

Legislative  
Assembly  
of Ontario



Assemblée  
législative  
de l'Ontario

# **OFFICE OF THE INTEGRITY COMMISSIONER**

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**REPORT**

**OF**

**LYNN MORRISON  
INTEGRITY COMMISSIONER**

**RE: THE HONOURABLE BRAD DUGUID,  
MEMBER FOR SCARBOROUGH CENTRE**

**TORONTO, ONTARIO**

**July 11, 2013**

**RE: THE HONOURABLE BRAD DUGUID, MEMBER FOR  
SCARBOROUGH CENTRE**

[1] In a complaint made on February 27, 2013 under section 30 of the *Members' Integrity Act, 1994* (the "Act"), Monte McNaughton, the member for Lambton-Kent-Middlesex, alleged that Brad Duguid, the member for Scarborough Centre and then minister for Economic Development and Innovation, contravened the Act because of the manner in which his 2012 holiday cards were mailed.

[2] In accordance with the Procedure for Complaints under Section 30 of the *Members' Integrity Act, 1994* (the "Procedure"), I sought clarification from Mr. McNaughton regarding his allegations. On March 14, 2013, I informed Mr. McNaughton and Mr. Duguid that I intended to proceed with an inquiry under section 31(1) of the Act.

[3] During the course of this inquiry, my staff and I have interviewed 16 people including: Mr. McNaughton; Mr. Duguid; Mr. Duguid's staff (and former staff) in his constituency office and his minister's office; staff in Mr. McNaughton's constituency office; staff and former staff in the Premier's Office; and, staff in the Legislative Assembly mail room, and in Financial Services. Documents were sought from Mr. Duguid and the Premier's Office.

**The Complaint**

[4] In his complaint, Mr. McNaughton alleged that Mr. Duguid's 2012 holiday cards were mailed without postage and with a custom-made label affixed where postage would normally go, bearing the words "Her Majesty's Service" (the "label") with the intention of benefiting from the Canada Post Government Mail Free of Postage program, which is not available to Members of Provincial Parliament ("MPP"). Mr. McNaughton alleged that the person responsible for this conduct acted fraudulently.

[5] Mr. McNaughton also alleged that Mr. Duguid had assigned a member of his staff working in his minister's office to prepare and distribute the holiday cards.

[6] Some immediate context is required to understand the latter component of Mr. McNaughton's allegation. Mr. Duguid is a minister. Like all ministers, Mr. Duguid has a staff employed under section 32 of the *Public Service of Ontario Act, 2006*. These individuals are part of the Ontario Public Service and referred to as "ministers' staff."

[7] In his capacity as MPP, Mr. Duguid also has a staff in his constituency office. Constituency office staff are employed directly by the member and are paid through the Members' global budget (defined further below). Members of this staff are called "constituency staff."

[8] On the basis of the alleged facts, Mr. McNaughton stated that Mr. Duguid contravened:

1. Ontario parliamentary convention because he knew about the use of the label or because of the seriousness of the improper conduct;
2. section 6 of the Act, relating to gifts, by taking advantage of free postage from Canada Post, a benefit which is not permitted under the Act and, even if it was permitted, it ought to have been disclosed publicly pursuant to section 6(3) of the Act, which it was not;
3. Ontario parliamentary convention by assigning a member of his minister's staff (the Special Assistant, Outreach) to oversee mailing the holiday cards.

### **Section 6 – the Gift Rule**

[9] During the intake phase of this complaint, I determined that I would not address Mr. McNaughton's allegations regarding section 6 because there were insufficient grounds to do so. My reasons are as follows.

[10] Section 6<sup>1</sup> sets out the rules for MPPs when they are offered or accept gifts or benefits. Considering the gift rule as a whole, it is clear that it applies only if a gift or

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<sup>1</sup> 6. (1) A member of the Assembly shall not accept a fee, gift or personal benefit that is connected directly or indirectly with the performance of his or her duties of office. 1994, c. 38, s. 6 (1).

Non-application of subs. (1)

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

benefit is *given* by someone. The main thrust of Mr. McNaughton's complaint is that Mr. Duguid took the benefit of free postage without the knowledge of Canada Post. I accordingly found this argument by Mr. McNaughton inconsistent with his main allegations and it stretches the bounds of section 6 beyond any reasonable interpretation.

### **Ontario Parliamentary Convention**

[11] This left Mr. McNaughton's allegations about Ontario parliamentary convention, which is a unique feature of the Act. It has been described by former Commissioner Coulter Osborne as follows:

Parliamentary convention refers to that which is generally accepted as a rule or practice in the context of norms accepted by parliamentarians. The elements of parliamentary convention are framed by the core principles which provide the general foundation for the Act as set out in the Act's preamble (the reconciliation of private interests and public duties).<sup>2</sup>

[12] In his submissions, Mr. McNaughton pointed to paragraphs 3 and 4 of the preamble to support his contention that Mr. Duguid had contravened parliamentary convention. The preamble to the Act states:

It is desirable to provide greater certainty in the reconciliation of the private interests and public duties of members of the Legislative Assembly, recognizing the following principles:

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

(c) a fee, gift or personal benefit that is given, directly or indirectly, by or on behalf of a political party, constituency association, candidate or leadership contestant registered under the Election Finances Act, including remuneration or financial assistance; or

(d) any other gift or personal benefit, if the Commissioner is of the opinion it is unlikely that receipt of the gift or benefit gives rise to a reasonable presumption that the gift or benefit was given in order to influence the member in the performance of his or her duties. 1994, c. 38, s. 6 (2); 2010, c. 5, s. 1 (1).

Disclosure

(3) Within 30 days after receiving a gift or personal benefit referred to in clause (2) (b) or (d) that exceeds \$200 in value, the member shall file with the Commissioner a disclosure statement in the form provided by the Commissioner, indicating the nature of the gift or benefit, its source and the circumstances under which it was given and accepted. 2010, c. 5, s. 1 (2).

Same

(4) Subsection (3) also applies to gifts and personal benefits referred to in clauses (2) (b) and (d) if the total value of what is received from one source in any 12-month period exceeds \$200. 1994, c. 38, s. 6 (4); 2010, c. 5, s. 1 (3).

<sup>2</sup> Report Re: Ms. Sandra Pupatello, Deputy leader of the Official Opposition and Member for Windsor West, December 12, 2002 (the "Pupatello Report").

1. The Assembly as a whole can represent the people of Ontario most effectively if its members have experience and knowledge in relation to many aspects of life in Ontario and if they can continue to be active in their own communities, whether in business, in the practice of a profession or otherwise.
2. Members' duty to represent their constituents includes broadly representing their constituents' interests in the Assembly and to the Government of Ontario.
3. Members are expected to perform their duties of office and arrange their private affairs in a manner that promotes public confidence in the integrity of each member, maintains the Assembly's dignity and justifies the respect in which society holds the Assembly and its members.
4. Members are expected to act with integrity and impartiality that will bear the closest scrutiny.

[13] The following types of conduct have been found to be contrary to Ontario parliamentary convention: a minister advocating before an agency, board or commission on behalf of a constituent<sup>3</sup>, a minister advocating to the judiciary regarding a matter<sup>4</sup>, a member using constituency resources for partisan purposes<sup>5</sup>, a member using the benefit of a contract between the government and a courier firm to mail goods on behalf of a friend and constituent<sup>6</sup>, and a member using his inspection privileges to allow access to a provincial facility by a member of the press under false pretenses.<sup>7</sup>

## **Issues**

[14] There are two key issues in this investigation:

1. Did Mr. Duguid act contrary to Ontario parliamentary convention due to the fact that holiday cards were mailed without postage and with the label?
2. Did Mr. Duguid act contrary to Ontario parliamentary convention because of the role a member of Mr. Duguid's ministers' staff played in the constituency office?

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<sup>3</sup> See Annual Report of the Office of the Integrity Commissioner, 1994-1995 at 5

<sup>4</sup> Ibid.

<sup>5</sup> Various annual reports of the Office of the Integrity Commissioner, referenced in Report Re: Ted Chudleigh, Member for Halton, December 11, 2008 at paras. 19-13, 28-30 and para. 39.

<sup>6</sup> Pupatello Report.

<sup>7</sup> Report Re: Mr. David Levac, Member for Brant, July 23, 2003.

[15] Regarding the first issue, Mr. Duguid agrees with Mr. McNaughton that it was wrong for mail to be sent from his office without postage and with the label. He states that as soon as he learned about it, he stopped the practice and took steps to rectify the situation. Mr. McNaughton is skeptical that Mr. Duguid did not know the label was used. Answering this issue, therefore, requires me to consider what Mr. Duguid knew about the practice and, if he did not know, whether he could contravene Ontario parliamentary convention for the actions of his staff.

[16] Relating to the second issue, there is no dispute between Mr. McNaughton and Mr. Duguid that a member of Mr. Duguid's ministers' staff coordinated the mailing of the holiday cards. The evidence in this inquiry has established that in addition to the holiday cards, this individual carried out additional duties in the constituency office. Accordingly, the second issue requires me to consider the role of this person and to determine whether it was appropriate for Mr. Duguid to assign him in the manner that he did.

## **Facts**

[17] The time period that required consideration for this inquiry is Summer 2011 until December 2012. The facts established are organized under the following headings:

- Background circumstances
  - The Canada Post Corporation Government Mail Free of Postage Program
  - Ontario Government Mail and the Members' Global Office Support and Communications Budget
  - Mr. Duguid's Constituency Staff
  - The Special Assistant's role in the Constituency Office
- Use of the Free Postage Program by the Constituency Office
- The 2012 Holiday Cards
- Did Mr. Duguid Know?
- The Role of Ministers' Staff in Constituency Offices, in general

## Background Circumstances

### *The Canada Post Corporation Government Mail Free of Postage Program*

[18] Section 35 of the *Canada Post Corporation Act*, R.S.C., 1985, c. C-10 provides that mail to and from certain federal government officials, including members of the House of Commons and the Senate, can be sent free of postage. This program is known as the Government Mail Free of Postage Program (the “free postage program”). Information about the program is available on the website of Canada Post.<sup>8</sup>

[19] When using the free postage program, Members of Parliament (“MP”) or Senators need only ensure that their name and position is stated on the envelope. There is no requirement that any particular sticker, such as a label, be affixed to the envelope.

[20] The most important fact about the program for purposes of this report is that Ontario members of provincial parliament are not entitled to use the free postage program (unless they are sending mail to a federal MP, a Senator or any of the other officials who are eligible for the program).

### *Ontario Government Mail and the Members’ Global Office Support and Communications Budget*

[21] The Ontario government has an internal mail system which allows for mail delivery between certain Ontario government offices, including the offices at the Legislature. Mail sent to destinations outside of the Ontario government requires proper postage because it is delivered using the services of Canada Post. Mail sent from constituency offices requires postage.

[22] The budgets available to MPPs to establish constituency offices include a component for postage. The budgets for MPP constituency offices are known as the Members’ Global Office Support and Communications Budget or, more commonly, the “global budget.” There are four components of the global budget: accommodation (for constituency office rent), communications (postage, courier, photography), office operations (supplies) and support staff.

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<sup>8</sup> <http://www.canadapost.ca/tools/pg/manual/PGgovtmail-e.asp>

[23] In addition to the global budget, MPPs are provided with a special budget for mailing newsletters, householders and calendars. The *GUIDE to Members' Allowances and Services and Members' Support and Caucus Staff* states,

Effective April 1, 2008, the Board of Internal Economy approved an amount of \$11,000 per Member per fiscal year to be funded by the Legislative Assembly outside the Members' Global Budget for the cost of printing and mailing paper based householders, calendars, Christmas Cards, targeted mailings within the Member's riding. Funding would not cover the costs of advertising or householders printed in newspapers. Any costs incurred in excess of \$11,000 each fiscal year will be charged to the Members' Global Budget.<sup>9</sup>

*Mr. Duguid's Constituency Staff*

[24] For most of 2011 until January 2012, Mr. Duguid's constituency office was staffed by an office manager, a full-time constituency assistant and a part-time constituency assistant. In January 2012, the office manager commenced a leave of indefinite duration.<sup>10</sup> Around the same time, the constituency office moved from a location in an office building to a storefront.

[25] With no office manager, staff in the constituency office required some assistance and oversight. This was particularly so because of the new challenges faced by having a storefront location.

[26] Mr. Duguid asked a member of his ministers' staff, the special assistant, outreach (referred to herein as the "special assistant"), to take on these oversight duties in the constituency office. The special assistant continued to carry out all the duties required of him as a ministers' staff including coordination between the constituency office and the minister's office, which will be discussed further below. However, the evidence is clear that staff in the constituency office needed a supervisor or an oversight person, and that responsibility was assigned to the special assistant.

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<sup>9</sup> *GUIDE to Members' Allowances and Services and Members' Support and Caucus Staff* at 69

<sup>10</sup> The evidence relating to this finding is personal information not relevant to the issues and I have determined it will not be disclosed.



### *The Special Assistant's Role in the Constituency Office*

[27] The special assistant is a long-time supporter and staff member of Mr. Duguid. The special assistant has been employed in Mr. Duguid's constituency office and his ministers' office, and he has supported the minister in a volunteer capacity in relation to campaign and constituency work.

[28] The special assistant was employed in Mr. Duguid's constituency office for a short time in 2009. He became employed in Mr. Duguid's minister's office on September 8, 2009 as Special Assistant, Outreach. Although Mr. Duguid's ministerial portfolios changed, the special assistant's role and general duties remained the same.

[29] "Special Assistant, Outreach" is a job title that I have become familiar with in my work as the ethics executive for ministers' staff under the *Public Service of Ontario Act, 2006*. Some offices have a similar position referred to as "MPP Liaison." One of the functions of jobs such as these is to maintain connections and contacts on behalf of the minister with stakeholders of the ministry and within the minister's riding.

[30] Near the end of 2012, Mr. Duguid began to consider permanently transferring the special assistant from his ministers' staff to his constituency staff.

### Use of the Free Postage Program by the Constituency Staff

[31] In summer 2011, a student working in the constituency office advised staff that he believed that the office could send mail using the free postage program. The student researched the issue online. Staff in the constituency office recall that the student showed them section 5 of the *Canada Post Corporation Act* in support of his belief. Section 5 of the *Canada Post Corporation Act* does not deal with the free postage program.

[32] The decision was eventually made that mail would be sent using the free postage program. Staff in the constituency office could not pinpoint exactly how the decision was made and it appears it may have been a consensus among the small team. In any event, constituency staff decided to use the program and to facilitate this decision, the student created a label that could be affixed to envelopes and it was used for mailing purposes in the constituency office.

[33] The special assistant stated that by the time he was overseeing operations in the constituency office (January 2012), staff were using the program. However, the special assistant also had knowledge of the student and his role in making the suggestion to create and use the label.

[34] At Queen's Park, staff in the mailroom observed that occasionally a small amount of mail was coming through their system from Mr. Duguid's constituency office using the label. Staff in the mailroom recalled contacting staff in the constituency office to inform them that the free postage program was not available to them. The mailroom has no role in overseeing or policing proper mail procedure for MPPs.

[35] Turning back to the constituency office, Canada Post occasionally returned mail with the label affixed with a note that said, "not for MPPs." Such mail was also occasionally delivered without incident. The fact that Mr. McNaughton actually received his card is additional evidence that sometimes the mail with no postage (but with a label) was delivered by Canada Post.

[36] Since mail was sometimes returned, staff in the constituency office decided they should try to verify their understanding of the program. On June 13, 2012, under the supervision of the special assistant, a constituency assistant wrote to Canada Post to obtain clarification about use of the free postage program. Her letter states,

Our Member of Provincial Parliament Constituency Office has been using the Canada Post to mail to our constituents only using "On Her Majesty's Service" on the envelope replacing a postage stamp. Our office is finding inconsistencies in that, on some occasions, the mail is returned to our office requesting a postage stamp. On the last piece of mail that was returned, someone wrote on it "not for MPPs."

[section 5 of the *Canada Post Corporation Act* was reproduced]

Can this information be conveyed to our local postage station? If we have misunderstood the Act, please let us know.

[37] On June 19, 2012, a response was received. The letter stated:

Thank you for your letter regarding items that are mailed from your Constituency Office to your constituents and are returned for insufficient postage.

Government mail free of postage is referred to as franking privileges. This allows for mail (with the exception of Parcel Services, options and special services) to be sent to and from the following individuals free of postage provided that both the sender and receiver are in Canada: [a list that did not include MPPs]

...

Thank you again for writing. I trust this information will clarify the franking privileges and I appreciated the opportunity to respond.

[38] The constituency assistant read the letter and recalled concluding that the response from Canada Post did not contain a clear answer to her question. She had the impression that there was still some ambiguity and that since the letter did not say “No, you cannot use the program as an MPP,” it was possible to carry on using the program. The constituency assistant informed the special assistant of the letter and her impression of it.

[39] The evidence is unclear whether the special assistant read the letter in June 2012. Whether he read the letter or not, he formed the view that the letter was not clear. It did not contain “cease and desist” type language. The special assistant’s evidence in this inquiry was that when he reads the letter now, he can see that it was clear. The special assistant blames his carelessness on the fact that he was busy due to his duties in both the minister’s office and the constituency office.

[40] The resulting circumstances were that Mr. Duguid’s constituency staff was, for many months, benefiting from a program that was not available to them. However, the evidence is clear, based on their direct inquiry to Canada Post, that they were not trying to inappropriately take advantage of the system, but rather had a mistaken belief about its applicability to MPPs’ offices. One can understand why they held this mistaken belief because sometimes the mail got delivered.

[41] In addition, the evidence is that Mr. Duguid's constituency office sends mail infrequently. They indicated that most of their business is transacted by phone or by email.

[42] The staff members involved were well-intentioned; however, the fact remains that their actions resulted in a significant error. A constituency office is the face of government for many people. Ontarians should reasonably expect that constituency offices operate with a baseline level of knowledge that includes basic facts about whether their MPP is entitled to send free mail using Canada Post. Constituency offices can ask questions of the Legislative Assembly mailroom or their party caucus office.

#### The 2012 Holiday Cards

[43] In December 2012, Mr. Duguid instructed the special assistant to oversee the mailing of his holiday cards. Mr. Duguid explained that sending holiday cards is important to him because it is a key communication tool that he has with his stakeholders both in the ministry and in the constituency. Mr. McNaughton, too, emphasized that holiday cards are an important part of the business of a constituency office.

[44] In 2012, a commercial mailing service was used to send 8,048 holiday cards on Mr. Duguid's behalf. Postage was paid to mail the 8,048 cards.

[45] An additional batch of cards (approximately 500) was sent using volunteer assistance from the constituency office. Under the direction of the special assistant, constituency volunteers stuffed and addressed this additional batch of cards which were destined to reach government stakeholders, other MPPs and other government officials. Each card was affixed with the label. At the time of this inquiry, the special assistant took full responsibility for his actions and candidly advised that in preparation for the December 2012 mail-out he took the time to improve the quality of the label to affix to the holiday cards. The special assistant stated, "The ones I could do for free, I did."

[46] On December 17, 2012, Mr. McNaughton received his holiday card. Mr. McNaughton's executive assistant noticed the label and the lack of postage and wondered whether it was possible for Mr. McNaughton to use a similar label to obtain free postage.

After some inquiries, it was established that there is no program offered by Canada Post that provides free mail delivery to and from the constituency offices of Ontario MPPs.

[47] Concluding that the label was inappropriate, Mr. McNaughton became offended that another MPP would attempt to use the free postage program. After consulting with his local MP, Mr. McNaughton wrote to the federal minister responsible for Canada Post Corporation to report the circumstances. A copy of the letter sent to Minister Rona Ambrose, Minister of Public Works and Government Services, is attached to this Report as Appendix A. As the letter to Minister Ambrose indicates, Mr. McNaughton also informed this Office. There was media interest in the issue.

[48] On or about December 19, 2012, Mr. Duguid's minister's office was contacted by media inquiring into the matter. The communications director and the chief of staff understood that the media was interested in whether Mr. Duguid had paid postage for his holiday cards. The communications director contacted the special assistant (the person responsible for the holiday cards – and overseeing the constituency office) to ask whether postage had been paid. The special assistant told the communications director that postage had been paid, referring to the costs of the commercial mailing service.

[49] Later that day, Mr. Duguid's chief of staff saw an image of the envelope and the label and spoke to the special assistant himself. The chief of staff informed the special assistant that MPPs could not use the free postage program. To the chief's surprise, the special assistant explained that he believed MPPs could use the free postage program. At this point, the chief of staff realized that Mr. McNaughton had raised a legitimate concern. He immediately called Mr. Duguid to inform him of the issue: there was a serious problem.

[50] Mr. Duguid instructed his chief of staff to do three things: 1. Inform the Premier's Office; 2. Inform Canada Post; and, 3. Inform the Office of the Integrity Commissioner. Mr. Duguid instructed his chief to inform the Premier's Office because it has corporate responsibility for human resources in relation to ministers' staff. Mr. Duguid concluded that it would not be possible for the special assistant to remain on staff.

[51] The chief of staff carried out the actions as instructed. On the evening of December 19, the chief of staff and the Premier's then-acting chief of staff phoned the special assistant to discuss the situation. During that call, the special assistant offered his resignation. The Premier's acting chief of staff verbally accepted the resignation and directed the special assistant to attend at the office of the Premier's deputy chief of staff the next day (December 20) to turn in his BlackBerry and provide a written letter of resignation.

[52] At around 9 a.m. on December 20, Mr. Duguid released a media statement indicating that a member of his staff had resigned. It also said that Mr. Duguid would be informing the Office of the Integrity Commissioner and contacting Canada Post to arrange for reimbursement and cooperate with any other investigations.

[53] At around 10 a.m. on December 20, the special assistant met with the deputy chief of staff in the Premier's Office. During the meeting, the special assistant informed the deputy chief of staff that he no longer wished to resign.

[54] In light of the severity of the action, the Premier's acting chief of staff and the Premier's deputy chief of staff decided that if the special assistant was not prepared to resign, his employment would be terminated. A termination letter was prepared and he was informed of the decision.

[55] Mr. Duguid's chief of staff called Canada Post and spoke to the Director of Government Affairs to disclose the circumstances.

[56] Staff in my office interviewed the Director, Government Affairs and the Chief Postal Inspector for Canada Post.<sup>11</sup> It was established that Canada Post had opened an investigation file with respect to the mailing of Mr. Duguid's holiday cards in response to the media reports and the correspondence to the federal ministers. The Canada Post officials also confirmed that they were contacted by the chief of staff.

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<sup>11</sup> Section 32 of the *Members' Integrity Act, 1994* requires that I suspend any inquiry if I become aware that the subject-matter is being investigated by police or that a charge has been laid. Section 32.1 stipulates that I may suspend the inquiry if I determine that the subject matter is being dealt with in accordance with another procedure. It was for this reason that I gathered information about the status of the Canada Post investigation, if any.

[57] Officials for Canada Post decided to close the investigation when they received payment from Mr. Duguid for the lost postage and when it became clear that there was no ongoing risk of future mailings using inappropriate postage. The Canada Post officials stated that they would have remained interested in the file if it appeared that there was a wider scale attempt to avoid paying postage.

[58] On December 20, 2012 Mr. Duguid's chief of staff called this Office, explaining that he was calling on behalf of Mr. Duguid. Records in this Office reflect that the chief of staff advised that Mr. Duguid had sent holiday cards without postage, and that this was not allowed. Upon becoming aware of the complaint, Mr. Duguid had instructed his staff to take steps to deal with the matter including ensuring that the person who was responsible no longer worked in the minister's office, contacting Canada Post and offering to reimburse Canada Post for the cost.

[59] The chief of staff determined that approximately 500 cards were mailed with the label. To account for the possibility that other cards were mailed, Mr. Duguid agreed to pay Canada Post the amount of \$366, which is the postage for 600 letters.

[60] On December 21, the chief of staff wrote to the Director, Government Affairs at Canada Post. The letter stated:

Please find enclosed a cheque from Brad Duguid, MPP Scarborough Centre as reimbursement for postage that was not applied to a portion of Mr. Duguid's holiday cards. We have estimated the number of cards that did not include the appropriate postage to be approximately 600. At a postage rate of \$0.61, the cheque is in the amount of \$366.

[61] The Director, Government Affairs at Canada Post responded on January 7, 2013. The letter states,

Thank you for the letter and the personal cheque from Mr. Duguid in the amount of \$366.00 that I received last week. Please accept this letter as formal recognition of the receipt of payment for cheque #242 from Mr. Duguid's personal account. This cheque has been deposited by Canada Post to cover the postage reimbursement and we will now close our investigation into this matter.

### Did Mr. Duguid Know?

[62] Mr. Duguid's evidence, which I accept, was that he did not become aware of his staff using the label until December 2012. I base this finding on Mr. Duguid's evidence and on the consistent recollections of his staff regarding his reaction when he found out about the circumstances.

[63] Mr. Duguid recalled that he was confused and upset about what he heard. His chief of staff recalled that he had never seen him so angry. His constituency staff recall specifically that when Mr. Duguid spoke about the issue with them in December 2012 he told them to cooperate with any investigation. They also recall that he wondered why the staff would feel any pressure to seek free postage because there was a budget available for these types of costs.

### The Role of Ministers' Staff in Constituency Offices, in general

[64] MPPs who are also ministers have much different obligations and demands on their time than regular MPPs. The appointment to Cabinet, in and of itself, requires a number of significant changes in one's life. The MPP/Minister has more responsibilities in Toronto at Queen's Park fulfilling their statutory duties as the head of their ministry. The increased demand on a minister's time is one of the reasons why ministers are generally restricted in the Act from carrying out other employment or professions while they are a minister.<sup>12</sup> MPPs who are ministers are challenged to meet the ordinary demands of their constituency office.

[65] As a consequence, a high degree of coordination is required between the MPP's constituency office and their minister's office at Queen's Park. This is similar to the coordination required between a non-minister MPP's constituency office and their Queen's Park office; however, it is a fact that a minister wears two hats and the demands on a minister/MPP's time are driven by the obligations and priorities of his or her ministry work.

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<sup>12</sup> Section 10 of the *Members' Integrity Act, 1994*.



[66] Although this high degree of coordination is required, it is well understood that ministers' staff are not permitted to perform constituency work, unless that work takes place on their own time. Managing the divide between constituency work and ministry work is not always easy to do because a minister/MPP is one person. It would of course be absurd to suggest that a minister not take a constituency-related telephone call at Queen's Park when in his or her minister's office, and vice versa.

[67] It is easier to draw clearer lines around the activities of ministers' staff versus those of constituency staff. This is because ministers' staff have defined roles within the minister's office relating to the minister's portfolio whereas constituency staff devote their time to supporting the MPP's constituents, and this work spans across all portfolios. As noted above, many ministers' offices have a position like MPP Liaison which has responsibility for coordinating activities.

[68] Although clearer lines can be drawn around the work of all staff, there will inevitably be times where some cross-over is necessary and practical. For example, the chief of staff of any minister may help constituency staff make decisions about scheduling the minister so that ministry priorities can be accommodated. Another example relevant to this inquiry is the coordination of mailing lists, especially for holiday card mail-outs.

### **Analysis**

[69] For ease of reference, the issues that require consideration are:

1. Did Mr. Duguid act contrary to Ontario parliamentary convention due to the fact that holiday cards were mailed without postage and with the label?
2. Did Mr. Duguid act contrary to Ontario parliamentary convention because of the role a member of Mr. Duguid's minister's staff played in the constituency office?

Issue 1: Did Mr. Duguid act contrary to Ontario parliamentary convention due to the fact that holiday cards were mailed without postage and with the label?

[70] It was inappropriate for any of Mr. Duguid's 2012 holiday cards to be mailed without postage in an effort to benefit from the free postage program. The evidence establishes that staff involved were well-intentioned and acting under a mistaken belief about who qualified for the program. Although they were well-intentioned, it was a serious mistake to make.

[71] The fact is that Mr. Duguid had no knowledge of the actions of his staff using the program until December 2012, at which time he immediately took steps to rectify the situation. Having determined that Mr. Duguid had no knowledge of the activity in question, I must then consider whether he can be responsible for contravening Ontario parliamentary convention for conduct that was not his own and was carried out without his knowledge.

[72] Mr. McNaughton states that he finds it hard to believe that Mr. Duguid did not know about his constituency staff using the label. I believe this can be explained because Mr. McNaughton viewed the circumstances from his own perspective. Mr. McNaughton, who is not a minister, is highly involved in the day to day activities of his constituency office. Mr. Duguid, a minister, is not as involved as Mr. McNaughton. This is not to say that Mr. Duguid is less interested or available for constituency matters. It is only to observe that the life of a minister/MPP is different than a regular MPP.

[73] In this case, the error related to a routine administrative task that is outside the type of tasks that a reasonable person could expect Mr. Duguid himself to have responsibility for supervising or directing. Mr. Duguid was not aware of – nor did he supervise, nor should he have been expected to supervise – the steps taken by staff in his constituency office to send correspondence. It is entirely distinct from a policy or procedural decision that an MPP might make relating to the management of his or her constituency office.

[74] Having said that, it is clearly up to Mr. Duguid to ensure that his staff are properly trained and informed so that they can carry out their jobs effectively. He is, of course, responsible in the general sense for the conduct of his staff. Mr. Duguid took

responsibility for the actions of his staff. He took many steps including repaying Canada Post for the money that should have been paid in the first place.

[75] Although Mr. Duguid is responsible for his staff, it does not follow that he contravened Ontario parliamentary convention because of the actions of his staff, when his staff were acting without his knowledge.

[76] As noted at the outset, parliamentary convention refers to generally accepted rules or practices framed by the principles of the preamble. The preamble sets out standards regarding the expectations the people of Ontario should have for how their elected officials act. These obligations relate specifically and uniquely to the personal conduct of the member/minister.

[77] This issue is similar to the circumstances I addressed in the Report Re: Randy Hillier, Member for Lanark – Frontenac – Lennox.<sup>13</sup> In the Hillier Report, the issue was whether Mr. Hillier contravened Ontario parliamentary convention for the use of his constituency website for partisan purposes. In that case, I found that an honest mistake by a third party contractor led to the perception that constituency resources were being used for partisan purposes. I found that it was not reasonable for Mr. Hillier to have foreseen the error and therefore that he had not contravened parliamentary convention.

[78] I conclude that Mr. Duguid did not act contrary to Ontario parliamentary convention on the basis of the actions of his staff in relation to using the label. It was not reasonable to expect him to supervise this kind of activity.

Issue 2: Did Mr. Duguid act contrary to Ontario parliamentary convention because of the role a member of Mr. Duguid’s ministers’ staff played in the constituency office?

[79] Unlike sending mail, Mr. Duguid is the person who is ultimately responsible for his staff in his constituency office and his ministers’ office. Mr. Duguid made two decisions with respect to the special assistant. First, he assigned him oversight responsibilities for the constituency office for at least 10 months. Second, he assigned him responsibility for overseeing the mailing of the 2012 holiday cards.

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<sup>13</sup> July 6, 2011 (the “Hillier Report”)

[80] Let me deal with the holiday cards first. I find nothing inappropriate about the coordination of the holiday card mailing by the special assistant. The sending of holiday cards is an example of one of the discrete tasks that require a high level of coordination between the ministers' office and the constituency office. It seems logical that the special assistant, outreach, the staff member who bridges the gap between the constituency and the ministry, would have oversight responsibility for this task. Therefore, it is my opinion that Mr. Duguid did not contravene Ontario parliamentary convention when he assigned the special assistant to oversee the sending of the 2012 holiday cards.

[81] However, I have a significant concern with the role that the special assistant played in the constituency office. The evidence is that he was responsible for overseeing the day to day activities of the constituency office. The constituency staff needed a supervisor and they viewed him as their supervisor. This situation lasted for almost a year.

[82] As elaborated above, coordination is required between a constituency office and a minister's office. However, in this case the special assistant was not merely bridging the divide but carrying out supervisory responsibilities. It was simply not appropriate for Mr. Duguid to assign the special assistant to this role. There were other options available. He could have required that the special assistant take a formal leave from his responsibilities in the ministers' office or he could have taken steps to transfer him to the constituency office sooner.

[83] I understand that the situation was complicated by extenuating circumstances, specifically that the office manager was on an indefinite leave. However, if Mr. Duguid was not a minister, he would have had no choice but to address the staff shortage in his constituency office directly by reallocating resources within his global budget. He would not have had the luxury of reallocating ministers' staff resources to his constituency. Ministers have a staff to support their work in the ministry office, not to support or supplement their constituency offices when those offices are short staffed.

[84] It is my opinion that Mr. Duguid contravened Ontario parliamentary convention when he assigned the special assistant oversight responsibilities in the constituency office. In making this finding, I am mindful of paragraph 4 of the preamble to the Act

which requires that members “act with integrity and impartiality that will bear the closest scrutiny.” It is my opinion that acting in a manner that bears the closest scrutiny means respecting the boundary between constituency staff and ministers’ staff and ensuring that resources allocated for ministers’ work are not inappropriately allocated to the constituency office.

### **Conclusion**

[85] I find that Mr. Duguid is not responsible for contravening Ontario parliamentary convention due to the fact that his 2012 holiday cards were mailed without postage and without a label.

[86] But, I find that Mr. Duguid contravened Ontario parliamentary convention when he assigned his special assistant, outreach the job of supervising and overseeing his constituency office.

[87] Mr. Duguid cooperated fully with the inquiry. The contravention related to extenuating circumstances and there was evidence that there were steps underway to transfer the special assistant. I view his conduct as an error in judgment and nothing more and for this reason I recommend that no penalty be imposed.

### **Final comments**

[88] Mr. McNaughton alleged in the letter to Minister Ambrose and in the complaint to this Office, that he believed fraudulent activity occurred. This is obviously a serious allegation to make – it is to allege a crime. In the face of such strong language, it is important that I state with clarity that I found absolutely no evidence that any person acted with any intent to take improper advantage of Canada Post or the program. I appreciate that Mr. McNaughton did not have all the facts but I ask members to take proper care and consideration when using this kind of language in future complaints.



Lynn Morrison  
Integrity Commissioner



Monte McNaughton, MPP  
Ambion-Kent-Middlesex

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December 18, 2012

Office of the Minister of Public Works and Government Services Canada  
The Honourable Rona Ambrose  
Place du Portage, Phase III, Room 18A1  
11 Laurier Street  
Gatineau, Quebec K1A 0S5

Dear Minister,

With the Christmas season upon us, my office has been receiving a number of Christmas Cards from government colleagues, friends and Ministers.

Yesterday, I received a card from Ontario Minister of Economic Development and Innovation, MPP Brad Duguid. This card jumped out at me because it did not have a postage stamp and instead had a custom printed mailing label applied where the stamp would normally be. I have attached a copy of this card for your reference, but note that the mailing label states, 'Her Majesty's Service' with a rendering of a female monarch.

After speaking with an official at my local post office in Stratroy, Ontario, I have been informed that this mailing label is what appears to be a postal 'frank'. Accordingly, I was provided with the attached flyer from Canada Post titled, 'Government Mail Free of Postage'.


As you will know, Canada Post allows for mail to be sent to and from the following individuals free of postage, provided that both the sender and receiver are in Canada: the Governor General, the Speaker or Clerk of the Senate or House of Commons, the Parliamentary Librarian or the Associate Parliamentary Librarian, Members of the Senate, Members of the House of Commons and the Conflict of Interest and Ethics Commissioner or Senate Ethics Officer. Nowhere does it state that this privilege is available for provincial MPP's



Unfortunately, with the Ontario Legislature currently prorogued, I have no direct method to raise this issue with MPP Duguid and am instead writing to you today to ask that you immediately investigate this matter to determine if any acts of the legislature or otherwise may have been breached or violated.

I look forward to your prompt reply.

Yours sincerely,



Monte McNaughton, MPP  
Lambton-Kent-Middlesex

Attachments:

Scan copy of Duguid Christmas Card 2012  
Government Mail Free of Postage Information Pamphlet, Canada Post

c.c.:

Bev Shipley, MP Lambton-Kent-Middlesex  
~~Cyril McKeown, Energy and Environment Minister, Ontario~~  
Brad Duguid, MPP Scarborough Centre