COMMISSION ON CONFLICT OF INTEREST
(ONTARIO)

REPORT

of

THE HONOURABLE GREGORY T. EVANS
COMMISSIONER

RE: MR. WILL FERGUSON, M.P.P.

TORONTO, ONTARIO
JUNE 23, 1992

COMMISSION ON CONFLICT OF INTEREST
(ONTARIO)

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INDEX

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RE: MR. WILL FERGUSON, M.P.P.

INTRODUCTION

In a letter dated May 4, 1993, attached as Appendix "A", Mr. Bob Chiarelli, the M.P.P. for Ottawa West, referred a matter to the Commissioner for an opinion as to the conduct of another M.P.P., Mr. Will Ferguson of Kitchener. The complaint is made pursuant to section 15(1) of the Members' Conflict of Interest Act, 1988, (hereinafter referred to as the "Act") which provides:

> "15(1) A member who has reasonable and probable grounds to believe that another member is in contravention of this Act may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the Commissioner give an opinion respecting the compliance of the other member with the provisions of this Act."

Along with his letter dated May 4, 1993, Mr. Chiarelli enclosed documents intended to provide background information and support for his complaint. These documents have been filed as Exhibits 1, 2, 3, 4, 5, 6, and 7.

On May 10, 1993, Mr. Chiarelli provided additional documentation in support of his complaint. The relevant documentation has been filed as Exhibits 8 and 9.

In both letters, Mr. Chiarelli asked me to conduct a public inquiry into his allegations against Mr. Ferguson. The authority for an inquiry of this kind would be section 16(2) of the Act which provides:

> "16(2) Where the request for an opinion is made under subsection 15(1) or (2), 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."

The complaint against Mr. Ferguson is that while serving as a Parliamentary Assistant to the Minister of Transportation, he took steps to attempt to publicize the criminal record of a private citizen. Mr. Ferguson had launched a civil action in libel and slander against this citizen and others. Mr. Chiarelli's allegation is that

the attempted disclosure of the citizen's criminal record was intended to damage her credibility which would in turn increase the chances of success in his civil action. This course of conduct on Mr. Ferguson's part, in the opinion of Mr. Chiarelli, created a conflict of interest and a violation of the Act.

As required under section 16(1) of the Act, Mr. Ferguson was served with Notice, attached as Appendix "B", together with a copy of Mr. Chiarelli's letters and supporting documentation.

In answer to Mr. Chiarelli's allegations, Mr. Ferguson filed with the Commissioner two letters dated May 21, 1993 and June 11, 1993, attached as Appendix "C".

BACKGROUND

In order to fully understand the issues raised by Mr. Chiarelli's complaint, I consider that a more detailed chronology of Mr. Ferguson's government career, and the actions he took, would be beneficial.

Mr. Ferguson was appointed Minister of Energy in the Government of Ontario on July 31, 1991. From June 1991 to February 1992, the police conducted an investigation of alleged wrongdoing, including criminal wrongdoing, by many people associated with the Grandview School for Girls in Cambridge. In early February 1992, a woman alleged that Will Ferguson in 1973 had helped her escape from Grandview in return for sexual favours. These allegations which were published in several newspapers and broadcast by other media, have been consistently denied by Mr. Ferguson.

Mr. Ferguson resigned his Cabinet position on February 13, 1992 and on March 2, 1992, commenced a libel and slander action against several defendants. On March 26, 1992, an amended statement of claim was filed. In both documents one of the named defendants is the woman who made the allegations against Mr. Ferguson. The civil action initiated by Mr. Ferguson seeks damages totalling $4.1 million.

On September 23, 1992, Mr. Ferguson was appointed the Parliamentary Assistant to the Minister of Transportation. On November 20, 1992, Mr. John Piper, Premier Bob Rae's Communications Adviser, a senior public servant with a rank and salary at the deputy minister level, resigned after he admitted that he offered to provide a copy of the criminal record of the woman who had made allegations against Mr. Ferguson to a reporter for the Toronto Sun newspaper. On March 4, 1993, the provincial police decided that Mr. Piper had not violated any law. On March 5, 1993, Mr. Piper stated he did not act alone but did not disclose the name of any other person involved. On March 8, 1993, Mr. Ferguson wrote to Premier Rae and said, "I wish to inform you that I am the person who provided Mr. Piper

with a copy of the criminal record of [the woman]". He resigned his position as Parliamentary Assistant to the Minister of Transportation.

On April 29, 1993, Mr. Ferguson was arrested on four criminal charges--assisting to escape lawful custody, sexual intercourse with a female ward and two counts of breach of trust by a public officer. Mr. Ferguson resigned from the NDP caucus and now sits as an Independent member. Neither the criminal charges against Mr. Ferguson nor his civil libel and slander action has yet been heard by the courts.

ISSUES

Against this background, two questions immediately arise for consideration and determination.

(1) Was Mr. Ferguson's participation in the attempt in November, 1992 to publicize the woman's criminal record a violation of the Members' Conflict of Interest Act, 1988 in light of the fact that he has commenced a civil libel and slander action against her?

(2) If there is a prima facie violation of the Act, should the Commission's inquiry under section 16 of the Act be 'informal' or 'formal'? And when should such an inquiry take place bearing in mind the existence of unresolved criminal charges against Mr. Ferguson and the unresolved civil suit launched by Mr. Ferguson?

Before dealing with these issues, I want to make two preliminary and contextual observations. First, I believe that the clear trend of recent public inquiries looking into conflict of interest allegations has been the avoidance of overly narrow interpretations of the notion and contents of conflict of interest. The reasons for this trend are well-stated in the Report of the Commission of Inquiry into the Facts of Allegations of Conflict of Interest Concerning the Honourable Sinclair M. Stevens, at p.28:

> "The duties and responsibilities of public office, ... are sophisticated and subtle. Immense power and influence can be wielded even in the absence of actual decision. The nature of modern government -- the importance of access, the nature of influence, the structure of governmental decision making -- is such that public confidence in the integrity, objectivity, and impartiality of government can only be conserved and enhanced if all of the duties and responsibilities of the public office holder are properly subject to scrutiny..."
> (emphasis in original)

My second preliminary point is that the same trend, i.e. a trend to view quite critically potential conflict situations, is evident in other, non-governmental

conflict contexts. The best and most recent example is in the realm of conflict of interest in a law firm scenario. In the leading case, Martin v. Gray, (1990), 77 D.L.R. (4th) 429 (S.C.C.), Justice Sopinka, after a lengthy review of the authorities, said, at p.266:

> Nevertheless it is evident from this review of authorities that the clear trend is in favour of a stricter test. This trend is in favour of ensuring not only that there be no actual conflict but there be no appearance of conflict.

I conclude from these pages and many similar ones from public inquiries and judicial decisions that conflict of interest laws like the one in Ontario should be interpreted generously and should not be diluted by an unduly narrow interpretation of the provisions in the law.

FINDINGS

ISSUE NO. 1

In his correspondence Mr. Chiarelli is not precise about the specific provisions in the Act that he contends Mr. Ferguson has violated. However, in the attachments to his letters, he has marked off sections 2 and 4 of the Act. I have also considered section 3 as in my opinion, these three provisions exhaust the possibilities; no other provision even comes close to being relevant to Mr. Ferguson's conduct. Accordingly, I will deal with sections 2, 3 and 4 seriatim.

(1) Section 2 - Conflict of Interest

Section 2 of the Members' Conflict of Interest Act, 1988 provides:

> "2. For the purposes of this Act, a member has a conflict of interest when the member makes a decision or participates in making a decision in the execution of his or her office and at the same time knows that in the making of the decision there is the opportunity to further his or her private interest."

Section 2 is in effect an 'umbrella' provision under which the substantive violations of the Act are sheltered. Section 2 is not itself a section whose breach gives rise to the potential imposition of the penalties found in section 17. In other words, it is not an offence to breach section 2 itself; rather section 2 defines, in a general way, the type of conduct that is prohibited in specific ways in other sections of the Act, including the two that are potentially relevant in this case, sections 3 and 4. Nevertheless, because section 2 provides the general definition of 'conflict of interest' and because some of its terminology is found in sections 3 and 4, it is

necessary and desirable to consider whether Mr. Ferguson's conduct comes within the definition of conflict of interest set out in section 2.

There are, in my view, five sets of words that need to be considered: "a decision", "participates in making", "in the execution of his office", "member's private interest" and "the opportunity to further".

In my opinion, Mr. Piper's attempt to provide to the Toronto Sun a copy of a private citizen's criminal record was "a decision". Mr. Piper was a senior public servant and the whole Ferguson/Grandview matter was a highly visible and contentious issue in the Ontario Legislature at the time he took his action. It would be unduly narrow, and not in accordance with the spirit of conflict of interest laws, to conclude that Mr. Piper's action was not "a decision".

On the second set of words, there can be no doubt that Mr. Ferguson "participated in making" the decision. Mr. Ferguson has stated that no person other than Mr. Piper was involved in this incident. Indeed a fair inference is that Mr. Ferguson was the entire reason for Mr. Piper's conduct. In his reply dated May 21, 1993, Mr. Ferguson states, "This matter has had absolutely nothing to do with any formal or informal decisions that I have made in the execution of my office as a member of the Assembly...". This misses the point. Participation in the decision of another is sufficient and, in my view, Mr. Ferguson certainly participated in Mr. Piper's decision.

I also believe that Mr. Ferguson's participation in Mr. Piper's decision was "in the execution of his office". The decision to attempt to release the criminal record of a private citizen was made entirely by virtue of communication between a Parliamentary Assistant to a Cabinet Minister and a very senior public servant. But for Mr. Ferguson's office, he would almost certainly not have had access to Mr. Piper and, again almost certainly, Mr. Piper would have had no interest in Mr. Ferguson's proposal.

On the fourth set of words, I believe that a substantial damage award in a civil suit would be viewed as a "private interest". There is a definition of "private interest" in the Act.

> "1. In this Act,
>
> ...
>
> "private interest" does not include an interest in a decision,
>
> (a) that is of general public application,
> (b) that affects a member as one of a broad class of electors, or
> (c) that concerns the remuneration and benefits of a member or an officer or employee of the Legislative Assembly.

This is an unhelpful definition. Clearly, none of the three exclusions from "private interest" is relevant in this case. However, the entire definition is negative; it defines what is not a private interest but not what is.

Accordingly, since there is nothing to exclude it in the definition of "private interest" in the Act, I believe that it is reasonable to conclude that a substantial monetary damage award in a civil suit is a "private interest". Such an award for Mr. Ferguson would be financial and personal.

The final set of words to consider is "the opportunity to further", i.e. to further the member's private interest. Here, my conclusion is that the Piper/Ferguson conduct does not come within the words. A civil law suit in libel and slander will be conducted by a justice of the Ontario Court of Justice (General Division) either with or without a jury. Moreover, the case, on the evidence of the statements of claim and defense that have already been filed, will be presented by experienced counsel. In such a context, it is highly unlikely that newspaper or broadcast accounts in November, 1992 of the criminal record of one of the defendants will have any influence on the outcome of the case.

It is true that the credibility of witnesses will be important in a libel and slander action. However, the judge hearing the case will decide whether evidence of the criminal record of a defendant is admissible and relevant. That decision will be made in the normal way, i.e. through consideration of the rules of evidence, various statutory provisions (e.g. section 22 of the Ontario Evidence Act), the testimony of witnesses and the arguments of counsel. It is simply far-fetched to think that newspaper and other media stories about the minor criminal record of a single defendant will have any influence on the outcome of the case. Accordingly, my opinion is that the Piper/Ferguson conduct provided no opportunity to further Mr. Ferguson's private interest. There is not, therefore, a breach, or even a remote possibility of a breach, of section 2 of the Act.

(2) Section 3 - Insider Information

Section 3 of the Members' Conflict of Interest Act, 1988 provides:

> "3. A member shall not use information that is gained in the execution of his or her office and is not available to the general public to further or seek to further the member's private interest."

It does not appear (although it is not entirely clear) that Mr. Chiarelli is alleging a violation of section 3. Nevertheless, I felt that this section should be considered. There are, in my view, four sets of words that need to be considered, "private interest, "not available to the general public", "information gained in the execution of his office", and "to further or seek to further".

There is no question about the constitutionality of the inquiry provisions (sections 16 and 17) of the Members' Conflict of Interest Act, 1988. The Supreme Court of Canada has consistently affirmed the validity of a wide range of provincial inquiries. See Faber v. The Queen (1975), 65 D.L.R. (3d) 423; Di Iorio v. Warden of Common Jail of Montreal (1976), 73 D.L.R. (3d) 491; A.G. (Quebec) v. A.G. (Canada) (Keable case) (1978), 90 D.L.R. (3d) 161; and O'Hara v. British Columbia (1987), 45 D.L.R. (4th) 527.

The constitutional problem encountered by provincial inquiries arises when they run prior or parallel to a criminal trial dealing with the same or overlapping fact situations. In such situations the Supreme Court of Canada has been very careful to preserve the complete integrity of the criminal trial. This has meant either the termination or postponement of the provincial inquiry depending on the terms of reference of the inquiry and the nature and extent of the overlap between it and the criminal trial. See especially the leading case Starr v. Houlden (1990), 68 D.L.R. (4th) 641. Representative of the language and conclusions in this case is the following passage from Chief Justice Lamer's judgment, at p.666:

> "In my view the commission of inquiry before this court is, in pith and substance, a substitute police investigation and preliminary inquiry into a specific offence defined in s.121 of the Criminal Code."

In my view, the Starr case, in which a provincial inquiry was declared to be unconstitutional, is distinguishable. It is true that Mr. Ferguson has been charged with four criminal offences and that the trial has not yet taken place. However, whereas in Starr the potential criminal charges and the subject matter of the provincial inquiry were virtually identical, here the subject matter in the criminal case against Mr. Ferguson and the subject matter of the inquiry which I might hold are, although not completely divorced, at least quite different, namely, sexual misconduct and providing assistance to enable a person to escape custody in the criminal case and attempting to release a private citizen's criminal record in the potential provincial inquiry. Moreover, it appears that the police investigation concerning the attempted release of the citizen's criminal record is complete and that no charges are contemplated against either Mr. Piper or Mr. Ferguson. Accordingly, I suspect that the decisions of the Supreme Court in Faber, Di Iorio, Keable and especially O'Hara, and not the decision in Starr, would govern. So, constitutionally, a public inquiry pursuant to section 16(2) could be ordered.

Nevertheless, even if I were disposed to hold a public inquiry, I would not do so until after the criminal charges against Mr. Ferguson are resolved. There would inevitably be some overlap of witnesses, testimony, evidence and argument in Mr. Ferguson's criminal trial and a s.16(2) inquiry into his conduct concerning the private citizen's criminal record. At a minimum, the alleged offender and 'victim' in both cases are the same. Accordingly, I believe that there is some real value in following the recent decision of the Nova Scotia Supreme Court, Appeal Division in Hon. Mr. Justice K. Peter Richard v. A.G. (N.S. (the Westray Mine case) (Unreported, January 19, 1993). The Court found that the provincial inquiry into

the Westray mine explosion was constitutional but nevertheless ordered a stay in its proceedings. Justice Hallett said, at pp. 58 and 59:

> "[I]t is not only in the interest of persons accused of offenses but also in the public interest not to jeopardize criminal or quasi-criminal trials if it can be avoided.
>
> ...
>
> [W]e can stay the Inquiry until the criminal investigation is concluded, until the trials of the four respondents for the provincial offenses are concluded and if criminal charges are laid against any of the respondents until those trials are concluded. This would ensure that the respondents get fair trials; I can see no valid reason to run a risk in this respect."

I believe that there is common sense and wisdom in these passages. Accordingly, if I had decided to conduct an inquiry, I would not proceed until after the disposition of criminal charges against Mr. Ferguson. In light of the very strong statements in the recent decisions of the Supreme Court of Canada in favour of protecting the integrity of the criminal process there is, in my view and in Justice Hallett's words, "no valid reason to run a risk in this respect".

The next question is: should a potential conflict of interest inquiry also await completion of the civil libel action? My answer would be an unqualified "No". The Supreme Court decisions restraining some provincial inquiries are firmly grounded in a desire to preserve the criminal justice process and the federal constitutional role in that process. In other words, one state-initiated process is given precedence over a second state-initiated process. With that context removed, there is no reason for a state-initiated process (the conflict inquiry) to defer to a private process devoid of state participation (the civil suit).

The Act provides that the Commissioner has a complete discretion whether the inquiry should be informal or formal. To date, my practice has been to proceed informally because I am aware that formal inquiries can be lengthy and expensive. Delay and expense are not necessarily adequate reasons for not proceeding under the Public Inquiries Act but they are factors which should be considered. The case law is clear that with a criminal proceeding having been commenced, a formal inquiry should be postponed until the trial and possible appeals have been concluded. At that point, I would need to consider the nature of any inquiry I might hold in light of the decision in the criminal trial.

OPINION

In summary, my opinion is:

(1) There is not a "conflict of interest" within the meaning of section 2 of the Act because the Piper/Ferguson conduct provided no opportunity to further Mr. Ferguson's private interest.

(2) There is no violation of section 3 (insider information) of the Act because Mr. Ferguson did not gain the relevant information "in the execution of his office" and because his conduct could not realistically have furthered his private interest in relation to the civil law suit.

(3) There is no violation of section 4 (influence) of the Act because the Piper/Ferguson conduct could not "influence the decision" of the court hearing the civil suit initiated by Mr. Ferguson.

Accordingly, in my opinion Mr. Ferguson is not in violation of the Act and no further inquiry should be held with respect to Mr. Chiarelli's complaint.

DATED at the City of Toronto in the Province of Ontario, this 23rd day of June, 1993.

Gregory T. Evans

The Honourable Gregory T. Evans
Commissioner

MAY 4 1993

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May 4, 1993

PRIVATE AND CONFIDENTIAL

Hon. G.T. Evans
Commissioner
Commission on Conflict of Interest
4th Floor, 101 Bloor Street West
Toronto, Ontario
M5S 2Z7

Re: Request under Sections 15 (1) and 16 (2)
Members' Conflict of Interest Act

Dear Commissioner:

As the Member of the Provincial Legislature for the constituency of Ottawa West, I am herewith, pursuant to sections 15 (1) and 16 (2) of the Members' Conflict of Interest Act, requesting you to conduct an inquiry pursuant to Parts I and II of the Public Inquiries Act regarding the probable conflict of interest of Mr. Will Ferguson, M.P.P. for Kitchener.

I believe that there are reasonable and probable grounds for a finding of a conflict of interest by reason of the following facts:

1. Mr. Ferguson initiated a private civil law suit against a former resident of the Grandview Training School for Girls and others claiming damages for libel and slander.

2. (a) In the legal proceedings Mr. Ferguson is seeking to recover $ 4.1 million in damages.

   (b) Mr. Ferguson's financial interest in the success of this case is covered in the definition of a "private interest" under Section 2 of the Act.

3. The success or failure of Mr. Ferguson's legal action would depend in large measure on the credibility or otherwise of the aforesaid defendant. In fact, it is likely that Mr. Ferguson would be unsuccessful in adducing evidence in the law suit of the defendant's criminal record.

...2/

On "private interest", my conclusion is the same as it was in the analysis of section 2, i.e. there is at least a prima facie case.

On the second set of words, "not available to the general public", there is not sufficient material before me about the actual contents and format of the criminal record Mr. Piper sought to release to determine whether this phrase is violated. The materials I have indicate that a lawyer for the Toronto Sun believes that the relevant documents are not public whereas the lawyer for Mr. Piper, and Mr. Ferguson himself, believe that the documents are public. It may well be that there is a difference in this regard between the criminal records of adults and young offenders (apparently the private citizen in this case has a record, albeit a minor one, in both categories). In any case, it is of questionable relevance.

My conclusion on the third set of words is that Mr. Ferguson did not obtain the information about the private citizen's criminal record "in the execution of his office". Mr. Ferguson was a Parliamentary Assistant to the Minister of Transportation at the relevant time. His attempt, apparently through his counsel, to obtain details of the citizen's criminal record at the courthouse in Owen Sound was something that any litigant could have attempted. His public office was irrelevant.

My conclusion on the fourth set of words, "to further or seek to further" a private interest, is the same as my conclusion on the similar words in section 2. There is no realistic way in which the Piper/Ferguson conduct could have assisted Mr. Ferguson in his civil law suit.

In summary, there is no violation of section 3 of the Act because at least two, and perhaps three, of the phrases in that section are not violated by Mr. Ferguson's conduct.

(3) Section 4 - Influence

Section 4 of the Members' Conflict of Interest Act, 1988 provides:

> "4. A member shall not use his or her office to seek to influence a decision made by another person to further the member's private interest."

This is one of the provisions that has been marked by Mr. Chiarelli in the attachments to his letter of complaint. The inference I draw is that Mr. Chiarelli contends Mr. Ferguson has violated section 4. There are, in my view, three sets of words that need to be considered, "use his office", "private interest", and "to seek to influence a decision made by another person".

In fact, I have considered two sets of words, or words very close to them, in the two previous sections of this Report. In my opinion under this section, Mr. Ferguson

has "used his office" and in a situation where, at least arguably, a "private interest" is implicated. However, there is no possibility that the information in issue could in any way "influence the decision of another person", namely a superior court judge.

It is impossible to determine what motives provoked Messrs. Piper and Ferguson -- personal vindictiveness in the case of Mr. Ferguson, misguided and misplaced political partisanship or sheer stupidity in the case of both Mr. Piper and Mr. Ferguson, all come to mind. What does not come to mind, because it is so remote and unrealistic, is a serious attempt to influence the outcome of a civil law suit presided over by a superior court judge. Accordingly, I conclude that Mr. Ferguson has not violated section 4 of the Act.

ISSUE NO. 2

In view of the above conclusions, I normally would not deal further with the complaint. However, in view of Mr. Chiarelli's request "that your discretion be exercised in favour of an inquiry under the Public Inquiries Act as permitted under 16(2)", I feel that I should make some comments. The relevant portions of the Act are as follows:

> "15(1) A member who has reasonable and probable grounds to believe that another member is in contravention of this Act may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the Commissioner give an opinion respecting the compliance of the other member with the provisions of the Act.
>
> 16(1) Upon receiving a request under section 15, and on giving the member concerned reasonable notice, the Commissioner may conduct an inquiry.
>
> (2) Where the request for an opinion is made under subsection 15(1) or (2), 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."

Mr. Chiarelli has, in my opinion, complied with section 15(1), although his letter of complaint is, as previously stated, a bit lacking in specificity. Accordingly, the question for me is whether to exercise my discretion under section 16(2) and order a public inquiry. If I were inclined to do this, there would be an additional and threshold question, namely when to hold the public inquiry. This question would arise because of the outstanding criminal charges against Mr. Ferguson and the possible effect of a conflict of interest inquiry on the trial of these charges.

4. Mr. Ferguson has admitted that he used his position as M.P.P. and Parliamentary Assistant to engage senior staff in the Premier's office to conduct a "smear campaign" against the reputation of the said defendant by way of calling media to publish the alleged criminal record and thereby defame the reputation and credibility of the said defendant.

5. Due to the nature of the facts and because the probable conflict of interest would involve an unprecedented transgression by an M.P.P. against a private citizen to advance a "private interest", it is respectfully submitted that your discretion be exercised in favour of an inquiry under the Public Inquiries Act as permitted under Section 16(2) rather than the private inquiry permitted under Section 16(1).

I have enclosed some preliminary documentation for your consideration and undertake to deliver to you more detailed information no later than Monday May 10, 1993.

Your attention to this matter will be appreciated.

Sincerely,

Bob Chiarelli, M.P.P.
Ottawa West

encl.

COMMISSION ON CONFLICT OF INTEREST
(Ontario)

NOTICE
(Pursuant to s.16)

TO: MR. WILL FERGUSON, M.P.P.

Having received a request under s.15 of the *Members' Conflict of Interest Act, 1988,* for an opinion respecting your compliance with the provisions of the Act, in accordance with s.16, I hereby formally notify you of my intention to conduct an inquiry into this matter.

The documents filed with the Commission are attached hereto.

DATED at Toronto, Ontario, this 18th day of May, 1993.

Gregory T. Evans

The Honourable Gregory T. Evans,
Commissioner.

Ontario

Will
Ferguson
MPP Kitchener

Personal and Confidential

May 21, 1993

The Honourable Gregory T. Evans
Commissioner
101 Bloor St. W., 4rth Floor
Toronto, Ontario
M5S 2Z7

Dear Commissioner Evans,

I am in receipt of your letter dated May 18, 1993 concerning the Notice of the Members Conflict of Interest Act, 1988, and related documentation and have been advised by your office that it is not inappropriate to respond to this matter. I want to provide the following information for your consideration.

1) Among other things the Act states that a member has a conflict of interest *"when the member makes a decision or participates in making a decision in the execution of his or her office..."*.

I would advise you sir, that this a private matter that it has been alleged occurred some 20 years ago. This matter has had absolutely nothing to do with any formal or informal decisions that I have made in the execution of my office as a member of the Assembly nor has this matter influenced any formal or informal decisions that I have made in the execution of my office as a member of the Legislative Assembly.

2) The member from Ottawa West asserts that the success or failure of my legal action would depend on a number of measures including *"adducing evidence in the law suit of the defendant's criminal record".*

I am certain you are aware Sir, that a criminal record, is a matter of the public record, first made public when it is entered into a court of law. In addition, the convictions in this record have appeared in various print media across Canada.

3) According to the contents of the letter from the member from Ottawa West, *"Mr. Ferguson has admitted that he used his position as M.P.P. and Parliamentary Assistant to engage senior staff in the Premier's office to conduct a "smear campaign" against the ...".*

I wish to advise you sir, that this is entirely false. The media and the member from Ottawa West have widely speculated on this matter. In examining the supporting documentation, you will not find any comments where am I personally quoted admitting to same nor will you find any comments attributed to me personally admitting to any such claim. It is simply untrue and without foundation.

I have admitted to passing on a legally obtained and very public document the contents of which have been reported in various newspapers across Canada including but not limited to, The Calgary Herald, the Albertan, the Kitchener-Waterloo Record and the Owen Sound Times.

Finally and in conclusion, I am sure that you are well aware that this particular matter has been the subject of a rather lengthy police investigation in which all parties were cleared of any wrong doing.

In addition, the broader related matter is the subject of civil litigation by a number of parties, criminal proceedings and a current and ongoing police investigation.

Respectfully submitted for your consideration,

Will Ferguson
MPP Kitchener

Ontario

Will
Ferguson
MPP Kitchener

Personal and Confidential
June 11, 1993

The Honourable Gregory T. Evans
Commissioner
101 Bloor St. W., 4rth Floor
Toronto, Ontario
M5S 2Z7

Dear Commissioner Evans,

Re: Request under the Sections 15(1) and 16(2) Members Conflict of Interest Act

Further to your request, regarding the above noted matter I am pleased to provided you with the following information.

A) I wish to reiterate that this matter has had absolutely nothing to do in the discharge of my duties or responsibilities as a member of the assembly. The matter to which the member from Ottawa West refers has not been the subject of any legislative or ministry, vote, policy discussion or recommendation. As a member of the assembly I have not been involved in any legislative or ministry votes, policy discussions, recommendations or debates on this matter. Nor have I tried to influence any ministry or legislative decisions, debates or policy discussions on this matter in exercising my duties and fulfilling my responsibilities as a member of the legislature.

B) The success or failure of my personal and private civil action against a number of parties, has never been part of any ministry or legislative discussion, debate, decision, suggestion or policy in which I have participated.

The member from Ottawa West has stated that the success or failure of my personal and private civil action will depend on whether I am successful in *"adducing evidence in the law suit of the defendant's criminal record"* . This is complete nonsense.

Sir, the success or failure of any civil action is a result of a determination made by a competent Judge and Jury as they weigh the evidence and facts of each case. In addition, it will be up to a court to decide if a criminal record is admissible as evidence in weighing among other things the credibility of those involved.

C) Not withstanding the above, you should be aware Sir, that I am not pursuing civil action to gain any advantage personal or otherwise, but rather to recoup what I believe is rightfully mine, namely, my reputation my good name and my honour.

D) In any event one's criminal record is a matter of the public record, first made public when it was entered into a court. This document was legally obtained as has been determined by a protracted police investigation. In addition, the contents of this particular record sir has been reported in the Calgary Herald, the Albertan, the Owen Sound Sun Times and the Kitchener-Waterloo Record.

Finally, I have never admitted, stated or other wise implied, that I have used my position as M.P.P. to engage senior staff in the Premier's office to conduct a smear campaign against anyone.

Should you have any further questions or concerns, please do not hesitate to contact me at your earliest convenience.

Yours sincerely,

Will Ferguson MPP
Kitchener

EXHIBITS

to

REPORT OF THE HONOURABLE GREGORY T. EVANS
COMMISSIONER
COMMISSION ON CONFLICT OF INTEREST

RE: WILL FERGUSON, M.P.P.

(1) Press Release by Mr. Will Ferguson dated March 9, 1993

(2) Sections 2, 4, 15, 16 and 17 of the Members' Conflict of Interest Act, 1988

(3) One page of press clippings

(4) Notice pursuant to section 5(1) of the Libel and Slander Act filed by Mr. Will Ferguson, March 1, 1992

(5) Amended Statement of Claim dated March 26, 1993

(6) Statement of Defence of Defendant, Judi Harris, dated May 26, 1993

(7) Statement of Defence of CKCO Television Channel 13, Don Wilcox, Peter Jackman and Chris Duncan

(8) Relevant excerpts from Hansard dated November 23, 24, 25, 26 and 30, 1992; December 9, 1992; and April 14, 15, 20, 27 and 29, 1993

(9) Various press clippings from November 20, 1992 to April 30, 1993

(Exhibits are available for viewing purposes in the Office of the Clerk of the Legislative Assembly, Room 104, Main Legislative Building, Queen's Park, Toronto.)