tendered my resignation from the law firm of Cassels, Brock & Blackwell on October 28, 1996, and with effect from November 20, 1996, I ceased to be employed as an associate lawyer with that firm.
2. On December 9, 1996, at the Request of the Honourable Marilyn Churley, M.P.P. for Riverdale, I swore an Affidavit in order to record my knowledge of the matters referred to in her letter of November 25, 1996, addressed to the Honourable G.T. Evans, Q.C., Integrity Commissioner for the Ontario Provincial Parliament. Attached to this my Affidavit and marked collectively as Exhibit "A" are copies of Ms. Churley's letter to Mr. Evans of November 25, 1996, and of my own Affidavit (without exhibits) of December 9, 1996.
3. I have been provided by Ms. Churley with a letter addressed to her from Mr. Evans, accompanied by Affidavits sworn by Allan F. Leach (the "Leach Affidavit"), by John Angus Matheson (the "Matheson Affidavit"), by David Spring (the "Spring Affidavit"), and by Hugh

Donald Guthrie (the "Guthrie Affidavit"). The Leach, Matheson and Spring Affidavits appear to have been sworn on January 2, 1997, while the Guthrie Affidavit appears to have been sworn on December 31, 1996. Attached to this my Affidavit and marked collectively as Exhibit "B" are copies the Leach, Matheson, Spring, and Guthrie Affidavits which I received from Ms. Churley.

4. At Ms. Churley's request, I swear this further Affidavit in response to the materials provided to me by Ms. Churley.

The Leach Affidavit

5. Paragraph 1 of the Leach Affidavit refers to an Affidavit of one M. Brian Donovan. I am not aware whether there is any such person in existence, but I presume that by M. Brian Donovan Mr. Leach intended to refer to me, John Brian Donovan, and to my Affidavit of December 9, 1996, sworn at the request of the Honourable Marilyn Churley, M.P.P. for Riverdale.

6. I have no reason to doubt the veracity of paragraph 3 of the Leach Affidavit insofar as Mr. Leach states that Mr. Matheson showed him a copy of my letter of October 4, 1996; however, I believe that it is extremely likely that if Mr. Leach has discussed the matter with Mr. Matheson, he will be aware that the intervening circumstances between my letter of September 27, 1996 and the writing of my letter of October 4, 1996, are now the subject of a

Complaint and Request for Investigation made to the Discipline Department Law Society of Upper Canada. I am not the complainant in that matter, but Mr. Matheson is one of the solicitors against whom the complaint has been made.

7. I further believe that, if Mr. Leach has discussed this matter with Mr. Matheson, he will know that I was instructed to send the letter of October 4, 1996, without the consent or authority of my clients, by two senior partners of Cassels, Brock & Blackwell, subsequent to Mr. Matheson's telephone conversation with Mr. Guthrie of that firm.

8. I understand from paragraphs 5 and 6 of the Leach Affidavit that Mr. Matheson acted without instructions when he telephoned a senior partner (Guthrie) of Cassels Brock & Blackwell, but that he (Leach) assumes full responsibility for the actions of Mr. Matheson.

9. The statements contained in paragraph 7 of the Leach Affidavit are, in my honest opinion, highly implausible, assuming that they are based on the statements contained in the Matheson Affidavit. While I shall elaborate on this contention further in my observations in respect of the Matheson Affidavit, I take as a case in point Mr. Leach's apparent endorsement of the reasonableness of Mr. Matheson's behaviour in contacting receptionists at the law firms of Goodman and Carr; Osler, Hoskin and Harcourt (a firm with which I have never had any association) and Donald Guthrie, a person who professes never to have met me, in order to ascertain my "identity". Since my identity is not a "secret", it would have been more reasonable to contact me instead. Nevertheless, I do not question Mr. Leach's right to decide, in the

manner that seems most appropriate to him, upon the reasonableness of the conduct of members of his staff. The reasonableness of Mr. Leach's decisions form part of the subject matter of this Request for Investigation.

The Matheson Affidavit

10. From reading the statements contained in paragraph 3 of the Matheson Affidavit, it would appear that Mr. Matheson has never read my letter to Mr. Lowden of the Sub-panel on Education Finance in anything more than a cursory manner. In my letter of September 27, 1996 to Mr. Lowden, I did not "threaten (*sic*) to bring an application for an injunction", the respondent to which would be the Sub-panel of Education Finance. In contrast, my letter requested certain specific information about the constitution, operations and terms of reference of the Sub-panel, and stated that if such information (which had already been requested by my clients) was not forthcoming, then I would be seeking instructions to seek injunctive and other prerogative relief. My letter of September 27, 1996, therefore, was in the nature of a request for information about the Sub-panel, and stated on its face (as was in fact the case) that no decision to proceed with an Application in the Ontario Court (General Division) had been taken. It remains unclear to me why Mr. Matheson, who professes to manage the "strategic communications" of Mr. Leach, chose to construe my letter of September 27, 1996 as a "threat", rather than simply communicate the information requested.

11. Having read and reflected upon paragraphs 4 and 5 of the Matheson Affidavit, I remain at a loss to understand why Mr. Matheson considered "the position expressed in the Donovan letter" to be one of pending or inevitable litigation. As indicated above, the sole "position" expressed in my letter of September 27, 1996, was that my clients had requested information about the Sub-panel, had received no adequate response, and now had requested me to write to Mr. Lowden on their behalf requesting the same and further information about the Sub-panel. The letter stated, on its face, that I had received no instructions to commence any form of legal action at all.

12. From reading paragraph 6 of the Matheson Affidavit, I gather that Mr. Matheson considered "the factor most relevant in assessing the risk that the matter would go to court" to have been my "identity and experience". I cannot imagine how Mr. Matheson could arrive at such a conclusion; however, in that he apparently considered my "identity and experience" to be "the factor most relevant" in deciding upon a course of action, I briefly state my "identity and experience", as follows:

I was born in Ottawa on September 24, 1959. My early higher education took place in Winnipeg, Manitoba, where I attended the Jesuit Saint Paul's College from 1973 to 1977. From 1977 to 1981, I studied economics and political science at the University of Manitoba, where I graduated in 1981 with the degree of B.A. (Hons.), with first class honours. In 1981-1982, I attended the University of California, Berkeley on a graduate fellowship from the Department of Political Science. In 1982 I graduated from Berkeley with the degree of M.A. in political science. In 1982, despite offers to remain at Berkeley to complete my Ph.D., I accepted a Commonwealth Scholarship to study politics at the University of Oxford. I attended as a student at Oxford, first as a Commonwealth Scholar, and subsequently on a Doctoral Fellowship from the Social Sciences and Humanities Research Council of Canada, and obtained the degrees of M.Phil. in 1984 and D.Phil. in 1987. In 1986, I became a Research Fellow of Nuffield

College, one of Oxford University's elite colleges devoted exclusively to study and research in the social sciences at the post-graduate level. While at Oxford, I also engaged in undergraduate teaching, and held lectureships at a number of Oxford Colleges.

In 1988, I returned to Canada and studied law at the University of Toronto from 1988 to 1991. While at law school, I received numerous academic awards, including prizes for highest standing in the categories of contracts, constitutional law, criminal procedure, and conflict of laws. Upon graduating from law school with my LL.B. in 1991, I served in 1991 and 1992 as Law Clerk to the Rt. Hon. Antonio Lamer, Chief Justice of Canada and of the Supreme Court of Canada. After the completion of my Clerkship at the Supreme Court of Canada, I completed the Ontario Bar Admission Course in 1992, and obtained distinctions in the categories of Public Law and Wills and Estate Planning.

I was called to the Bar of Ontario in February, 1993, and practised civil litigation at Goodman and Carr from 1992 until 1995. I have prepared and argued significant reported cases in both public law and commercial law matters; see, for instance, *Re Westpac Banking Corporation and The Duke Group Limited, et al.* (1994), 20 O.R. (3d) 515 (Gen. Div.); *Re K. and B.* (1995), 25 O.R. (3d) 679 (Prov. Div.)

I am a member of the Canadian Bar Association and of the International Bar Association, and have served as a Special Consultant to the American Law Institute in the preparation of its International Statement of the Canadian Law of Bankruptcy and Insolvency.

Having set out above an abbreviated history of my "identity and experience", I remain at a loss to understand how any reasonable person could conclude that this was relevant in any way to the prospect of litigation, let alone "the factor most relevant in assessing the risk that the matter would go to court". Nevertheless, this is Mr. Matheson's sworn evidence, and also that of Mr. Leach, as he adopts Mr. Matheson's explanation of his (Matheson's) actions without qualification in paragraph 7 of the Leach Affidavit. I respectfully submit that Mr. Matheson's professed belief in the relevance of my "identity and experience" is so implausible that it should not be believed.

13. Contrary to Mr. Matheson's professed belief expressed in paragraph 7 of his affidavit, I have never had any association with the law firm of Osler, Hoskin & Harcourt.

14. Having read and reflected upon paragraph 8 of the Matheson Affidavit, I am intrigued by Mr. Matheson's professed belief that I am a "highly ideological individual"; indeed, I am not certain what Mr. Matheson intends to convey by this expression. The most reasonable interpretation I am able to place upon the characterization of a person as an "ideological individual" is "an individual with political beliefs and preferences". If this is the meaning intended to be expressed by Mr. Matheson then I presume that he (Matheson), and, *a fortiori*, Mr. Leach, are also "highly ideological individuals". I am uncertain why Mr. Matheson believes that such individuals are likely to promote litigation on a *pro bono* basis; however, my retainer by the Frankland Community School Parent/Staff Association was not on a *pro bono* basis, and I received a substantial monetary retainer in respect of the matter. These funds would have been deposited into the trust account of Cassels Brock & Blackwell but for the intervention of senior partners of that firm who required me to abandon the case.

15. In reading and reflecting upon paragraphs 9 through 14 of the Matheson Affidavit, and with no disrespect intended, I am unable to learn of Mr. Matheson's efforts to ascertain my "identity" without a sense of the comical. According to Mr. Matheson, his efforts consisted of telephoning a senior partner of Cassels Brock & Blackwell who professed never to have met me (Guthrie), telephoning receptionists at Osler, Hoskin & Harcourt (a firm with which I have never had any association), and telephoning receptionists at Goodman and Carr, a firm where I was

not at that time employed. A far simpler procedure to ascertain my identity would have been to telephone me at my direct line as indicated on my letter of September 27, 1996, and asking me whether I was the same Brian Donovan that he had known at law school. I do not regard this information to be secret, privileged, or politically sensitive, and I would gladly have disclosed my identity to Mr. Matheson had he asked. Once again, I respectfully submit that Mr. Matheson's account of his behaviour is so implausible that it ought not to be believed.

16. With respect to paragraph 16 of the Matheson Affidavit, my honest belief is that the contents thereof are utterly implausible and should not be believed. There is a clear and perceptible difference between Mr. Matheson telephoning me in order to ascertain my "identity", and formal discussions between me and Crown counsel as to the contents of my letter of September 27, 1996. In my view, Mr. Matheson is simply trying disingenuously to equate the former with the latter.

17. I note from paragraph 17 of the Matheson Affidavit that Mr. Matheson acted without the knowledge or instructions of Mr. Leach; however, the Leach Affidavit expressly states that Mr. Leach takes full responsibility for Mr. Matheson's behaviour, and, indeed, considers it to have been proper and reasonable.

The Spring Affidavit

18. I have also read and reflected upon the Affidavit of David Spring, and as I have no reason to doubt the veracity of the statements contained therein, I have little comment thereon. Nevertheless, I would have been interested to learn of Mr. Spring's legal and academic qualifications, and, in particular, whether he considers himself to be an expert in the field of administrative law and prerogative remedies, such that he can opine on these matters with ease and accuracy.

19. I note, further, that the requests for information, as opposed to legal opinion, about the Sub-panel on Education Finance made by my clients through me were never answered by Mr. Spring.

The Guthrie Affidavit

20. I have also read the Guthrie Affidavit and have now had the opportunity to reflect thereon. Upon reading paragraph 7 thereof, I can only reiterate my observations contained in paragraphs 10 and 11 of this my Affidavit, above, in respect of the Matheson Affidavit. I remain unable to understand why a letter in the nature of a request for information, which stated on its face that I had received no instructions to commence any form of legal action at all, was construed by Mr. Guthrie as a "threat" of litigation. Mr. Guthrie states that my letter of September 27, 1996 was read to him over the telephone; consequently, it would have been

helpful if Mr. Guthrie had been able to explain how it is that my letter, which stated that I had not received instructions to commence legal action, constituted a threat of litigation.

21. With respect to paragraph 8 of the Guthrie Affidavit, I did indeed cause a written conflict search to be circulated throughout the firm. Indeed, a copy of this written conflict search is annexed to the Guthrie Affidavit as Exhibit "B" thereto. I note that Mr. Guthrie's partner, Mr. John W.R. Day, actually had the courtesy to respond to my conflict inquiry indicating that he was aware of no conflict, as appears on the face of Exhibit "B" to Mr. Guthrie's Affidavit. In fact, I received a further response to my conflict search which indicated that there was no conflict, by the simple handwritten inscription "none" on the face of the document circulated.

22. With respect to paragraph 9 of the Guthrie Affidavit, it is correct (to the best of my knowledge) that the Sub-panel on Education Finance has offices in the same government building as the Ministry of Education and Training. It would be wrong to assume from this, however, that the Sub-panel is associated or connected with the Ministry of Education and Training. The Sub-panel is not an emanation of any Ministry of the Ontario Government; however, it does, contrary to Mr. Guthrie's suggestion, appear to have some undefined reporting responsibility to the Ministry of Municipal Affairs and Housing, by virtue of its apparent involvement with Mr. Leach and Mr. Matheson.

23. Consequently, it is unclear why Mr. Guthrie concludes paragraph 10 of his Affidavit by suggesting that Cassels Brock & Blackwell had "a true ethical conflict as well as a business

conflict" in acting adverse in interest to the Sub-panel, in that the Sub-panel appears to be associated with a wholly different Ministry than the Ministry of Education and Training (i.e. Ministry of Municipal Affairs and Housing), although it is not an emanation or a department of any Ministry of the Ontario Government. Perhaps Mr. Guthrie meant to convey that the Cassels Brock & Blackwell law firm stood to lose significant monetary retainers from the Government of Ontario if a letter emanating from the firm was embarrassing to the Government (i.e., a "business conflict"). In any case, I reiterate that Mr. Guthrie's partner, Mr. Day, took the courtesy of informing me that he was aware of no conflict.

24. I do not know why none of Mr. Guthrie nor the two senior partners referred to in paragraph 7 of my Affidavit of December 9, 1996 say that they never saw the conflict search; evidently other partners of the firm did see the conflict search, and at least two had the courtesy to respond that they perceived no conflict.

25. Paragraph 13 of Mr. Guthrie's Affidavit is misleading in its discussion of opening a client matter for the file and the assignment of a client file number. This is a bureaucratic procedure which can take several days to complete. Indeed, when I joined Cassels Brock & Blackwell in November 1995 I brought with me a major client. A "file number" was not assigned to this matter, to the best of my recollection, for between one and two weeks, in that there was some disagreement as to which partner would "take credit" for bringing the file to the firm. Ultimately, at my insistence, a file number was assigned indicating that I had brought the client to the firm, which was in fact the case.

I disagree with the opinion expressed in paragraph 15 of the Guthrie Affidavit. It is not clear how requests for information about the operations and constitution of the Sub-panel on Education Finance, a public body, made by a lawyer on behalf of clients, is a "serious" matter. Evidently Mr. Guthrie considers this to be the case. My letter of September 27, 1996 expressly stated that I had not received instructions to commence any legal proceedings against "an emanation of the Government of Ontario", and I believe that if Mr. Guthrie reads the letter he will equally conclude that this is the case.

27. The description of the meeting between me and two senior partners of Cassels Brock & Blackwell contained in paragraphs 17 and 18 of the Guthrie Affidavit is inaccurate; however, given that Mr. Guthrie did not attend at that meeting, I attribute no mendacity to Mr. Guthrie in this regard. He may have been misled by others. What actually happened at the meeting between me and the two senior partners is correctly set out in paragraphs 7, 8 and 9 of my Affidavit of December 9, 1996. The subject matter of this meeting is now the subject of a Complaint and Request for Investigation directed (not by me) to the Discipline Department of the Law Society of Upper Canada, and therefore I do not propose to comment in great detail at this point on what transpired. I will add, however, that one of the senior partners present at the meeting stated that he would convey Mr. Guthrie's position to me, and I was told that had Mr. Guthrie been present, I would have been "lying on the floor bleeding with Mr. Guthrie kicking me". I am pleased that Mr. Guthrie records my behaviour at the meeting to have been gentlemanly and polite, as this is the standard of conduct to which I customarily attempt to

conform. I would suggest that the standard of conduct attributed to Mr. Guthrie by his two partners falls somewhat short of this.

28. While the full description of the meeting between me and the two senior partners of Cassels Brock & Blackwell is currently before the Discipline Department of the Law Society of Upper Canada, Mr. Guthrie is wrong to suggest that I wrote my letter of October 4, 1996, voluntarily; in contrast, I did so on instructions from my employers and without the consent or authority of my clients. I resigned my position as a lawyer at the Cassels Brock & Blackwell firm as a result of the action I was instructed to take.

SWORN before me at the City of Toronto,
in the Municipality of Metropolitan Toronto
this 10th day of January, 1997.

M. Ventura

Commissioner for Taking Affidavits

MARGARET VENTURA, a Commissioner, etc.,
Municipality of Metropolitan Toronto, for
Goodman and Carr, Barristers and Solicitors.
Expires January 19, 1999.

B. Donovan

Brian Donovan

This is Exhibit "A" referred to in the Affidavit
of Brian Donovan sworn before me on this 10th day
of January, 1997.


.....
A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

MARGARET VENTURA, a Commissioner, etc.,
Municipality of Metropolitan Toronto, for
Goodman and Carr, Barristers and Solicitors.
Expires January 19, 1999.

Information



November 25, 1996

Hon. G.T. Evans, Q.C.
Office of the Integrity Commissioner
4th Floor, 101 Bloor St. W.
Toronto, Ontario

OPEN LETTER

Dear Mr. Evans:

I write to ask you to investigate whether the Minister of Municipal Affairs and Housing, the Hon. Al Leach, has breached the Members' Integrity Act. While the Act speaks to the conduct of Members, we must also be aware of the public's perception of senior political staff. A Minister's executive assistant is regularly assumed to be speaking with the voice of his or her Minister. Indeed, staff are normally instructed to comport themselves as if this were the case.

In the case in question, the Minister has clearly stated that his executive assistant — the senior member of the Minister's political staff — telephoned a law firm that represented a group of parents who wished to protest the work of a subpanel operating under the Minister's mandate. The parents had written a letter stating they were considering launching legal proceedings against the government.

The Minister is on the record as saying: "The application seemed so frivolous that my executive assistant called Cassels Brock and said, 'Are you serious?'" The Minister went further, implicating himself in this intimidating action, when he said: "We made an inquiry as to whether this was a serious allegation." [Hansard, November 7, 1996]

Today in the Legislature I raised the matter again during Question Period and the Minister responded in a similar vein, deeming it appropriate for his staff to have telephoned and questioned the intent of the lawyer's clients.

While the Minister seems to wholeheartedly approve of his executive assistant's action, it is still unclear whether or not he directed that this action be taken, if others gave that direction or if the staff member acted on his own. Either way, as I indicated previously, senior staff are perceived to be acting on behalf of the Minister.

.../2

The result for the parents at Frankland Community School, located in my riding of Riverdale, was devastating. Their lawyer has indicated he was instructed by his superiors to drop their case, and he subsequently resigned from the firm. The parents' questions remain unanswered. The subpanel which they questioned has made its report to the Minister so that the opportunity to have questions answered or to apply for an injunction has passed.

This appears to be an abrogation of the rights of citizens, who should expect to be able to ask questions of their government and consider legal recourse without intimidation by political staff. I ask you to undertake an investigation of this event and determine whether the spirit or intent of the Members' Integrity act has been broken.

Sincerely,

Marilyn Churley
MPP -- Riverdale

E Mail to <ndpmail@ndp.on.ca>
-opseu 593

**IN THE MATTER OF a Request for an
Investigation made to the Office of the Integrity
Commissioner in respect of certain conduct of the
Minister of Municipal Affairs and Housing and a
Member of his Political Staff**

AFFIDAVIT OF BRIAN DONOVAN

**I, BRIAN DONOVAN, of the City of Toronto, in the Municipality of Metropolitan
Toronto, MAKE OATH AND SAY AS FOLLOWS:**

1. I am a Barrister and Solicitor of the Bar of Ontario, called to the Bar in February of 1993. I tendered my resignation from the law firm of Cassels, Brock & Blackwell on October 28, 1996, and with effect from November 20, 1996, I ceased to be employed as an associate lawyer with that firm.
2. I have received from the Honourable Marilyn Churley, M.P.P. for Riverdale, a copy of her letter of November 25, 1996 addressed to the Honourable G.T. Evans, Q.C., Integrity Commissioner for the Ontario Provincial Parliament. A copy of Ms. Churley's letter is annexed to this my Affidavit as Exhibit "A". Ms. Churley has asked me to swear this Affidavit in order to record my knowledge of the subject matter in respect of which she has requested an investigation, for the assistance of the Integrity Commissioner in his inquiries.
3. In September, 1996, I was retained by the Parent Staff Association of Frankland Community School (the "PSA") to make formal inquiries of the Subpanel on Education Finance of the Ontario Who Does What Panel, a body chaired by Mr. David Crombie. The PSA was,

at that time, seriously concerned that a letter by Ms. Colleen D. Morris, one of its members, addressed to Mr. Steve Lowden, Chair of the Subpanel on Education Finance, had gone unanswered. A copy of Ms. Morris' letter, dated September 20, 1996, is attached to this my Affidavit as Exhibit "B".

4. Acting on my clients' instructions, I wrote a letter to Mr. Lowden, dated September 26, 1996, but delivered on September 27, 1996. The purpose of this letter was two-fold. First, I made certain specific requests for certain specific information about the Subpanel and its activities, including, but not limited to the following:

- (a) Whether the Subpanel had any formal terms of reference, and, if so, if it proposed to produce these to the public;
- (b) Whether the Subpanel proposed to receive oral depositions from any of the interests which would potentially be affected by its recommendations; and
- (c) How members of the Subpanel were chosen, whether they were paid, and what selection process was used to ensure a fair representation of interested parties in the course of the Subpanel's selection.

5. Secondly, I inquired by what legal instrument, if any, the Subpanel had been constituted, and suggested that my clients were considering an Application for Judicial Review of the Subpanel's activities, seeking orders in the nature of *certiorari* and *prohibition*, to quash the Subpanel's constitution and restrain it from reporting if it was improperly legally constituted, or if it was found to have failed to comply with any standards of procedural fairness which it

was legally bound to observe. A copy of my letter dated September 26, 1996, addressed to Mr. Lowden, is annexed to this my Affidavit as Exhibit "C".

6. By September 30, 1996, I had received no response to my letter to Mr. Lowden dated September 26, 1996. At that time, the PSA had been given to understand that the Subpanel would report its recommendations by October 5, 1996. Given the very tight time frame apparently involved, I wrote again to Mr. Lowden on September 30, 1996 again requesting a response. A copy of my second letter to Mr. Lowden is attached to this my Affidavit as Exhibit "D".

7. On October 1, 1996, I was summoned to a meeting with two Senior Partners of Cassels, Brock & Blackwell. In the course of this meeting, I was told that the firm had "received a call from the Province" in respect of my letter to Mr. Lowden dated September 26, 1996. I was also told that my letter had been very widely circulated, and that many people were very upset about it. I was told, further, that the Cassels, Brock & Blackwell law firm had been retained on various occasions by the Ontario Ministry of Education and Training. I was then instructed to write a further letter to Mr. Lowden, without the consent of my clients, withdrawing my letter to Mr. Lowden of September 26, 1996 and stating that Cassels, Brock & Blackwell would not consider representing the PSA in the matter.

8. In response, I pointed out that I had performed a conflict search within the firm, and that, in any case, my clients did not intend to seek any legal remedy against the Ministry of Education

and Training. In contrast, any Application for Judicial Review would have named as Respondent the Subpanel on Education Finance, which is not an emanation of the Ontario Ministry of Education and Training, nor, indeed, of any other Ministry of the Ontario Government. I also pointed out that I had been given a retainer in excess of \$2,000.00 in respect of the matter.

9. The Senior Partners of Cassels Brock & Blackwell with whom I was summoned to meet did, nevertheless, insist that I cease my representation of the PSA, and instructed me to write a further letter to Mr. Lowden formally withdrawing my letter of September 26, 1996, and stating that Cassels Brock & Blackwell would not consider acting for the PSA in the matter. On the instructions of these Senior Partners of Cassels Brock & Blackwell, I sent this final letter to Mr. Lowden, a copy of which is attached to this my Affidavit as Exhibit "E". On October 28, 1996, I tendered my resignation from Cassels Brock & Blackwell, in consequence of the action which I had been instructed to take.

10. While I did not know this at the relevant time, I now believe that the "call from the Province" referred to by the Senior Partners of Cassels Brock & Blackwell with whom I met on October 1, 1996 was made by John Matheson, Executive Assistant to Al Leach, Ontario's current Minister of Municipal Affairs and Housing. Attached to this my Affidavit as Exhibit "F" is a copy of an excerpt from Ontario Hansard of November 7, 1996, wherein Mr. Leach admitted in the House that his Executive Assistant had called Cassels Brock & Blackwell in respect of my letter dated September 26, 1996 to Mr. Lowden. Mr. Leach characterized the

matter as "frivolous" and stated that his Executive Assistant had asked Cassels, Brock & Blackwell "Are You Serious?"

11. Attached to this my Affidavit and marked collectively as Exhibit "G" are copies of articles in respect of this matter printed in the Globe & Mail (John Barber - November 8, 1996), and in the Toronto Star (Peter Small - November 12, 1996), which identify John Matheson as the Executive Assistant who made the telephone call to Cassels Brock & Blackwell. I have no knowledge as to whether Mr. Matheson made the telephone call of his own initiative or at the instigation of Mr. Leach.

12. I do not believe that Mr. Matheson telephoned Cassels Brock & Blackwell in order to determine whether Cassels Brock & Blackwell were "serious" about the letter, or because the letter seemed "frivolous", in that:

- (a) At no point did Mr. Matheson ever attempt to make contact with me, the author of the letter; in contrast, he apparently contacted a senior partner of Cassels Brock & Blackwell who had no knowledge of the matter; and
- (b) The letter itself consisted principally of formal requests for information about the constitution and operations of a public body, the Subpanel on Education Finance, and it is not clear how requests made by citizens through a lawyer for information about a public body can be frivolous.

13. My honest opinion is that the true purpose of Mr. Matheson's telephone call to Cassels Brock & Blackwell was to cause Cassels Brock & Blackwell to instruct me to withdraw my legal representation from the PSA (as it did) in order that the questions posed in my letter dated

September 26, 1996 would not have to be answered, and the Subpanel on Education Finance would not be subject to an Application for Judicial Review on any of the proposed grounds set out in that letter. I believe that if Mr. Matheson's true purpose in telephoning Cassels Brock & Blackwell had been as stated by Mr. Leach in the House, then Mr. Matheson would have contacted me, the author of the letter, and not my employers.

14. It is my honest opinion that Mr. Matheson's telephone call to Cassels Brock & Blackwell, whether instigated by Mr. Leach or made of his own volition, constituted a discreditable interference in the relationship between me and my clients, made for political purposes.

15. As a result of Mr. Matheson's actions, my clients have been permanently and irretrievably prejudiced in whatever cause of action they may have had in the nature of injunction or *prohibition* against the Subpanel on Education Finance, in that the Subpanel has already reported its findings and recommendations. Moreover, I am advised by the PSA, and I do verily believe, that none of the questions posed in my letter dated September 26, 1996, has been answered.

16. I swear this Affidavit at the request of the Honourable Marilyn Churley, M.P.P. for Riverdale, for the assistance of the Integrity Commissioner in his inquiries into this matter, and

for no other or improper purpose. I am, further, prepared to cooperate with the Integrity Commissioner in his inquiries in any way in which I may properly do so.

SWORN before me at the City of Toronto,
in the Municipality of Metropolitan Toronto
this ^{9th} day of December, 1996



Brian Donovan



Commissioner for Taking Affidavits

brian.aff

**MARGARET VENTURA, a Commissioner, etc.,
Municipality of Metropolitan Toronto, for
Goodman and Carr, Barristers and Solicitors.
Expires January 19, 1999.**

This is Exhibit "B" referred to in the Affidavit
of Brian Donovan sworn before me on this 10th day
of January, 1997.


.....
A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

MARGARET VENTURA, a Commissioner, etc.,
Municipality of Metropolitan Toronto, for
Goodman and Carr, Barristers and Solicitors.
Expires January 19, 1999.

IN THE MATTER OF a request for an
Investigation made to the Office of the Integrity
Commissioner in respect of certain conduct of the
Minister of Municipal Affairs and Housing and a
Member of his Political Staff

AFFIDAVIT OF ALLAN F. LEACH

I, **ALLAN F. LEACH**, of the City of Toronto in the Municipality of Metropolitan Toronto, make oath and do solemnly swear as follows:

I am the Member of Provincial Parliament for St. George - St. David, and Minister of Municipal Affairs and Housing. As such, I have knowledge of the matters hereinafter deposed to:

1. On or about the morning of September 27th, 1996 I was informed by telephone call from John Matheson, my executive assistant, that a letter from M. Brian Donovan dated September 26th, 1996 had been received at the Ministry. He informed me that the letter threatened legal action on behalf of the Parent Staff Association of the Frankland Community School (the "Association"), against the Who Does What Sub-Panel on Education Finance. He further informed me that David Spring, Senior Counsel to the Ministry, was evaluating the letter. why
2. On September 30, 1996, I was informed by John Matheson that while the threat of litigation was on-going, it was the preliminary opinion of Mr. Spring that the substance of the claim was without legal merit.
3. On or about October 4, 1996, I was informed by John Matheson that Mr. Donovan had withdrawn his letter. I was provided with a copy of a letter from Mr. Donovan dated October 4, 1996, which stated that he had undertaken his representation of the Frankland Parents Association without the prior consent of

his employer, Cassels, Brock and Blackwell.

4. I am advised by Mr. Matheson and do verily believe that in the course of formulating his assessment of the risk of litigation in this matter, he made a telephone call to Mr. Don Guthrie at Cassels, Brock and Blackwell, for the purpose of finding out the seriousness of the claim.

5. At no time did I ever contact anyone at Cassels, Brock and Blackwell in connection with this matter. Furthermore, at no time did I ever instruct Mr. Matheson or any member of my staff to contact that firm.


*Matheson is
the scapegoat*

6. I believe that as Minister I am responsible for the actions of my staff.

7. I have investigated this matter and am satisfied that the call was made for the purpose of evaluating the seriousness of the claim, and not for any improper purpose. I am advised by Mr. Matheson and do verily believe that further particulars of his involvement in this matter are stated in his affidavit, sworn January 2, 1997 and attached hereto as Exhibit "A".

B.S.

SWORN before me at the City of Toronto,)
in the Municipality of Metropolitan Toronto)
this 2 day of January, 1997)


Allan F. Leach


Commissioner for Taking Affidavits

IN THE MATTER OF a request for an
Investigation made to the Office of the
Integrity Commissioner in respect of certain
conduct of the Minister of Municipal Affairs
and Housing and a Member of his Political
Staff

AFFIDAVIT OF JOHN MATHESON

(Exhibit "A" to the Affidavit of Allan F. Leach)

I, JOHN ANGUS MATHESON, of the City of Etobicoke in the Municipality of Metropolitan Toronto, make oath and do solemnly swear as follows:

1. At all times relevant to these proceedings, I was the executive assistant to the Honourable Allan F. Leach, Minister of Municipal Affairs and Housing. I am also a barrister and solicitor called in 1993 to the Bar of Ontario. As such, I have knowledge of the matters hereinafter deposed to:
2. As executive assistant to the Minister, I am responsible for the planning and operations of his office. In particular, I manage his strategic communications and am responsible for the operation of his legislative agenda. Although I am a lawyer by profession, I do not act as legal counsel to the Ministry of Municipal Affairs and Housing.
3. On or about September 27th, 1996, I received a copy of a letter dated September 26th, 1996, and written by J. Brian Donovan. A copy of this letter is attached hereto as Exhibit "A". In that letter, Mr. Donovan threatened to bring an application for an injunction to "restrain further activity and deliberation" by the sub-panel on education finance of the Who Does What commission. Given the tight operational time frames under which the sub-panel was operating, I regarded the threatened injunction as a potential communications and operational challenge.

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4. Later that day, I attended a meeting with inter alia David Spring, Senior Counsel to the Ministry of Municipal Affairs and Housing at which time that letter was discussed. Mr. Spring informed me that in his preliminary opinion, the basis of the potential legal action against the Education Sub-Panel was ill-founded and without legal merit.

5. After the meeting I remained concerned that notwithstanding what I believed to be a lack of legal merit with respect to the position expressed in the Donovan letter, the process of litigation itself might lead to an interruption in the on-going work of the sub-panel pending a final determination of the matter.

process of litigation is the problem

6. I believed that in addition to the legal merits, the factor most relevant in assessing the risk that the matter would go to court was the identity and experience of their legal counsel.

clarify

7. With respect to the identity and experience of counsel, I believed that I knew the author of the letter. There was a Brian Donovan known to me who had been a classmate at the University of Toronto Law School. I was uncertain as to whether this was the same person, however, because it was then my understanding that Donovan had recently left the firm of Goodman & Carr to practise at Osler, Hoskin & Harcourt.

Never practices at OH

8. In my view the identity of Mr. Donovan was relevant to the assessment of the case in that based on my personal knowledge of him, I honestly believed Donovan to be a highly ideological individual who would be very interested in the case for ideological reasons. If it were him, I believed that he would be likely to advance the case even on a pro bono basis.

B.S.

1) not pro bono
2) significant retainer
3) ideological = person with political beliefs?

9. In the hope of obtaining more information that would indicate whether or not the threat of litigation was serious, I called Don Guthrie, a partner at Cassels Brock who was known to me as a colleague. I contacted him for the purpose of confirming whether Mr. Donovan was the same Donovan known to me, notwithstanding that my last information was that he was still employed at Osler, Hoskin and Harcourt.

what last information

10. With respect to the allegations contained in paragraphs 12 and 13 of the Affidavit of J. Brian Donovan, sworn December 9, 1996, I deny that at any time I impliedly suggested to Mr. Guthrie that Cassels, Brock should discontinue its representation of the Association. In fact when I called I inquired into Mr. Donovan's seniority at the firm. Mr. Guthrie confirmed that Mr. Donovan had recently joined the firm. I then asked if he was about 38 years old, with grey hair and beard. Mr. Guthrie informed me that he had never met Mr. Donovan and did not know his appearance.

to ascertain
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person
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11. Mr. Guthrie then asked why I was interested in Mr. Donovan. I told him that Mr. Donovan had threatened to bring an application for an injunction relating to the activities of the Who Does What panel and that I was trying to find out more about him, and whether the threat was meant seriously, as it appeared to be frivolous based on its absence of legal merit.

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me

12. Mr. Guthrie told me that he was not aware of the threatened injunction. I read a copy of Mr. Donovan's letter to Mr. Guthrie. Mr Guthrie expressed his discomfort with the tone of the letter.

not a person
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13. After my call to Mr. Guthrie, I made two further calls to receptionists at Goodman and Carr and Osler Hoskin and Harcourt, who confirmed that no one else by the name of Brian Donovan worked at those firms. Based on those calls, and my call to Mr. Guthrie, I concluded that the author of the letter and the person known to me were one and the same.

Calls to
G+C and
OHH
↓
Why not
call me

14. Accordingly, on my assumption based on all of the above that the author of the letter and the Brian Donovan known to me from law school days were one and the same, I planned the next week around the likelihood that an application to the Courts would be made, which might present an impediment to the timeliness of the sub-committee's presentation of its recommendations.

15. On or about October 5, 1996 I received a copy of a letter dated October 4, 1996 (Exhibit "B" to this Affidavit), wherein Mr. Donovan revoked his letter of September 26, 1996.

16. With respect to the allegation contained in paragraph 13 of the Donovan Affidavit, I did not contact Mr. Donovan directly because I am employed by the Minister in a political and not a legal function. Any formal communication with Mr. Donovan in respect of the latter's letter of September 26 was to be undertaken by our senior counsel, Mr. David Spring. As has already been explained herein, my call to Mr. Guthrie was to find out information about the identity and experience of Mr. Donovan.

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function

17. My decision to call Mr. Guthrie was made on my own and without any knowledge of the Hon. Allan F. Leach, M.P.P.

18. I swear this affidavit for the assistance of the Integrity Commissioner in his inquiries into this matter, and for no other or improper purpose.

SWORN before me at the City of Toronto,
in the Municipality of Metropolitan Toronto
this 2nd day of January 1997

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John A. Matheson



Commissioner for Taking Affidavits

EXHIBIT "A"

WRITER'S DIRECT LINE: (416) 869-5452
OUR FILE NO:

VIA DELIVERY AND FAX

September 26, 1996

Mr. Steve Lowden
Chair
Sub-Panel on Education Finance
Ministry of Education & Training
Mowat Block
24th Floor
900 Bay Street
Toronto, ON M7A 1L2

Dear Mr. Lowden:

Re: **Sub-panel on Education Finance**

We have been consulted by the Parent/Staff Association of Frankland Community School (the "PSA") in respect of the appointment and activities of your sub-panel on education finance. Our client, the PSA, has repeatedly attempted to obtain pertinent information from your sub-panel which ought reasonably to be accessible to such a concerned organization under the circumstances. Indeed, the terms of reference of your sub-panel have been requested, which request has been refused.

Accordingly, we have advised our client that the activities and deliberations of your sub-panel are subject to judicial challenge on the basis of basic administrative law principles of administrative reasonableness and procedural fairness.

We understand that your sub-panel proposes to report its findings and conclusions on or about October 5, 1996, and that such report will have an impact upon the interests of many parties, including our client. Consequently, unless your sub-panel becomes immediately more forthcoming, we shall be seeking instructions to commence immediate judicial proceedings to restrain further activity and deliberation by your sub-panel by way of injunction, and *certiorari* to quash the sub-panel's constitution, with *prohibition* in aid to preclude the delivery of your report by the proposed October 5, 1996 deadline.

Without purporting to be exhaustive, our client's legitimate concerns include the following:

1. As indicated above, the terms of reference for your sub-panel have been requested, and this request has been refused. In contrast, we have most recently been provided (as of September 25, 1996) with a set of draft terms of reference. Are we to understand that the sub-panel on education finance has been proceeding with its investigations and deliberations to date in the absence of final terms of reference? If so, the sub-panel's activities have clearly been carried on without proper authority.

In this connection, we require immediate answers to the following questions:

- (a) Do final terms of reference for the sub-panel on education finance exist?
 - (b) If such terms of reference do exist, when were they adopted?
 - (c) If such terms of reference do exist, kindly produce a copy of same immediately.
2. By letter dated September 20, 1996, Ms. Colleen D. Morris on behalf of the PSA, requested that you notify the PSA as to the dates on which the sub-panel will be receiving depositions. Ms. Morris has received no reply. Please indicate at once when you will be receiving oral depositions from parties whose interests will obviously be affected by any recommendations which your sub-panel may make, including our client.
3. We are distressed to have been informed that the activities of the sub-panel have been conducted under what can only be described as an aura of secrecy. Our understanding is that information in respect of the location of the sub-panel's proceedings has been denied when requested, even when such requests have been for the purpose of delivering relevant materials to the sub-panel. Such a practice is clearly unacceptable, and gives rise to an inference of bad faith.
4. The legal authority for the appointment of the sub-panel (if any) appears to have been kept mysterious. In this connection, we require immediate answers to the following questions:
 - (a) How were the members of the sub-panel appointed?
 - (b) Are the sub-panel members paid for their work, and, if so, on what basis?
 - (c) What was the selection process utilized to ensure a fair representation of interested parties in the course of the selection of the sub-panel?

- (d) From what pool were the members of the sub-panel selected, and was the process of selection made public?
 - (e) By means of what legal instrument (if any) were the members of the sub-panel appointed?
5. The composition of the sub-panel on education finance is seriously defective, in that it fails to represent parties whose interests will clearly be affected by any report or recommendations made by the sub-panel. Most blatantly, the Metropolitan Toronto School Board is not represented. Equally, the Ontario Secondary School Teachers Federation is unrepresented. We are advised that knowledgeable members of these and other educational organizations are willing and prepared to serve on the sub-panel. None of them have been selected. Why not?

Under the circumstances, we have advised our client that any report or recommendations made by your sub-panel as presently constituted will be fundamentally defective, in that it is not clear that the sub-panel was ever properly constituted, and legitimate apprehensions of bias, and procedural and administrative unfairness, arise. I now write, further to Ms. Morris' letter of September 20, 1996 to request that your sub-panel immediately cease its activities and deliberations, pending resolution of the very serious concerns outlined above. I trust we shall receive your early and co-operative response, and that it will not be necessary to obtain the assistance of the courts to restrain the sub-panel's current activities in order to ensure a fair and equitable result.

Please govern yourself accordingly.

Yours very truly,
CASSELS BROCK & BLACKWEL



Per: J. Brian Donovan

JBD/tz

cc: Ms. Gisele Lilonde
Ms. Enid Slack
Mr. James Downey
Ms. Linda Rydholm
Mr. John Snobelen (Delivered)
Ms. Gay Young
Ms. Colleen Morris
Ms. Maria Bahadur
Ms. Jane Archibald
Mr. Chris Malkiewicz (fax 751-7079)

+416-590-8877 CASSELS

Cassels Brock & Blackwell

BARRISTERS & SOLICITORS • TRADE MARK AGENTS

SCOTIA PLAZA, SUITE 2100, 40 KING STREET WEST, TORONTO, CANADA M5H 3C2
TELEPHONE (416) 869-5300 FAX (416) 360-8877

David
for Don

EXHIBIT "B"

WRITER'S DIRECT LINE (416) 889-5452
OUR FILE NO:

October 4, 1996

Mr. Steve Lowden
Chair
Sub-Panel on Education Finance
Ministry of Education & Training
Mowat Block
24th Floor
900 Bay Street
Toronto, ON M7A 1L2

Dear Mr. Lowden:

Re: Subpanel on Education Finance

My letter to you and other members of the Subpanel on Education Finance of September 27, while sent on the firm letterhead of Cassels Brock & Blackwell, was unauthorized by the firm. Further, I have been advised that had the firm been aware of the letter, it would not have considered acting in this matter at all. Consequently, I am writing formally to withdraw my September 27, 1996 letter.

In any case, I can advise you that I do not believe that the PSA intends to proceed with an application for judicial review; however, if it does decide to proceed, Cassels Brock & Blackwell will not consider acting in the matter on their behalf.

Yours very truly,
CASSELS BROCK & BLACKWELL

J. B. Donovan

Brian Donovan
BD/jvms

IN THE MATTER OF a request for an
Investigation made to the Office of the Integrity
Commissioner in respect of certain conduct of
the Minister of Municipal Affairs and Housing
and a Member of his Political Staff

AFFIDAVIT OF DAVID SPRING

I, **David Spring**, of the City of Toronto in the Municipality of Metropolitan Toronto,
MAKE OATH AND SAY AS FOLLOWS:

1. I am the Senior Counsel in the Municipal and Planning Law section of the Legal Services Branch of the Ministry of Municipal Affairs and Housing.
2. The Province of Ontario, as represented by the Minister of Municipal Affairs and Housing, required assistance from advisors and consultants in reviewing the service delivery responsibilities of the municipal and provincial governments. This advisory group became known as the "Who Does What Panel". The participation of the advisors was confirmed by letter and the consultants were retained by the Minister of Municipal Affairs and Housing in his capacity as a Minister of the Crown.
3. On Friday, September 27, I was given a copy of a letter from Brian Donovan of the firm of Cassels Brock and Blackwell which I immediately circulated to my supervisor and to senior officials within the Ministry. A copy of this letter is attached hereto as Exhibit "A".
4. After a discussion with Ministry officials in which I offered a preliminary opinion to the effect that the legal position espoused in the letter was without merit, I was instructed to prepare a reply for my signature.

5. At the beginning of the following week, I prepared such a reply, after researching the applicable law. My reply answered a number of the questions raised by Mr. Donovan in his letter of September 26, and addressed the legal issues raised by him in that letter.


6. On October 1 or 2, I telephoned Mr. Donovan, the author of the letter referred to above, and advised him that I would be responding to this letter in writing. He replied that he would await my response.

7. On Friday, October 4, before sending my reply to Mr. Donovan, I received from a Ministry official, a copy of letter from Mr. Donovan. A copy of that letter is attached hereto as Exhibit "B".

8. As a consequence of receiving the copy of the letter referred to in paragraph 7 above, I did not send the response referred to above, and took no further action in the matter.

9. I make this Affidavit for the purpose of assisting the Integrity Commission in this matter, and for no other purpose.

SWORN before me at the City of Toronto,
in the Municipality of Metropolitan Toronto
this 2nd day of January, 1997

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)
)
David Spring



Commissioner for Taking Affidavits

EXHIBIT "A"

WRITER'S DIRECT LINE: (416) 869-5452

OUR FILE NO:

VIA DELIVERY AND FAX

September 26, 1996

Mr. Steve Lowden
Chair
Sub-Panel on Education Finance
Ministry of Education & Training
Mowat Block
24th Floor
900 Bay Street
Toronto, ON M7A 1L2

Dear Mr. Lowden:

Re: Sub-panel on Education Finance

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Accordingly, we have advised our client that the activities and deliberations of your sub-panel are subject to judicial challenge on the basis of basic administrative law principles of administrative reasonableness and procedural fairness.

We understand that your sub-panel proposes to report its findings and conclusions on or about October 5, 1996, and that such report will have an impact upon the interests of many parties, including our client. Consequently, unless your sub-panel becomes immediately more forthcoming, we shall be seeking instructions to commence immediate judicial proceedings to restrain further activity and deliberation by your sub-panel by way of injunction, and *certiorari* to quash the sub-panel's constitution, with *prohibition* in aid to preclude the delivery of your report by the proposed October 5, 1996 deadline.

Without purporting to be exhaustive, our client's legitimate concerns include the following:

1. As indicated above, the terms of reference for your sub-panel have been requested, and this request has been refused. In contrast, we have most recently been provided (as of September 25, 1996) with a set of draft terms of reference. Are we to understand that the sub-panel on education finance has been proceeding with its investigations and deliberations to date in the absence of final terms of reference? If so, the sub-panel's activities have clearly been carried on without proper authority.

In this connection, we require immediate answers to the following questions:

- (a) Do final terms of reference for the sub-panel on education finance exist?
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 - (c) If such terms of reference do exist, kindly produce a copy of same immediately.
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3. We are distressed to have been informed that the activities of the sub-panel have been conducted under what can only be described as an aura of secrecy. Our understanding is that information in respect of the location of the sub-panel's proceedings has been denied when requested, even when such requests have been for the purpose of delivering relevant materials to the sub-panel. Such a practice is clearly unacceptable, and gives rise to an inference of bad faith.
4. The legal authority for the appointment of the sub-panel (if any) appears to have been kept mysterious. In this connection, we require immediate answers to the following questions:
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 - (c) What was the selection process utilized to ensure a fair representation of interested parties in the course of the selection of the sub-panel.

- (d) From what pool were the members of the sub-panel selected, and was the process of selection made public?
- (e) By means of what legal instrument (if any) were the members of the sub-panel appointed?

5. The composition of the sub-panel on education finance is seriously defective, in that it fails to represent parties whose interests will clearly be affected by any report or recommendations made by the sub-panel. Most blatantly, the Metropolitan Toronto School Board is not represented. Equally, the Ontario Secondary School Teachers Federation is unrepresented. We are advised that knowledgeable members of these and other educational organizations are willing and prepared to serve on the sub-panel. None of them have been selected. Why not?

Under the circumstances, we have advised our client that any report or recommendations made by your sub-panel as presently constituted will be fundamentally defective, in that it is not clear that the sub-panel was ever properly constituted, and legitimate apprehensions of bias, and procedural and administrative unfairness, arise. I now write, further to Ms. Morris' letter of September 20, 1996 to request that your sub-panel immediately cease its activities and deliberations, pending resolution of the very serious concerns outlined above. I trust we shall receive your early and co-operative response, and that it will not be necessary to obtain the assistance of the courts to restrain the sub-panel's current activities in order to ensure a fair and equitable result.

Please govern yourself accordingly.

Yours very truly,
CASSELS BROCK & BLACKWEL



Per: J. Brian Donovan

JBD/tz

cc: Ms. Gisele Lalonde
Ms. Enid Slack
Mr. James Downey
Ms. Linda Rydholm
Mr. John Snobelen (Delivered)
Ms. Gay Young
Ms. Colleen Morris
Ms. Maria Bahadur
Ms. Jane Archibald
Mr. Chris Malkiewicz (fax 754-7070)

Cassels Brock & Blackwell

BARRISTERS & SOLICITORS • TRADE MARK AGENTS

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TELEPHONE (416) 869-5300 FAX (416) 360-8877

David
for Don

EXHIBIT "B"

WRITER'S DIRECT LINE (416) 889-5452
OUR FILE NO:

October 4, 1996

Mr. Steve Lowden
Chair
Sub-Panel on Education Finance
Ministry of Education & Training
Mowat Block
24th Floor
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My letter to you and other members of the Subpanel on Education Finance of September 27, while sent on the firm letterhead of Cassels Brock & Blackwell, was unauthorized by the firm. Further, I have been advised that had the firm been aware of the letter, it would not have considered acting in this matter at all. Consequently, I am writing formally to withdraw my September 27, 1996 letter.

In any case, I can advise you that I do not believe that the PSA intends to proceed with an application for judicial review; however, if it does decide to proceed, Cassels Brock & Blackwell will not consider acting in the matter on their behalf.

Yours very truly,
CASSELS BROCK & BLACKWELL

J. B. Donovan

Brian Donovan
BD/jvms

**IN THE MATTER OF a Request for an
Investigation made to the Office of the Integrity
Commissioner in respect of certain conduct of
the Minister of Municipal Affairs and Housing
and a Member of his Political Staff**

AFFIDAVIT OF HUGH DONALD GUTHRIE

I, HUGH DONALD GUTHRIE, of the City of Toronto, in the Municipality of Metropolitan Toronto, MAKE OATH AND SAY AS FOLLOWS:

1. I am a barrister and solicitor duly qualified to practice law in the Province of Ontario and was called to the Bar of Ontario in 1954. From the time of my call to the Bar until the present, I have practiced law with the firm of Cassels Brock & Blackwell (the "firm") and its predecessor firms. I am the immediate past Chairman of the firm, and for some years have been and now am the Chairman of its Ethics and Professional Standards Committee.
2. I have read the Affidavit of Brian Donovan sworn the 9th day of December, 1996 and the exhibits thereto annexed, and I make this Affidavit in response thereto, in order to provide relevant facts not included in Mr. Donovan's Affidavit and to correct a number of serious inaccuracies therein.
3. On Friday, the 27th day of September, 1996 I received a telephone call from John Matheson, Executive Assistant to the Hon. Al Leach, Minister of Municipal Affairs and Housing in the Government of Ontario, referred to in paragraph 10 of Mr. Donovan's Affidavit.
4. Mr. Matheson asked me at the outset of our telephone conversation if there was a Brian Donovan currently associated with the firm as a practicing lawyer. I told him that I could not immediately recall the name or say for sure whether Mr. Donovan

practiced with us. The firm comprises some 130 lawyers and I must admit that I am not confident that I know at all times the names of all who have recently been employed by the firm. I told Mr. Matheson that I would have to confirm Mr. Donovan's status and asked him why he was inquiring.

5. Mr. Matheson then asked me if I was aware of a letter addressed to a Mr. Steve Lowden dated September 26, 1996 (the "Letter"), written on the stationery of the firm and apparently signed on its behalf by J. Brian Donovan, a copy of which Mr. Matheson had received on the morning of the day of his call to me, 27th September. I told him that I was not aware of such a letter and as a result of inquiries which I made subsequently, it appeared that until my conversation with Mr. Matheson, no partner in the firm was aware of the existence of the Letter.

6. The Letter in question is referred to in paragraphs 4 and 5 of Mr. Donovan's said Affidavit and for greater certainty, a copy thereof is hereto annexed and marked as Exhibit "A" to this Affidavit.

7. At no time during the said telephone conversation or at any other time did Mr. Matheson suggest to me that the firm should withdraw or consider withdrawing the Letter or that it should instruct Mr. Donovan to do so or that it should cease to act for the Parent/Staff Association of Frankland Community School ("Frankland"), nor did Mr. Matheson interfere or attempt to interfere with any solicitor-client relationship between the firm and Frankland, nor suggest or lead me to think that his call to me was made for any political or ulterior motive or purpose. I understood Mr. Matheson's inquiry to be solely directed to ascertaining whether the Letter represented the outcome of a serious retainer and was authorized by the firm or whether it may have been written more from Mr. Donovan's private and personal standpoint. I told Mr. Matheson that I would look into the matter, as it concerned me to learn from him on the telephone that the Letter

Conflict
Search

threatened "the assistance of the courts to restrain the sub-panel's current activities" before October 5, 1996 unless the sub-panel should "immediately cease its activities and deliberations ...".

8. I have ascertained that Mr. Donovan became an associate lawyer in the firm on November 1, 1995. As such he would or should have been aware of the policies, procedures and practices of the firm as to the acceptance of retainers from prospective clients and the opening of files for new client matters. Except as otherwise expressly indicated in this Affidavit, I use the term "retainer" herein to mean an authority and instruction to a lawyer from a client or prospective client to act on his, her or its behalf in advising on or conducting a matter of a legal nature. The policies and procedures of the firm require a three-step process in the acceptance of a retainer from a prospective new client where the matter involves a possible controversy with or action against another party. Firstly, the lawyer concerned must conduct a search for possible conflicts of interest by circulating or causing to be circulated an inquiry by written memorandum or electronic mail message to all other lawyers in the firm and to the central records department of the firm, to inquire whether the proposed retainer could result in a possible conflict of interest with an existing client of the firm. The procedures further require that an adequate time for response be given, so that the many lawyers who must read the inquiry will have sufficient time to reply, given their other commitments and absences from the office. If after the appropriate lapse of time, there is no adverse response to the conflict inquiry, a partner may accept a retainer from the prospective client, preferably in writing if the matter is of a serious or difficult nature but on occasion, where appropriate, the retainer may be oral at the outset. In the case of an associate, the procedures apply in the same manner but the associate will normally seek the approval or guidance of his supervising partner before accepting an important retainer. Thirdly, the lawyer then opens a file for the matter,

done

I receive
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Mr. G. is
slow.

which involves instructions to the central records department to enter the name of the new client in the firm records, to assign a client number, to prepare a file cover and to assign a matter number to the particular file, as a sub-set of the client number.

*1. takes time
partners still in
as to who gets credit*

9. Having consulted the records of the firm produced to me by the firm's Chief Administrative Officer, I can positively state, with reference to compliance with these policies and procedures, as follows. Firstly, with regard to a conflict search, Mr. Donovan evidently intended to cause to be circulated to secretaries within the firm the electronic message, a transcribed copy of which is annexed hereto and marked as Exhibit "B" to this Affidavit. It is to be noted that the intended opposite party in a proposed action "to seek an immediate interim injunction and other ancillary prerogative relief" was stated to be "the Ontario Subpanel on Education Finance". The Letter, Exhibit "A" hereto, identifies that sub-panel as addressed at and apparently associated or connected with the Ministry of Education & Training of Ontario, and the practice of the firm would call for a listing, in the conflict inquiry, of parent, superior, associated, related and subsidiary bodies of the opposite party, so that responding lawyers could be made fully aware of the ramifications of the proposed retainer.

suggests not any of what subpanel was

10. It is further to be noted that the conflict inquiry was issued on "27/9/96" at "9:56 a.m." (i.e. on the day following the date of the Letter). Neither I nor the "Senior Partners" of the firm referred to in paragraph 7 of Mr. Donovan's affidavit, nor many of the lawyers in the firm of whom I have made inquiries ever saw the conflict message. There is no record of the inquiry having been sent to the central records department of the firm. The firm was acting at the time and has for many years acted for several Ministries of the Government of Ontario, including the Ministry of Education & Training, and had the conflict inquiry been in proper form and issued in time for appropriate response in advance of the issuance of the Letter, I have no doubt that I and several partners in the firm would have responded adversely to the acceptance of the

cannot comment as to why as I did receive replies back

proposed retainer, or would at least have initiated inquiries, because the firm had clearly, at the time, a true ethical conflict as well as a business conflict in acting contrary to the interests of the Ministry of Education & Training or any panel or sub-panel associated with that Ministry.

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of the
Ministry

11. Secondly, there is no record to be found in the file data or docket entries of Mr. Donovan for the whole of the relevant period of any written retainer from Frankland, although there are docket entries on September 25 and 26 which indicate extensive discussions with one C. Morris concerning "potential injunction application" and "draft letter to S. Lowden". Presumably the C. Morris was the author of the letter, Exhibit "B" to Mr. Donovan's Affidavit. There is a further docket entry on September 26 of "meeting at Frankland Public School to discuss possible courses of action" and a final entry on September 30: "telephone call with C. Morris re possible retainer and evening meeting" (emphasis added).

12. In my belief and respectful submission, the statement in paragraph 8 of Mr. Donovan's Affidavit that he "had performed a conflict search within the firm" is misleading, in that the search was not made in accordance with the procedures of the firm or on a timely basis that would have allowed response before the issuance of the Letter. Such procedures would normally require that no action akin to the Letter be taken until October 1 at the earliest.

13. Thirdly, the records of the firm disclose that at no time did Mr. Donovan open a client file for the matter in question or ask that a client matter number be assigned to Frankland, for this or any other matter. The records of the firm further show that if Mr. Donovan "had been given a retainer in excess of \$2,000.00 in respect of the matter", as alleged in paragraph 8 of his Affidavit, no such monetary retainer was ever received or recorded by or made known to the firm.

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14. It is further to be noted that the docket entries referred to in paragraph 11 hereof were entered by Mr. Donovan on an internal ledger, kept for office administration purposes, entitled "Business Development - Donovan, J.B." to which was assigned a number in an internal series prefixed with the numbers "99" to indicate (as Mr. Donovan would well know) that the activities or services reflected by the entries were considered to be "non-billable" and not pursuant to an authorized retainer.

15. One of the said Senior Partners was Mr. Donovan's supervising partner. It is my belief that Mr. Donovan would or should have known that before undertaking a matter of the seriousness alleged in the Letter and before considering or threatening injunction proceedings against an emanation of the Government of Ontario, he should have discussed the matter with his supervising partner. I am informed and verily believe that no such discussion took place and that the supervising partner was completely unaware of the threatening Letter until informed of it by me as hereinafter described.

if so?
because
he did
not read
conflict
search

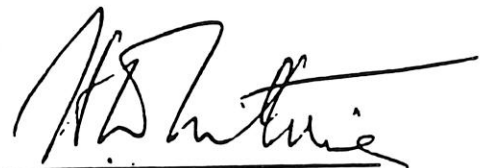
16. On Monday, the 30th day of September, 1996, I consulted with the said two Senior Partners and informed them of the substance of my telephone conversation with Mr. Matheson on the previous Friday. The statements in the succeeding paragraphs of this Affidavit are made upon information and belief, from information provided to me by those Senior Partners and which I verily believe to be true.

17. On or about the 2nd day of October, 1996, Mr. Donovan was asked by the two Senior Partners to attend a meeting with them, at which he was told that the firm had received an inquiry about the Letter and was asked to describe the background. Mr. Donovan explained to the Senior Partners that he was a parent member of Frankland and said that he was unable to confirm that a proper conflict search had preceded the issuance of the Letter. The Senior Partners told Mr. Donovan that neither of them had

received the conflict enquiry and that they would have responded adversely had they done so, as would several other partners. Mr. Donovan understood immediately the problem that the firm had of conflict with the Ministry of Education & Training and acknowledged that there was formal conflict. He was very concerned in the meeting that he had seriously failed to observe proper procedures and the whole tone of the meeting was one of apology and confession of shortcoming by him. He did not take a combative or adversarial or debating stance with the Senior Partners and was purely apologetic and contrite. B.S.

18. The statements made by the Senior Partners to Mr. Donovan at the meeting proceeded strictly and solely on the basis of the conflict issue, as a result of which Mr. Donovan further acknowledged to them that lacking the authority of the firm to accept the retainer, the use of its letterhead for the Letter was inappropriate and that he would immediately withdraw the letter, which he did by letter to Mr. Steve Lowden dated October 4, 1996, Exhibit "E" to Mr. Donovan's Affidavit. That letter was written by Mr. Donovan on his own, although a draft was shown to the Senior Partners for their approval. Contrary to the allegations made in paragraph 7 and 9 of Mr. Donovan's affidavit, he was not in any sense "instructed" by or "acting on the instructions of" the Senior Partners in writing that letter. On the contrary, Mr. Donovan, realizing his errors, volunteered to write that letter and to confirm that the Letter and his acting in the matter were unauthorized. He further stated to the Senior Partners that in any event, it would not be a problem for him to do so because the group which he represented was no longer intending to proceed with the threatened action. B.S.

Sworn before me at the City of Toronto)
in the Municipality of Metropolitan Toronto)
this 31st day of December, 1996)
A Commissioner, etc.)



Cassels Brock & Blackwell

BARRISTERS & SOLICITORS • TRADE MARK AGENTS

WRITER'S DIRECT LINE: (416) 869-5452

OUR FILE NO:

VIA DELIVERY AND FAX

September 26, 1996

Mr. Steve Lowden
Chair
Sub-Panel on Education Finance
Ministry of Education & Training
Mowat Block
24th Floor
900 Bay Street
Toronto, ON M7A 1L2

Dear Mr. Lowden:

Re: Sub-panel on Education Finance

COPY

This is Exhibit....."A".....referred to in the
affidavit of...H. W. H. D. N. A. L. D. G. H. I. N. G.
sworn before me, this.....3:35.....
day of.....OCTOBER..... 19.....96.....

A COMMISSIONER FOR TAKING AFFIDAVITS

We have been consulted by the Parent/Staff Association of Frankland Community School (the "PSA") in respect of the appointment and activities of your sub-panel on education finance. Our client, the PSA, has repeatedly attempted to obtain pertinent information from your sub-panel which ought reasonably to be accessible to such a concerned organization under the circumstances. Indeed, the terms of reference of your sub-panel have been requested, which request has been refused.

Accordingly, we have advised our client that the activities and deliberations of your sub-panel are subject to judicial challenge on the basis of basic administrative law principles of administrative reasonableness and procedural fairness.

We understand that your sub-panel proposes to report its findings and conclusions on or about October 5, 1996, and that such report will have an impact upon the interests of many parties, including our client. Consequently, unless your sub-panel becomes immediately more forthcoming, we shall be seeking instructions to commence immediate judicial proceedings to restrain further activity and deliberation by your sub-panel by way of injunction, and *certiorari* to quash the sub-panel's constitution, with *prohibition* in aid to preclude the delivery of your report by the proposed October 5, 1996 deadline.

Without purporting to be exhaustive, our client's legitimate concerns include the following:

Cassels Brock & Blackwell

- 2 -

1. As indicated above, the terms of reference for your sub-panel have been requested, and this request has been refused. In contrast, we have most recently been provided (as of September 25, 1996) with a set of draft terms of reference. Are we to understand that the sub-panel on education finance has been proceeding with its investigations and deliberations to date in the absence of final terms of reference? If so, the sub-panel's activities have clearly been carried on without proper authority.

In this connection, we require immediate answers to the following questions:

- (a) Do final terms of reference for the sub-panel on education finance exist?
 - (b) If such terms of reference do exist, when were they adopted?
 - (c) If such terms of reference do exist, kindly produce a copy of same immediately.
2. By letter dated September 20, 1996, Ms. Colleen D. Morris on behalf of the PSA, requested that you notify the PSA as to the dates on which the sub-panel will be receiving depositions. Ms. Morris has received no reply. Please indicate at once when you will be receiving oral depositions from parties whose interests will obviously be affected by any recommendations which your sub-panel may make, including our client.
3. We are distressed to have been informed that the activities of the sub-panel have been conducted under what can only be described as an aura of secrecy. Our understanding is that information in respect of the location of the sub-panel's proceedings has been denied when requested, even when such requests have been for the purpose of delivering relevant materials to the sub-panel. Such a practice is clearly unacceptable, and gives rise to an inference of bad faith.
4. The legal authority for the appointment of the sub-panel (if any) appears to have been kept mysterious. In this connection, we require immediate answers to the following questions:
 - (a) How were the members of the sub-panel appointed?
 - (b) Are the sub-panel members paid for their work, and, if so, on what basis?
 - (c) What was the selection process utilized to ensure a fair representation of interested parties in the course of the selection of the sub-panel;

- (d) From what pool were the members of the sub-panel selected, and was the process of selection made public?
 - (e) By means of what legal instrument (if any) were the members of the sub-panel appointed?
5. The composition of the sub-panel on education finance is seriously defective, in that it fails to represent parties whose interests will clearly be affected by any report or recommendations made by the sub-panel. Most blatantly, the Metropolitan Toronto School Board is not represented. Equally, the Ontario Secondary School Teachers Federation is unrepresented. We are advised that knowledgeable members of these and other educational organizations are willing and prepared to serve on the sub-panel. None of them have been selected. Why not?

Under the circumstances, we have advised our client that any report or recommendations made by your sub-panel as presently constituted will be fundamentally defective, in that it is not clear that the sub-panel was ever properly constituted, and legitimate apprehensions of bias, and procedural and administrative unfairness, arise. I now write, further to Ms. Morris' letter of September 20, 1996 to request that your sub-panel immediately cease its activities and deliberations, pending resolution of the very serious concerns outlined above. I trust we shall receive your early and co-operative response, and that it will not be necessary to obtain the assistance of the courts to restrain the sub-panel's current activities in order to ensure a fair and equitable result.

Please govern yourself accordingly.

Yours very truly,
CASSELS BROCK & BLACKWEL



Per: J. Brian Donovan

JBD/tz

cc Ms. Gisele Lalonde
Ms. Enid Slack
Mr. James Downey
Ms. Linda Rydholm
Mr. John Snobelen (Delivered)
Ms. Gay Young
Ms. Colleen Morris
Ms. Maria Bahadur
Ms. Jane Archibald
Mr. Chris Malkiewich (fax: 751-7079)

Printed By: HQ, S. 27/9/96 12:10 P.M.
From: Curtis, D. (27/9/96)
To: Amorim, F., Aranha, S., Barbison, C., Bartel, A., Bartholomew, J., Benson, C., Best, C., Bianchi,
CC: Neves, O., Nicov, M., O'Brien, P., Olindo, C., Oliveira, J., Papiz, B., Patterson, L., Pearsell, L., P
BCC:
Priority: Normal
Date sent: 27/9/96 9:56 AM

RE: CONFLICT

THIS MESSAGE IS BEING SENT TO SECRETARIES ONLY - PLEASE PASS ON TO ALL LAWYERS

I have been asked to act for the Frankland Public School Parents/Staff Association to seek an immediate interim injunction and other ancillary prerogative relief against the Ontario Subpanel on Education Finance.

Please advise Brian Donovan if there is a conflict.

Not to my knowledge
JOHN W. R. DAY

This is Exhibit "B" referred to in the
affidavit of Huest. D. M. A. D. GUTHRIE
sworn before me this 31ST
day of DECEMBER 1996

[Signature]
A COMMISSIONER FOR SWORING AFFIDAVITS

**IN THE MATTER OF a Request for an
Investigation made to the Office of the
Integrity Commissioner in respect of
certain conduct of the Minister of
Municipal Affairs and Housing and a
Member of his Political Staff**

**AFFIDAVIT OF
HUGH DONALD GUTHRIE**

**CASELS BROCK & BLACKWELL
Barristers & Solicitors
Suite 2100, 40 King Street West
Toronto, Ontario
M5H 3C2**

IN THE MATTER OF a Request for an Investigation made to the Office of the Integrity Commissioner in respect of certain conduct of the Minister of Municipal Affairs and Housing and a Member of his Political Staff

AFFIDAVIT OF HUGH DONALD GUTHRIE

I, HUGH DONALD GUTHRIE, of the City of Toronto, in the Municipality of Metropolitan Toronto, MAKE OATH AND SAY AS FOLLOWS:

1. I am a barrister and solicitor duly qualified to practice law in the Province of Ontario and was called to the Bar of Ontario in 1954. From the time of my call to the Bar until the present, I have practiced law with the firm of Cassels Brock & Blackwell (the "firm") and its predecessor firms. I am the immediate past Chairman of the firm, and for some years have been and now am the Chairman of its Ethics and Professional Standards Committee.
2. I have read the Affidavit of Brian Donovan sworn the 9th day of December, 1996 and the exhibits thereto annexed, and I make this Affidavit in response thereto, in order to provide relevant facts not included in Mr. Donovan's Affidavit and to correct a number of serious inaccuracies therein.
3. On Friday, the 27th day of September, 1996 I received a telephone call from John Matheson, Executive Assistant to the Hon. Al Leach, Minister of Municipal Affairs and Housing in the Government of Ontario, referred to in paragraph 10 of Mr. Donovan's Affidavit.
4. Mr. Matheson asked me at the outset of our telephone conversation if there was a Brian Donovan currently associated with the firm as a practicing lawyer. I told him that I could not immediately recall the name or say for sure whether Mr. Donovan

practiced with us. The firm comprises some 130 lawyers and I must admit that I am not confident that I know at all times the names of all who have recently been employed by the firm. I told Mr. Matheson that I would have to confirm Mr. Donovan's status and asked him why he was inquiring.

5. Mr. Matheson then asked me if I was aware of a letter addressed to a Mr. Steve Lowden dated September 26, 1996 (the "Letter"), written on the stationery of the firm and apparently signed on its behalf by J. Brian Donovan, a copy of which Mr. Matheson had received on the morning of the day of his call to me, 27th September. I told him that I was not aware of such a letter and as a result of inquiries which I made subsequently, it appeared that until my conversation with Mr. Matheson, no partner in the firm was aware of the existence of the Letter.

6. The Letter in question is referred to in paragraphs 4 and 5 of Mr. Donovan's said Affidavit and for greater certainty, a copy thereof is hereto annexed and marked as Exhibit "A" to this Affidavit.

7. At no time during the said telephone conversation or at any other time did Mr. Matheson suggest to me that the firm should withdraw or consider withdrawing the Letter or that it should instruct Mr. Donovan to do so or that it should cease to act for the Parent/Staff Association of Frankland Community School ("Frankland"), nor did Mr. Matheson interfere or attempt to interfere with any solicitor-client relationship between the firm and Frankland, nor suggest or lead me to think that his call to me was made for any political or ulterior motive or purpose. I understood Mr. Matheson's inquiry to be solely directed to ascertaining whether the Letter represented the outcome of a serious retainer and was authorized by the firm or whether it may have been written more from Mr. Donovan's private and personal standpoint. I told Mr. Matheson that I would look into the matter, as it concerned me to learn from him on the telephone that the Letter

threatened "the assistance of the courts to restrain the sub-panel's current activities" before October 5, 1996 unless the sub-panel should "immediately cease its activities and deliberations ...".

8. I have ascertained that Mr. Donovan became an associate lawyer in the firm on November 1, 1995. As such he would or should have been aware of the policies, procedures and practices of the firm as to the acceptance of retainers from prospective clients and the opening of files for new client matters. Except as otherwise expressly indicated in this Affidavit, I use the term "retainer" herein to mean an authority and instruction to a lawyer from a client or prospective client to act on his, her or its behalf in advising on or conducting a matter of a legal nature. The policies and procedures of the firm require a three-step process in the acceptance of a retainer from a prospective new client where the matter involves a possible controversy with or action against another party. Firstly, the lawyer concerned must conduct a search for possible conflicts of interest by circulating or causing to be circulated an inquiry by written memorandum or electronic mail message to all other lawyers in the firm and to the central records department of the firm, to inquire whether the proposed retainer could result in a possible conflict of interest with an existing client of the firm. The procedures further require that an adequate time for response be given, so that the many lawyers who must read the inquiry will have sufficient time to reply, given their other commitments and absences from the office. If after the appropriate lapse of time, there is no adverse response to the conflict inquiry, a partner may accept a retainer from the prospective client, preferably in writing if the matter is of a serious or difficult nature but on occasion, where appropriate, the retainer may be oral at the outset. In the case of an associate, the procedures apply in the same manner but the associate will normally seek the approval or guidance of his supervising partner before accepting an important retainer. Thirdly, the lawyer then opens a file for the matter,

which involves instructions to the central records department to enter the name of the new client in the firm records, to assign a client number, to prepare a file cover and to assign a matter number to the particular file, as a sub-set of the client number.

9. Having consulted the records of the firm produced to me by the firm's Chief Administrative Officer, I can positively state, with reference to compliance with these policies and procedures, as follows. Firstly, with regard to a conflict search, Mr. Donovan evidently intended to cause to be circulated to secretaries within the firm the electronic message, a transcribed copy of which is annexed hereto and marked as Exhibit "B" to this Affidavit. It is to be noted that the intended opposite party in a proposed action "to seek an immediate interim injunction and other ancillary prerogative relief" was stated to be "the Ontario Subpanel on Education Finance". The Letter, Exhibit "A" hereto, identifies that sub-panel as addressed at and apparently associated or connected with the Ministry of Education & Training of Ontario, and the practice of the firm would call for a listing, in the conflict inquiry, of parent, superior, associated, related and subsidiary bodies of the opposite party, so that responding lawyers could be made fully aware of the ramifications of the proposed retainer.

10. It is further to be noted that the conflict inquiry was issued on "27/9/96" at "9:56 a.m." (i.e. on the day following the date of the Letter). Neither I nor the "Senior Partners" of the firm referred to in paragraph 7 of Mr. Donovan's affidavit, nor many of the lawyers in the firm of whom I have made inquiries ever saw the conflict message. There is no record of the inquiry having been sent to the central records department of the firm. The firm was acting at the time and has for many years acted for several Ministries of the Government of Ontario, including the Ministry of Education & Training, and had the conflict inquiry been in proper form and issued in time for appropriate response in advance of the issuance of the Letter, I have no doubt that I and several partners in the firm would have responded adversely to the acceptance of the

proposed retainer, or would at least have initiated inquiries, because the firm had clearly, at the time, a true ethical conflict as well as a business conflict in acting contrary to the interests of the Ministry of Education & Training or any panel or sub-panel associated with that Ministry.

11. Secondly, there is no record to be found in the file data or docket entries of Mr. Donovan for the whole of the relevant period of any written retainer from Frankland, although there are docket entries on September 25 and 26 which indicate extensive discussions with one C. Morris concerning "potential injunction application" and "draft letter to S. Lowden". Presumably the C. Morris was the author of the letter, Exhibit "B" to Mr. Donovan's Affidavit. There is a further docket entry on September 26 of "meeting at Frankland Public School to discuss possible courses of action" and a final entry on September 30: "telephone call with C. Morris re possible retainer and evening meeting" (emphasis added).

12. In my belief and respectful submission, the statement in paragraph 8 of Mr. Donovan's Affidavit that he "had performed a conflict search within the firm" is misleading, in that the search was not made in accordance with the procedures of the firm or on a timely basis that would have allowed response before the issuance of the Letter. Such procedures would normally require that no action akin to the Letter be taken until October 1 at the earliest.

13. Thirdly, the records of the firm disclose that at no time did Mr. Donovan open a client file for the matter in question or ask that a client matter number be assigned to Frankland, for this or any other matter. The records of the firm further show that if Mr. Donovan "had been given a retainer in excess of \$2,000.00 in respect of the matter", as alleged in paragraph 8 of his Affidavit, no such monetary retainer was ever received or recorded by or made known to the firm.

14. It is further to be noted that the docket entries referred to in paragraph 11 hereof were entered by Mr. Donovan on an internal ledger, kept for office administration purposes, entitled "Business Development - Donovan, J.B." to which was assigned a number in an internal series prefixed with the numbers "99" to indicate (as Mr. Donovan would well know) that the activities or services reflected by the entries were considered to be "non-billable" and not pursuant to an authorized retainer.

15. One of the said Senior Partners was Mr. Donovan's supervising partner. It is my belief that Mr. Donovan would or should have known that before undertaking a matter of the seriousness alleged in the Letter and before considering or threatening injunction proceedings against an emanation of the Government of Ontario, he should have discussed the matter with his supervising partner. I am informed and verily believe that no such discussion took place and that the supervising partner was completely unaware of the threatening Letter until informed of it by me as hereinafter described.


16. On Monday, the 30th day of September, 1996, I consulted with the said two Senior Partners and informed them of the substance of my telephone conversation with Mr. Matheson on the previous Friday. The statements in the succeeding paragraphs of this Affidavit are made upon information and belief, from information provided to me by those Senior Partners and which I verily believe to be true.

17. On or about the 2nd day of October, 1996, Mr. Donovan was asked by the two Senior Partners to attend a meeting with them, at which he was told that the firm had received an inquiry about the Letter and was asked to describe the background. Mr. Donovan explained to the Senior Partners that he was a parent member of Frankland and said that he was unable to confirm that a proper conflict search had preceded the issuance of the Letter. The Senior Partners told Mr. Donovan that neither of them had

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18. The statements made by the Senior Partners to Mr. Donovan at the meeting proceeded strictly and solely on the basis of the conflict issue, as a result of which Mr. Donovan further acknowledged to them that lacking the authority of the firm to accept the retainer, the use of its letterhead for the Letter was inappropriate and that he would immediately withdraw the letter, which he did by letter to Mr. Steve Lowden dated October 4, 1996, Exhibit "E" to Mr. Donovan's Affidavit. That letter was written by Mr. Donovan on his own, although a draft was shown to the Senior Partners for their approval. Contrary to the allegations made in paragraph 7 and 9 of Mr. Donovan's affidavit, he was not in any sense "instructed" by or "acting on the instructions of" the Senior Partners in writing that letter. On the contrary, Mr. Donovan, realizing his errors, volunteered to write that letter and to confirm that the Letter and his acting in the matter were unauthorized. He further stated to the Senior Partners that in any event, it would not be a problem for him to do so because the group which he represented was no longer intending to proceed with the threatened action.

Sworn before me at the City of Toronto)
in the Municipality of Metropolitan Toronto)
this 31st day of December, 1996)
A Commissioner, etc.)



Cassels Brock & Blackwell

BARRISTERS & SOLICITORS • TRADE MARK AGENTS

507A PLAZA SUITE 1
TORONTO, ONT. M5T 1A1
TELEPHONE (416) 593-1111

WRITER'S DIRECT LINE: (416) 869-5452

OUR FILE NO:

VIA DELIVERY AND FAX

September 26, 1996

Mr. Steve Lowden
Chair
Sub-Panel on Education Finance
Ministry of Education & Training
Mowat Block
24th Floor
900 Bay Street
Toronto, ON M7A 1L2

Dear Mr. Lowden:

Re: Sub-panel on Education Finance

COPY

This is Exhibit.....^{11A} referred to in the
affidavit of H. H. H. DONALD G. HARRIS
sworn before me, this.....^{31st}.....
day of.....DECEMBER..... 19...96...

.....
A COMMISSIONER FOR TAKING AFFIDAVITS

We have been consulted by the Parent/Staff Association of Frankland Community School (the "PSA") in respect of the appointment and activities of your sub-panel on education finance. Our client, the PSA, has repeatedly attempted to obtain pertinent information from your sub-panel which ought reasonably to be accessible to such a concerned organization under the circumstances. Indeed, the terms of reference of your sub-panel have been requested, which request has been refused.

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Without purporting to be exhaustive, our client's legitimate concerns include the following:

1. As indicated above, the terms of reference for your sub-panel have been requested, and this request has been refused. In contrast, we have most recently been provided (as of September 25, 1996) with a set of draft terms of reference. Are we to understand that the sub-panel on education finance has been proceeding with its investigations and deliberations to date in the absence of final terms of reference? If so, the sub-panel's activities have clearly been carried on without proper authority.

In this connection, we require immediate answers to the following questions:

- (a) Do final terms of reference for the sub-panel on education finance exist?
 - (b) If such terms of reference do exist, when were they adopted?
 - (c) If such terms of reference do exist, kindly produce a copy of same immediately.
2. By letter dated September 20, 1996, Ms. Colleen D. Morris on behalf of the PSA, requested that you notify the PSA as to the dates on which the sub-panel will be receiving deputations. Ms. Morris has received no reply. Please indicate at once when you will be receiving oral deputations from parties whose interests will obviously be affected by any recommendations which your sub-panel may make, including our client.
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Cassels Brock & Blackwell

- 3 -

- (d) From what pool were the members of the sub-panel selected, and was the process of selection made public?
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5. The composition of the sub-panel on education finance is seriously defective, in that it fails to represent parties whose interests will clearly be affected by any report or recommendations made by the sub-panel. Most blatantly, the Metropolitan Toronto School Board is not represented. Equally, the Ontario Secondary School Teachers Federation is unrepresented. We are advised that knowledgeable members of these and other educational organizations are willing and prepared to serve on the sub-panel. None of them have been selected. Why not?

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Please govern yourself accordingly.

Yours very truly,
CASSELS BROCK & BLACKWEL



Per: J. Brian Donovan
JBD/tz

cc: Ms. Gisele Lalonde
Ms. Enid Slack
Mr. James Downey
Ms. Linda Rydholm
Mr. John Snobelen (Delivered)
Ms. Gay Young
Ms. Colleen Morris
Ms. Maria Bahadur
Ms. Jane Archibald
Mr. Chris Malkiewich (fax: 751-7079)

OF/039/tz

From: Curtis, D. (27/9/96)

To: Amorim, F., Aranha, S., Barbison, C., Bartel, A., Bartholomew, J., Benson, C., Best, C., Bianchi,

CC: Neves, O., Nicov, M., O'Brien, P., Olindo, C., Oliveira, J., Papiz, B., Patterson, L., Pearsell, L., P

BCC:

Priority: Normal

Date sent: 27/9/96 9:56 AM

RE: CONFLICT

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Please advise Brian Donovan if there is a conflict.

Not to my knowledge
JOHN W. R. DAY

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affidavit of HUGH RAMAND GUTHRIE
sworn before me this 31st
day of DECEMBER 1996

[Signature]
COMMISSIONER FOR TAKING AFFIDAVITS

**IN THE MATTER OF a Request for an
Investigation made to the Office of the
Integrity Commissioner in respect of
certain conduct of the Minister of
Municipal Affairs and Housing and a
Member of his Political Staff**

**AFFIDAVIT OF
HUGH DONALD GUTHRIE**

**CASSELS BROCK & BLACKWELL
Barristers & Solicitors
Suite 2100, 40 King Street West
Toronto, Ontario
M5H 3C2**

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BCC:

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RE: CONFLICT

EXHIBIT " 9 "

THIS MESSAGE IS BEING SENT TO SECRETARIES ONLY - PLEASE PASS ON TO ALL LAWYERS

I have been asked to act for the Frankland Public School Parents/Staff Association to seek an immediate interim injunction and other ancillary prerogative relief against the Ontario Subpanel on Education Finance.

Please advise Brian Donovan if there is a conflict.

Not to my knowledge
JOHN W. R. DAY.

This is Exhibit "B" referred to in the
affidavit of HUGH DONALD GUTHRIE
sworn before me this 31ST
day of DECEMBER 1996

.....
A COMMISSIONER FOR SWORING AFFIDAVITS



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Hon Charles Harnick (Attorney General, minister responsible for native affairs): I can tell the member, if he's interested in the answer, that last week we processed \$7.1 million of cheques. We are doing that work out of 55 Yonge Street. We have closed all of the regional offices, and four of the floors of the Downsview centre are now complete, the work stations have been built, the files have been brought in and the files have been unpacked and put away. There are still —

The Speaker (Hon Chris Stockwell): Order. Supplementary, member for London Centre.

Mrs Marion Boyd (London Centre): Let's just talk about a case that we've talked about at great length in this House, the case of my constituent Wendy Taylor. Wendy Taylor from London, who never had any problems with the plan, has not received any payments since you decided to centralize it. Wendy is in financial distress — I detailed that in this House — because of her inability to access funds for family support, funds that have been deducted from her ex-partner's cheque.

On October 30, my constituency office staff were told by the family support plan staff that Wendy Taylor's files were in transit from the regional office and therefore they could not access the court orders and other documents relevant to this case, as well as many other cases. In fact, I have a printout in my office from the family support office stating: "We need to follow up. Need file to get contact person."

I don't think it's farfetched for me, as a member of this Legislature, to assume that the reason my constituent is not getting the dollars she needs to feed her children is because you have made such a mess of the family support plan, and her file is probably in those piles of files and is not accessible to whoever it is you have answering the phone —

The Speaker: Member for London Centre, come to order. The Attorney General.

Hon Mr Harnick: Mr Speaker, as I've indicated, four of the regional offices have now been completely moved into the Downsview centre. There are still —

Ms Frances Lankin (Beaches-Woodbine): Completely moved in? Charles, look at the video. There are boxes in the hallway. Women and children are not getting money because you won't take action to clean this up.

Interjection.

Ms Lankin: Janet, as a woman you should care about this. As Minister of Community and Social Services, you should be doing something to make sure that these women and children are getting their money. I don't need this from you; the women and children of this province don't need this from you.

The Speaker: Member for Beaches-Woodbine, come to order please. Attorney General.

Hon Mr Harnick: Mr Speaker, as I've said, four of the regional offices have now been completely moved into the Downsview centre. There is further work to do to complete the work to transfer the files from the other regional offices. We have endeavoured, through the office at 55 Yonge Street, to maintain the essential services during this transition. We are doing that, and as I've said earlier, we processed \$7.1 million worth of cheques last week.

Ms Shelley Martel (Sudbury East): I'd like to say to the Attorney General that there is no transition; there is only chaos. The Sudbury office closed three weeks ago. Ten boxes of unopened mail was sent somewhere into Toronto to be dealt with by someone at some time. At the office today, we saw boxes and boxes of files still in the Allied Van Lines boxes. There's nothing going on at that office. It is complete chaos.

I want you to tell me what I should tell Linda Carter today about her case. She's got two children, two and a half and four and a half years old. She regularly got payments of \$300 a month. Her last cheque was on August 20, 1996. We confirmed with the employer that indeed the money was remitted to the Sudbury regional office. We tried contacting FSP on November 1; they were going to follow up with the employer. We tried again yesterday; they were going to follow up with the employer. She still doesn't have a cent.

How can you justify the crisis that is happening in the family support plan now, due directly to your cuts in staff and the closures of the regional offices?

Hon Mr Harnick: As I've indicated to this member before, if she has a specific problem, I am prepared to take that to the —

Interjections.

The Speaker: Attorney General?

Hon Mr Harnick: As I have indicated to this House before, the family support plan has been a major problem in terms of the way clients —

Interjections.

The Speaker: Order. Attorney General?

Hon Mr Harnick: To conclude, I hope that the members opposite have the same passion for passing the bill that's now before the House so that we can correct the problems in the family support plan once and for all.

Interjections.

Mr Wayne Wettlaufer (Kitchener): I wish you'd shut up so we can hear.

The Speaker: Member for Kitchener, that's unparliamentary language. I ask you to withdraw.

Mr Wettlaufer: I withdraw.

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PARENT-SCHOOL ASSOCIATION

Mrs Lyn McLeod (Leader of the Opposition): My question is for the Minister of Education and Training. Today a group of parents from Franklin community school delivered this letter to the Premier. Their letter expresses their concern with an incident which they feel constitutes a serious interference with the administration of justice.

These parents, on behalf of their parent-school association, had engaged a lawyer with funds which they raised through contributions from their own pockets. They asked the lawyer, who was another parent at Franklin school, to act on their behalf in raising concerns about the subpanel on education that was set up under the Who Does What committee. These parents were prepared to challenge the legality of the work of the subcommittee, the constitution of the subcommittee, and in fact were prepared to seek an injunction against the work of the subcommittee.

The lawyer whom they had engaged was subsequently asked by the chairman of his law firm, a leading law firm here in the city of Toronto, to withdraw from the case. He was also instructed to write a letter to Steve Lowden of the subpanel on education in which he would withdraw the representations he had made on behalf of his clients. This requirement that he drop the case and that he write this letter was made because a call had come from the province to a senior member in the firm.

Minister, I'm sure you would agree that this does constitute a serious violation of the rights of individuals to express concerns and to have legal representation. I ask whether you are aware of this situation and I ask whether your office made the call.

Hon John Snobelen (Minister of Education and Training): I want to thank the Leader of the Opposition for the question. However, this question deals with the Who Does What committee and I would defer this question to the minister to whom that committee is responsible.

Hon Al Leach (Minister of Municipal Affairs and Housing): I could add some light to this question. Yes, the Who Does What panel did receive a letter indicating that the law firm of Cassels Brock was going to impose an injunction on the Crombie subpanel on education. The application seemed so frivolous that my executive assistant called Cassels Brock and said, "Are you serious?" They said: "We're not aware of this at all. We'll get back to you." We never heard any more about it until such time as we got a letter from the lawyer in question withdrawing the application. That's all we know.

Mrs McLeod: I must confess I am surprised we would so quickly get an admission from the minister that his office contacted the law firm. I trust he is now aware of the results of that direct intervention in legal representation on the part of a group of citizens who wanted to raise concerns about this government's actions, that this kind of direct intervention with a law firm has not only resulted in this particular lawyer being required to drop the case, but that these citizens have lost their legal representation because the lawyer was required to withdraw his representation on their behalf. These citizens have now been denied both their right to raise their concerns and their right to legal representation because of direct intimidation from your office.

Minister, these citizens believed when they came into this place today — and they are here — that they had been bullied into silence by your government. They asked in a letter to the Premier why this government believes it is free to manipulate the law. Do you not consider this to be a direct interference with the rights of citizens to be heard and to have legal representation? Is this not —

The Speaker (Hon Chris Stockwell): Thank you.

Hon Mr Leach: That's even a stretch for that party. We made an inquiry as to whether this was a serious allegation. The law firm said they didn't know about it.

By the way —

Interjections.

The Speaker: Order. Order. I appreciate the fact that the member asked the question. I presume you'd like to hear the answer.

Hon Mr Leach: By the way, so everybody's aware, this is the law firm of the former leader of the Liberal Party, David Peterson. If anybody thinks we're going to call and try to intimidate a law firm like that, it is rather silly. There was absolutely no attempt to intimidate anybody. We made an inquiry whether this was serious. We didn't hear any more after that. What the law firm does is their business. If they're that easily intimidated they're not very good lawyers.

FAMILY SUPPORT PLAN

Ms Shelley Martel (Sudbury East): I want to return to the Attorney General with respect to the family support plan. To date in our office we have received over 80 enquiries on cases from women and children right across Sudbury East. We received all of our cases and we reviewed them last week, and I can tell you that the overwhelming majority of those cases involved women and children who used to receive regular support payments until you cut 290 staff and closed the regional office.

Three weeks ago 10 boxes of unopened mail left the Sudbury office to be dealt with somewhere in Toronto. No doubt, thousands of other files have also come to Toronto and were probably among the boxes that we saw today on the fourth floor, totally unsecured, all over the floor in a public area.

I want to ask you today: What are you going to do, since your office is completely non-functioning at this point in time, to ensure that the thousands of women and children across this province, who aren't receiving support because of your cuts, are going to get some money today so they can look after and support their own families?

Hon Charles Harnick (Attorney General, minister responsible for native affairs): The fact that we processed \$7.1 million in cheques last week, and that we will in all likelihood process more than that this week and again more than that next week, belies the fact that the family support plan isn't working.

We have been going through this transition. We hope we will be through the transition very shortly. We've hired 160 people who will be working on the front lines to deal with client problems. We are working our way through this transition and hope to be in a position to deal with this in a permanent way very shortly.

Mr Bud Wildman (Algoma): Perhaps this is one of the cases that's lost in your files in the Allied Van Lines boxes in this office.

Patricia Dorn, Bruce Mines in my constituency, contacted the Sudbury office, sent the forms to the Sudbury office in May because the payee, her ex-spouse, was a month behind. It was not processed because the Sudbury office was getting ready to close as per your order.

Since that time Ms Dorn has had to get two jobs because she hasn't been receiving her payments. She's working at two part-time jobs. She has two children, 13 and 10, who are supposed to be supported. She's left messages on the answering machine. She hasn't received any answers. She says her children would like to have lunches when they go to school. That's what she said on

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the handling of the shutting down of these offices and the damage that you have inflicted on women on children? You knew in January, as your colleague acknowledged on Thursday. What have you done about it?

Hon Charles Harnick (Attorney General, minister responsible for native affairs): What we have done about it is we have ensured that in the first three weeks of November, \$27 million was paid out to 88,224 recipients. Last week \$8.3 million was paid out to 27,425 recipients. This weekend, 297 MPP inquiries were dealt with, out of which 12 required follow-up, which is being done this morning. We also are able now to process more than 5,000 transactions a day, up 25% in productivity over where we ever were. So that's what we've done to date.

Mr Agostino: The response and the attitude of this minister shows clearly the arrogance and the incompetence of you as minister and of your ministry in handling this particular transition. Minister, how can you sit there and continue to tell us the plan is working? In my own office we have over 80 cases that are still outstanding. You knew in January but you deliberately allowed the battering and beating up of women and children in Ontario to continue because of your incompetence and your failure to fix the plan.

The Speaker (Hon Chris Stockwell): Member for Hamilton East, it's out of order to suggest that the minister deliberately allowed the battering and beating up of innocent women. I would ask that you withdraw.

Mr Agostino: I withdraw. What the minister has done is deliberately allow women and children to suffer in this province as a result of the change you have made to the plan. One quick example: I have a constituent from Thorold, a gentleman who called my office. He gets \$200 a month withdrawn from his bank account to go to his wife and two children he is paying support to. Two weeks later this \$200 cheque was sent back to him to put back in his own bank account. They're not getting the money.

Minister, will you do the honourable thing in view of the fact that you have known since January and resign and allow this plan to get fixed by another minister who is more competent than you are?

Hon Mr Harnick: We are taking steps now to take a plan that didn't work very well, that was \$1 billion in arrears, and we're moving it into a new plan that we hope will provide much better coverage for people who depend on the plan. We are now processing cheques within 24 to 36 hours. Under the old plan, where so many of these cheques were being done manually, this could take up to a week. As I've indicated, we have increased by 25% the productivity in allowing us to increase productivity to put more cheques through the system. We're contacting 2,000 employers who have over five payors on their payroll in order to make sure that they send cheques through properly so they can be involved in electronic banking and thus enhance the ability to speed up payments and thus make the plan a better plan.

PARENT-SCHOOL ASSOCIATION

Ms Marilyn Churley (Riverdale): I have a question for the Minister of Municipal Affairs. On November 7

you were questioned in this House about a phone call your executive assistant placed on your behalf to the firm Cassels Brock and Blackwell. The phone call concerned a letter that a lawyer with the firm, Brian Donovan, had written to the Who Does What subpanel on education financing on behalf of a group of parents from Franklin community school in my riding. They were concerned that a panel which was in a position to be advocating some drastic changes to the education system in this province was operating in the dark in secret locations, with secret terms of reference and with no representation from the education sector in Metro Toronto.

Your response to the question that day was that the concerns of these parents "seemed so frivolous." Minister, can you tell this House today what supreme authority gives you the right to deem the concerns of those parents, concerns that might shortly be before the courts, frivolous?

Hon Al Leach (Minister of Municipal Affairs and Housing): I think when anybody wants to try and take somebody to court for providing advice, it doesn't seem very appropriate to me. I also think it's very appropriate that when you get a letter from a law firm that's threatening to take legal action on a process that's under way, it's an appropriate thing to do to call that law firm and inquire what this is all about. And that's what I said before. We called the law firm and said, "Are you serious?" The law firm —

Interjections.

The Speaker (Hon Chris Stockwell): Minister.

Hon Mr Leach: The principals of the law firm said they didn't know anything about the matter and that's the last we heard of it.

Ms Churley: Minister, I can assure you this is not the last you will have heard of it. You don't seem to understand how serious this situation is. This is about citizens' rights to due process being denied, because at the very least an implicit threat was made on your behalf.

This is the situation: We'll never get to know whether the courts would have agreed with your assessment of these concerns as being frivolous because the actions of your staff, operating on your behalf, had the effect — claims Mr Donovan and he's saying this. As you know, he no longer has a job there. He was pulled off the case by the firm after that phone call made on your behalf. The Franklin group never had the chance to make their case for an injunction because of the action of your executive assistant acting on your behalf. It sent a chill through the firm of Cassels Brock and Blackwell. We don't know what was said, but it had at the very least the appearance of a threat. Minister, what was said in that phone call to Cassels Brock and Blackwell?

Hon Mr Leach: The lawyer in question is still a lawyer. I assume there was nothing to stop him from proceeding with the action. There's nothing to stop him now from proceeding with the action if he feels it's appropriate.

Interjections.

The Speaker: Order.

Interjections.

The Speaker: Member for Cochrane South. Minister?

Hon Mr Leach: There's nothing to stop the individual in question from taking action now if he chooses to.

Ms Churley: They've reported, Al. It's too late. The subcommittee reported.

Hon Mr Leach: Then you could obviously see that there was absolutely nothing wrong with the action. There's no way you can take action against somebody from providing advice. The Crombie panel doesn't make any decisions; it makes recommendations and provides advice. We make the decisions.

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ONTARIO FEDERATION OF AGRICULTURE

Mr Toby Barrett (Norfolk): I wish to question the Minister of Agriculture, Food and Rural Affairs. Last week, Minister Villeneuve attended the 1996 convention of the Ontario Federation of Agriculture. I also attended, as did other rural MPPs from both sides of the House. I have received feedback from farmers as a result of your presentation, Minister, to the OFA. Much of the input I received concerned crop insurance, safety net programs and how the plans for the development of AgriCorp are coming, to take responsibility for these kinds of programs. What feedback have you received with respect to AgriCorp and also with respect to other deliberations at the Ontario Federation of Agriculture?

Hon Noble Villeneuve (Minister of Agriculture, Food and Rural Affairs, minister responsible for francophone affairs): I want to thank my colleague for that question. Yes, I was very pleased to attend the Ontario Federation of Agriculture annual meeting last week. It was one of the most successful annual meetings the federation has ever had, with a very large attendance.

On AgriCorp, the agricultural community is quite prepared and able to take into their own hands and look after what they need. I certainly feel that's where the responsibility lies.

I want to congratulate the OFA president, Tony Morris, for his acclamation. I want to congratulate the new and returning executive who were elected last week. I promise, as do all of our colleagues, to work with the OFA for the betterment and continuing to keep our food producers on the leading edge, which is where they are.

Mr Barrett: The minister will no doubt remember that in the Common Sense Revolution's rural economic development task force we promised Ontario's food producers that we would work towards strengthening Ontario's Farm Practices Protection Act, more commonly referred to as the right-to-farm bill.

Interjections.

The Speaker (Hon Chris Stockwell): Would you come to order, please. Thank you. Go ahead.

Mr Barrett: A few months ago the Ontario Federation of Agriculture submitted a draft right-to-farm bill to the minister. Could the minister tell this House if any work is being done to ensure that farmers have proper protection against nuisance complaints?

Hon Mr Villeneuve: Yes, the OFA did present a draft bill and it's certainly in the direction this government wants to go. We must provide more protection to our farmers and our food producers. They are a very import-

ant sector of our economy. Any country or any province that has let its agriculture go down will stand to suffer. This government has brought in new money, \$15 million of the Grow Ontario program. We've brought in a rebate on sales tax, \$20-plus million.

Interjections.

Hon Mr Villeneuve: It's difficult to get the attention of the NDP, particularly because they always have their own agenda. I want to remind them that they were the government that shut down two of our five agricultural colleges and then gave us a \$50-billion debt to boot. That's what they did, and now they sanctimoniously try to give us advice. We have to take it with a little grain of salt.

HEALTH CARE FUNDING

Mrs Elinor Caplan (Orléans): My question is for the Minister of Health. Last year you announced an 18% cut in hospital budgets. You know and I know and all members of the House know that this has resulted in nurse layoffs, replacement of registered nurses with less qualified staff and difficulties in access to services.

Minister, let me tell you about Angelina Marrone.

Hon Noble Villeneuve (Minister of Agriculture, Food and Rural Affairs, minister responsible for francophone affairs): Put it on Hansard.

The Speaker (Hon Chris Stockwell): Minister of Agriculture, would you come to order, please.

Interjection.

The Speaker: And the member for Hamilton East, come to order.

Mrs Caplan: I'll tell you about Angelina Marrone. This 69-year-old grandmother was admitted to hospital on November 2 with chest pains. It was determined almost immediately that she required an angiogram to diagnose the severity of her heart condition, but the doctors encountered obstacle after obstacle. In the interim, her condition worsened and she was transferred to an intensive care unit in the same hospital on November 15.

Her family is here today in the gallery. They have just learned that she is being transferred to a hospital where she can get her angiogram, but they are concerned because she has already been bumped twice. They want to know what you say to her and to her family and others. Is this what people can expect —

The Speaker: Member for Orléans, thank you. Minister of Health.

Hon Jim Wilson (Minister of Health): I know the federal government has cut health care, but we have not. Second, there have been no cuts to the cardiac program at all through hospital budgets; it is a fully protected program. We have increased cardiac surgeries in this province by 19%, or almost 1,500 surgeries, and we have the shortest waiting lists in Canada.

This government has got rid of waste and duplication, and soon we'll take other steps to make sure that we have a more efficient system and that we drive dollars towards patient care. We've done that in cardiac, and we've taken great strides to reduce the waiting list and increase the capacity so we have a better system and people can be looked after on a timely basis. You don't tell your