

Legislative  
Assembly  
of Ontario



Assemblée  
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de l'Ontario

# **OFFICE OF THE INTEGRITY COMMISSIONER**



**REPORT**

**OF**

**THE HONOURABLE J. DAVID WAKE  
INTEGRITY COMMISSIONER**

**RE: THE HONOURABLE BOB CHIARELLI,  
THE HONOURABLE MICHAEL COTEAU AND  
THE HONOURABLE YASIR NAQVI**

**TORONTO, ONTARIO**

**December 8, 2016**

# RE: THE HONOURABLE BOB CHIARELLI, THE HONOURABLE MICHAEL COTEAU AND THE HONOURABLE YASIR NAQVI

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## EXECUTIVE SUMMARY

This report relates to a request made by Catherine Fife, the Member of Provincial Parliament (MPP) for Kitchener-Waterloo, under section 30 of the *Members' Integrity Act, 1994* (the “Act”) about (1) **Bob Chiarelli**, MPP for Ottawa West-Nepean and Minister of Infrastructure, (2) **Michael Coteau**, MPP for Don Valley East and Minister of Child and Youth Services and (3) **Yasir Naqvi**, MPP for Ottawa Centre and Government House Leader and Attorney General (the “Ministers”).

Ms. Fife alleged that in contravention of section 2 of the Act the Ministers instructed staff in their respective ministerial offices to participate in partisan fundraising activities such that the Ministers furthered their own private interests by: (a) helping them to achieve the fundraising quotas assigned to them by the Ontario Liberal Party (the “OLP”) with the consent of the Premier, and (b) benefiting as future candidates from contributions to the OLP. Ms. Fife also alleged that by instructing their staff to engage in these activities, the Ministers blurred the lines between partisan fundraising and government business.

In my opinion, the Ministers did not contravene section 2 of the Act because their private interests were not engaged. I found no evidence that fundraising quotas were assigned to the Ministers and that any benefit to them as future candidates would be too remote to be considered a private interest. I also found that the Ministers did not instruct their staff to participate in the partisan fundraising activities and that accordingly, there was no deliberate attempt by the Ministers to use their offices in such a way that the lines between partisan fundraising and government business were blurred.

## **I. LEGISLATIVE FRAMEWORK**

- [1] Under section 30(1) of the Act, a member of the Legislative Assembly of Ontario who has reasonable and probable grounds to believe that another member has contravened the Act or Ontario parliamentary convention may request that I give an opinion on the matter.
- [2] When a matter is referred to me I may then conduct an inquiry and report my opinion to the Speaker in accordance with section 31 of the Act. Alternatively, I may refuse to conduct an inquiry if I am of the opinion that the referral was frivolous, vexatious, not made in good faith or that there are either no or insufficient grounds for an inquiry as set out in section 31(5) of the Act.
- [3] The conflict of interest provision in the Act is set out in section 2 and reads:

A member of the Assembly shall not make a decision or participate in making a decision in the execution of his or her office if the member knows or reasonably should know that in the making of the decision there is an opportunity to further the member's private interest or improperly to further another person's private interest.

## **II. THE REQUEST AND MINISTERS' RESPONSES**

- [4] On July 28, 2016, Ms. Fife sent my Office four affidavits (the "**Affidavits**") via email, with proof that they had been served on the Speaker of the Legislative Assembly, in which she alleges that the Ministers contravened the Act.<sup>1</sup>
- [5] On August 2, I sent the Ministers a copy of the Affidavits and invited them to provide comments, which they subsequently did. I received comments from Ministers Naqvi, Coteau and Chiarelli on August 9, August 10 and August 23, 2016, respectively.
- [6] On August 24, I invited Ms. Fife to comment on the Ministers' responses, which she did on August 31, 2016.

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<sup>1</sup> One of the Affidavits also related to Madeleine Meilleur, the former Member of Provincial Parliament for Ottawa-Vanier and previously the Attorney General. As Ms. Meilleur was not a member at the time the request was made, I refused to conduct an inquiry. A response to this affidavit is being released concurrently with this Report.

[7] Ms. Fife has alleged that each minister instructed a senior political staff person to contact stakeholders to promote fundraising events which intentionally created an impression that stakeholder relations were contingent on political contributions and thus deliberately blurred the lines between partisan fundraising and government business. She also alleged that the Ministers used their offices in a way that would further their private interests by allowing each to meet his “fundraising quotas” assigned by the OLP with the consent of the Premier. It was alleged that the Ministers would also benefit from contributions to the OLP as future candidates. It was submitted that the conduct of each minister constituted a violation of the conflict of interest provision contained in section 2 of the Act.

[8] In response to Ms. Fife’s complaint the Ministers have each advanced similar positions to one another, namely that:

- Ms. Fife had failed to identify how the elements of section 2 of the Act had been violated;
- the Ministers had not instructed their staff to conduct a fundraiser;
- the staff was in compliance with the political activity rules under the *Public Service of Ontario Act, 2006* (the “PSOA”);
- government resources were not used to contact persons or stakeholders for the fundraisers; and
- had the legislature sought to create a limitation as it pertains to ministers’ staff and fundraising it would have expressly done so.

[9] Due to the similarity of both the subject matter of these complaints and the affidavits filed with respect to each of them, I decided that it was more convenient to address Ms. Fife’s concerns in one opinion than separately.

### **III. THE INQUIRY PROCESS**

[10] My staff interviewed Ministers Naqvi and Coteau separately, as well as Jacqueline Choquette, the former Chief of Staff to Minister Naqvi first in his capacity as Government House Leader and subsequently as Minister of Community Safety and Correctional Services, and Sara Alimardani, Senior Advisor, Stakeholder Relations, for

Minister Coteau. I also sought and received further information in writing from Minister Naqvi.

[11] Jack B. Siegel, counsel for the Ontario Liberal Caucus Service Bureau attended the interviews of Ministers Naqvi and Coteau as well as that of Ms. Alimardani. I also sought and received further information in writing from Mr. Siegel.

[12] Additionally, I sought further clarification from Minister Chiarelli by email. My staff did not interview Minister Chiarelli or Andrew Teliszewsky, his then-Chief of Staff. Rather, I considered information that they had previously provided to my Office in a previous section 30 inquiry pertaining to Minister Chiarelli that dealt with the same fundraising activity that is at issue for Minister Chiarelli in the present matter.<sup>2</sup>

[13] I also sought and received information from Premier Kathleen Wynne, to whom I wrote on the issue of whether there were fundraising “targets” or “quotas” and whether these were mandatory as reported in an article in the media on which Ms. Fife relied.

#### **IV. THE EVIDENCE OF THE PARTIES**

##### **1. The Fundraising Events**

[14] Ms. Fife’s complaint relates to various partisan fundraising events in which staff from the ministerial offices of each of the Ministers participated.

##### **a) Minister Naqvi Events**

[15] On March 27, 2014 a fundraising event for the OLP was held at Ripley’s Aquarium of Canada in Toronto (the “**Ripley’s event**”). The cost to attend was \$400. Minister Naqvi was the featured minister at this event.

[16] On November 26, 2014 Minister Naqvi was again the featured minister at a fundraising event for the OLP held at the Toronto office of the law firm of Fasken Martineau (the “**Fasken Event**”). The cost to attend the event was \$350. The event was hosted by Daniel

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<sup>2</sup> See Report re: the Honourable Bob Chiarelli and the Honourable Charles Sousa, August 9, 2016 (the “**Chiarelli/Sousa Report**”).

Brock, a partner at the law firm who is currently the chair of the firm's Government Relations & Strategy practice group.

[17] Minister Naqvi indicated that his riding association (the Ottawa Centre Provincial Liberal Association) organized these events. He also indicated that Jacqueline Choquette, who became Minister Naqvi's chief of staff in his capacity as Government House Leader after the Ripley's event but before the Fasken event, was also involved in the planning of these events as a volunteer for his riding association. Minister Naqvi submitted that he did not instruct Ms. Choquette to conduct a fundraiser and stated that he has never asked the staff in his ministerial offices to participate in fundraising events.

[18] Minister Naqvi and Ms. Choquette each described that Ms. Choquette has been volunteering for Minister Naqvi's riding association for about 10 years, having held various positions throughout that period such as fundraising chair. Ms. Choquette also indicated that she ran Minister Naqvi's last two election campaigns.

[19] Ms. Choquette confirmed that Minister Naqvi did not ask her to participate in fundraising events. Ms. Choquette indicated that she has been very involved in riding association work, which included the development of an annual fundraising schedule. She explained that this work was something that she wanted to do as she would likely be Minister Naqvi's campaign manager for the next election, and part of that job was "to make sure that we're ready to run a campaign." Ms. Choquette emphasized that this work was voluntary.

[20] Ms. Choquette was the contact person on the invitations for both the Ripley's event and the Fasken event and her personal contact information was provided in each for this purpose. Although she was chief of staff in the Office of the Government House Leader at the time of the Fasken event, she was not identified as such on the invitation.

[21] Minister Naqvi's riding association sent the invitations for the events by email using the riding association email address. The invitation was sent to Minister Naqvi's contact list, which Ms. Choquette referred to as his "donor list." Minister Naqvi and Ms. Choquette indicated that this list comprises various individuals including people whom Minister

Naqvi meets, friends, family, supporters and those who have donated to the OLP or the riding association in the past.

[22] Ms. Choquette indicated that while invitations to events are usually sent using the riding association email, she would also send direct emails to her own contacts and Minister Naqvi's contacts or place telephone calls to them. When making these calls, she indicated that she identified herself as "Jackie" calling on behalf of the riding association or Yasir Naqvi. Ms. Choquette indicated that this work was done at night or during weekends. Minister Naqvi also confirmed that fundraising work gets done in the evenings.

[23] Minister Naqvi indicated that it was his view that those who had been contacted by Ms. Choquette are "sophisticated" and would be able to determine that she was not contacting them in her capacity as staff for Minister Naqvi based upon "the hour of the day" a phone call is made or an email arrives. Minister Naqvi explained that "these are not usually cold calls, these are people you are on a first name basis with."

[24] The Ripley's event and the Fasken event were each attended by approximately 50-75 people. Minister Naqvi indicated that some government stakeholders would have attended. Ms. Choquette indicated that most of those who attended had no business or dealings with the Office of the Government House Leader.

[25] Minister Naqvi indicated that he does not discuss work at these events. His view is that these events are of a social nature and that it would be "crass to talk work at a social event." Ms. Choquette indicated that if business was discussed it would not have been substantial given that cocktail receptions are not conducive to these types of discussions. She indicated that the conversations were short and superficial, and confirmed that the minister would not have substantial conversations during these events.

[26] Mr. Siegel confirmed that all money raised in connection with the events was paid to the OLP.

**b) Minister Coteau Event**

- [27] On November 30, 2015, an event at which Minister Coteau was featured was held at HUSH Restaurant in Toronto (the “**HUSH event**”). The cost to attend was \$2,500.
- [28] The HUSH event was organized by the Ontario Liberal Fund (“**OLF**”). Minister Coteau indicated that these events are usually held in conjunction with his riding association (the Don Valley East Provincial Liberal Association).
- [29] Minister Coteau indicated that Ms. Alimardani, who has worked as staff in the ministerial offices of Minister Coteau since 2013, was one of the people who helped to make the HUSH event successful. He explained that Ms. Alimardani has been involved as a volunteer with his riding association for five years. Ms. Alimardani confirmed that she has been volunteering with the OLP since 2011 and that this work has involved fundraising for Minister Coteau and others.
- [30] Minister Coteau indicated that he has never asked the staff in his ministerial offices to volunteer for fundraising events and that there is no requirement that they be involved. Ms. Alimardani confirmed that fundraising is not part of her duties as staff for Minister Coteau and that she volunteered with the OLF to organize and participate in the HUSH event.
- [31] Ms. Alimardani was identified on the invitation for the HUSH event as the RSVP contact and her personal contact information was provided for this purpose. She was not identified as staff to Minister Coteau on the invitation. Ms. Alimardani indicated that all of the work for the HUSH event was done using her own resources (phone, laptop, etc.) during her personal time.
- [32] The invitation was sent using an email account that was operated by Minister Coteau’s riding association. Minister Coteau indicated that the process of selecting invitees to fundraisers would depend on the event. He described having an extensive list of contacts on which he relies, which includes people who have supported him throughout his career. Ms. Alimardani could not recall specifically to whom the invitation was sent. She indicated that to her knowledge, no particular group was targeted. When asked whether



government stakeholders were sent the invitation, Ms. Alimardani indicated that there could be “crossover” but that government stakeholders were not necessarily targeted.

[33] Ms. Alimardani indicated that she also sent a few invitations using her personal email account.

[34] The event was attended by approximately 30-40 people. Minister Coteau could not recall if any government stakeholders attended the event.

[35] Minister Coteau indicated that there is no time to discuss government business or have in depth conversations at these events. He stated that “you cannot mix the party stuff with the ministry stuff – it’s just something that’s not done”. Ms. Alimardani confirmed that it was unlikely that she would have discussed government business at the event, indicating that the focus of these events is on supporting a political party.

[36] Ms. Alimardani confirmed that the money raised in connection with the event was paid to the OLP.

**c) Minister Chiarelli Event<sup>3</sup>**

[37] On December 7, 2015 a fundraising event was held for Minister Chiarelli, in his former capacity as Minister of Energy, and another minister at the Four Seasons hotel in Toronto. The event was attended by 24 individuals from various financial institutions, unions, government relations firms and representatives from the energy sector. The cost to attend the event was \$7,500.

[38] Mr. Teliszewsky, Minister Chiarelli’s then-Chief of Staff, volunteered to assist with the organization of the event, including sending invitations. He indicated that this work was done on his own time and did not use any government resources. Mr. Teliszewsky’s name or contact information was not listed anywhere on the invitation, ticket form or invitation email. Minister Chiarelli denied instructing Mr. Teliszewsky, either as chief of staff of his office or in any other capacity, to engage in fundraising on his behalf.

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<sup>3</sup> The information in this section was gathered during the course of the inquiry pertaining to the Chiarelli/Sousa Report.

[39] Bobby Walman, former chief fundraising officer for the OLP, confirmed that his team helped organize the logistics of the event, including marketing, event management, cashing and attributing the taxable portion of the receipts and generating the tax receipts.

[40] Minister Chiarelli indicated that he communicated with attendees of the event in the same manner as he communicates with any stakeholder, namely by asking what the ministry is doing right or wrong and asking them how they view issues within the energy sector.

[41] Mr. Walman confirmed that all money raised was paid to the OLP.

## **2. Fundraising Quotas for the Ministers**

[42] The Ministers each confirmed that no personal fundraising quotas are assigned to them by the OLP and/or the Premier.

[43] Further to my request, Premier Wynne also confirmed that no such quotas are assigned. I will elaborate in the Opinion section of this Report on the context in which I made this request and the Premier's response.

## **3. Staff Training**

[44] Ms. Choquette indicated that she has never received training from Minister Naqvi about conflicts of interest because ministers' staff received other training on this topic. She indicated that she was clear that she could not do fundraising during office hours. Minister Naqvi confirmed that the staff in his ministerial offices receives training from the Premier's Office. He also indicated that he is very clear with his staff about where the lines are and that he leads by example by ensuring that he never "crosses the line".

[45] Ms. Alimardani indicated that she received no specific training from Minister Coteau about the conflict of interest and political activity rules, but is familiar with these rules. Minister Coteau pointed to centralized resources, such as my Office, that provide guidance on these issues and he indicated that his staff knows that there are rules in place.

[46] Both Minister Chiarelli and Mr. Teliszewsky provided information acknowledging awareness of former Integrity Commissioner Lynn Morrison's report released on March

10, 2015 entitled “A Report on a Consultation into the Role of Ministers’ Staff at Queen’s Park” (the “**Ministers’ Staff Report**”) and the subsequent steps taken by them to ensure that their staff had a “heightened awareness of the *Public Service of Ontario Act* (PSOA) and its regulations”. These steps included the development and distribution of a binder with a direction to staff to familiarize themselves with its contents which included a copy of Ontario Regulation 382/07, the Conflict of Interest Rules for Public Servants (Ministers’ Offices) and Former Public Servants (Ministers’ Offices) (the “**Conflict of Interest Rules**”).

## V. THE ISSUES

[47] As framed by Ms. Fife I find that the issues before me are as follows:

1. Did the Ministers use their offices by participating in political fundraising events in a way that would further their private interests contrary to section 2 of the Act by: (a) allowing each minister to meet his mandatory fundraising quota assigned by the OLP with the consent of the Premier; and (b) benefiting as future candidates from contributions made to the OLP at these events?
2. Did the Ministers instruct their senior political staff to contact stakeholders to promote fundraising events?
3. Did the involvement of senior staff in political fundraising deliberately blur the lines between partisan fundraising and government business and operate so as to contravene section 2 of the Act?

## VI. OPINION

[48] The conflict of interest provision of the Act, set out in section 2, essentially prohibits the Ministers from participating in certain types of decision-making if their participation could further their own private interests or improperly further those of another person.

[49] In considering whether circumstances constitute a conflict of interest under section 2 it is important to draw a distinction between a “private interest” and a “political interest”. I

explained this distinction at paragraphs 49-51 of the Chiarelli/Sousa Report, relying on the opinions of Ethics Commissioner Marguerite Trussler of Alberta and Conflict of Interest Commissioner Paul Fraser of British Columbia. Although both opinions were in relation to the prohibition against accepting gifts in both provinces similar to that in Ontario, the same principles apply to the definition of “private interest” in the conflict of interest provision of the Act. For the sake of convenience I have set out the same quote from Commissioner Fraser which I provided in the Chiarelli/Sousa Report:

While it is likely that some portion of the funds raised at the events in question may be used to promote the election prospects of the Premier and others representing the Liberal Party, this is a general, political interest. Such a wide political benefit is not to be regarded as synonymous with a personal benefit. It is too remote and speculative to be considered a “private interest” for the purposes of the Act. For a private interest to exist there must be a direct and personal benefit accruing to the Member, rather than an indirect and political one.<sup>4</sup>

[50] Contributions to a political party, such as the contributions made in relation to each of the fundraisers under examination, must be distinguished from campaign contributions made directly to an individual candidate. The latter may, in certain circumstances, give rise to a conflict of interest where there is a sense of obligation created as a result of the direct contribution. Where the contributions are made directly to a political party and a minister, or any member, does not have possession or control of the money, a “political interest” may be created but not a “private interest” within the meaning of section 2 of the Act.

[51] Interestingly there is no definition in section 1 of the Act of what constitutes a “private interest”, only what is not included. The definition is derived from the opinions expressed in previous reports such as the ones referred to above. In addition, the federal Conflict of Interest and Ethics Commissioner Mary Dawson has explored the scope of private interests in several reports. She has found that under the federal *Conflict of Interest Act* and the Members’ Code private interest does not include political interests or advantage but rather the concept is one of largely personal pecuniary interest<sup>5</sup>.

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<sup>4</sup> Opinion in the matter of applications by David Eby, MLA (Vancouver-Point Grey) and Duff Conacher with respect to alleged contraventions of the *Members’ Conflict of Interest Act* by the Honourable Christy Clark, MLA (Westside-Kelowna) and Premier of British Columbia, May 4, 2016 at para. 46.

<sup>5</sup> The Cheques Report: The use of partisan or personal identifiers on ceremonial cheques or other props for federal fundraising announcements (made under the *Conflict of Interest Act*), April 29, 2010 at pgs. 15-16; The Cheques Report: The use of partisan or personal identifiers on ceremonial cheques or other props for federal fundraising

[52] One of the most egregious examples of a private interest which could amount to a personal pecuniary interest occurred in 1994 in the United Kingdom. It was alleged that two members of parliament had been paid through a lobbyist to table parliamentary questions on behalf of the owner of Harrod's Department Store. The matter became known as the "cash-for-questions affair". It had a tortuous history as it made its way through an inquiry initiated by parliament as well as in a parliamentary committee. It was also the subject of a libel trial. In Ontario there is no question that, if proven, this type of payment of money to a member to table questions in the legislature would amount not only to "an opportunity to further the member's private interest" by accepting the money but also it would have improperly furthered the payor's private interest.

[53] I will now turn to an examination of the issues as set out in Part V above:

## **1. Did the Ministers Further Their Private Interests?**

### **a) Were There Mandatory Fundraising Targets?**

[54] The subject of political fundraising has received significant attention recently.<sup>6</sup> While much has been said about the appropriateness of elected officials and their staff participating in fundraising events, as Integrity Commissioner I must use the Act as the basis for any opinion I provide. Under the Act, as written, I must find proof of an *actual* conflict of interest. To do so there must be an opportunity for the Ministers to further their private interests as opposed to their political interests.

[55] It is submitted that if the Ministers were subject to mandatory fundraising targets or quotas imposed on them by the OLP, with the consent of the Premier, that meeting those targets or quotas and avoiding any consequences for failing to achieve those targets amounts to realizing a private interest.

[56] The difficulty with this argument, even if it were viable, is in the proof.

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announcements (made under the *Code of Conduct for Members of the House of Commons*), April 29, 2010 at pgs. 16-17.

<sup>6</sup> It was the subject of considerable discussion by the media and the Standing Committee on General Government. Indeed, I have issued two reports under section 30 of the Act this year alone on the subject.

[57] In the Chiarelli/Sousa Report I found that no private interest was engaged because I could not reach the conclusion on the information before me that Ministers Chiarelli and Sousa were subject to mandatory fundraising requirements. I accepted the evidence of these ministers who denied being subject to mandatory targets together with the evidence of Mr. Walman, Vince Borg, President of the OLP, Dwight Duncan, former Cabinet Minister and Mr. Teliszewsky, all to the same effect.

[58] In the Chiarelli/Sousa Report I also reviewed the comments made by John Gerretsen, former Attorney General, on June 27, 2016 before the Standing Committee on General Government in which he stated that he had been asked to raise certain amounts and he “let his staff look after it.” I will return to this comment later in a different context, however I find nothing in Mr. Gerretsen’s remarks that is inconsistent with other witnesses who maintained that the OLP needed to be able to forecast revenues and make financial projections for the OLP’s budget purposes and required a dialogue with members to determine realistic expectations. There was no suggestion from Mr. Gerretsen that the amounts he may have been asked about were mandatory.

[59] Similarly in the present case Minister Chiarelli reiterated his position that he did not have a “personal fundraising quota.” Ministers Naqvi and Coteau also denied having any mandatory fundraising quotas.

[60] Nevertheless, Ms. Fife maintained that Premier Wynne had acknowledged that ministers do indeed have targets. The source of her belief was a newspaper article by the Canadian Press dated April 1, 2016 under the headline “Kathleen Wynne admits cabinet ministers have fundraising quotas.”<sup>7</sup> The quote attributed to the Premier, which was presumably intended to support the conclusion in the headline, was this:

“We’re a team, and those conversations [are] between the ministers and the fundraising [managers], we don’t necessarily have a joint conversation about what everyone’s target is,” Wynne said at an Ottawa news conference. “We know that there’s an overall objective in terms of what we need to run the party, and we all do our bit.”

[61] Frankly, I find that the quote attributed to the Premier is not inconsistent with the evidence of the Ministers and party officials. In fact, it can be interpreted as confirming

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<sup>7</sup> <http://www.cbc.ca/news/canada/toronto/kathleen-wynne-political-fundraising-1.3517290>

that the dialogue between the OLP and ministers does not involve the setting of targets. There is also nothing in the quote which suggests that any targets were mandatory with consequences for failing to meet them.

[62] At this point I should interject a note of caution concerning the use of media reports to support a complaint made under section 30 of the Act. One of my predecessors, The Honourable Gregory T. Evans, wrote the following on this subject in a report made following a complaint against then-Premier Michael Harris by an opposition MPP David Ramsay:

Much of the material presented by Ramsay to support the allegations that Harris contravened the *Members' Integrity Act* consists of newspaper and other media reports. While the material may be informative, it is hearsay and lacking in evidentiary value. 'Hearsay' is defined in Black's Law Dictionary as:

*"... A term applied to that species of testimony given by a witness who relates, not what he knows personally, but what others have hold him or what he has heard said by others."*

Such testimony is generally inadmissible. The very nature of the evidence shows its weakness. The reasoning for such exclusion is that the statement being offered as an assertion to show the truth of matters asserted therein, depends for its value, upon the veracity and competency of others.<sup>8</sup>

[63] I agree with Commissioner Evans, particularly given the serious consequences which can result to a member's reputation as part of the inquiry process and the range of sanctions to which a member is subject up to and including a recommendation that the member's seat be declared vacant. Care must be taken to ensure that the Commissioner's recommendation is based on evidence and information which is reliable and capable of being tested.

[64] It would be helpful to the Commissioner, who must define the scope of an inquiry, if the direct sources relied upon could be clearly identified in the request for a section 30 opinion. It should not require the Commissioner to chase down every possible source which might support the allegations made.

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<sup>8</sup> Report re: The Honourable Michael D. Harris, Premier of Ontario, May 16, 2001 at p. 10.

- [65] I do not intend these comments to be critical of Ms. Fife, who relied on two articles in the media as the basis for her request and to support her submissions. The comments are intended to be more general in nature and may explain the relative weight to be given in the end to the information and evidence provided in the section 31 inquiry.
- [66] Bearing in mind the caution which needs to be taken when examining an allegation based on a media report, I decided to follow up the matter with Premier Wynne. It was the quote attributed to her in the Canadian Press article which had been interpreted as a statement that mandatory fundraising quotas do indeed exist.
- [67] In fairness to Premier Wynne I wrote to her as part of the inquiry, provided her with a copy of the article in question and invited her to comment. She replied appropriately as Leader of the OLP, and categorically denied that any quotas are imposed upon ministers or assigned to them. The salient portion of her response is set out below:

The question you asked pertains to fundraising “targets” or “quotas”. Like all political parties and most registered charities, the Ontario Liberal Party has aspirational global fundraising goals as an organization. Those goals are discussed with our caucus members, Ministers and non-ministers alike, and it is anticipated that those members will share with party officials the extent to which they think they can assist in fundraising efforts. This is a voluntary exercise, where it is hoped that our caucus members, whether or not they are Ministers, are able to identify the extent to which their own fundraising initiatives and cooperation with others can contribute to the financial success of the political party with which we are all affiliated.

As I am sure you can appreciate, that party requires funds to operate – to pay for things like salaries and expenses. Like any other organization, a party must set a budget and the responses received permit it to do so realistically. No quotas are imposed upon Ministers and if they have any “targets” at all, those would be entirely self-generated; they are certainly not assigned. No such quotas or targets having been assigned, there are certainly no consequences or benefits that result, whether a Minister’s fundraising efforts fall short of or exceed the levels that might have been anticipated.

- [68] Given this response, which is consistent with the Ministers’ denials and all other information before me both in this matter and in the matter to which the Chiarelli/Sousa Report pertained, I must find that there were no mandatory fundraising requirements for the Ministers in this case either. Accordingly no private interest was engaged, a pre-requisite for a conflict of interest finding, since there were no consequences or benefits that might have flowed from these requirements if they had been proven to exist.



**b) Were There Benefits to the Ministers as Future Candidates?**

[69] While some of the funds raised at the events in question for the OLP could conceivably find their way back to benefit the individual Ministers' election prospects, that possibility as stated above in the quote from Commissioner Fraser, "is too remote and speculative to be considered a private interest." This applies to the circumstances before me.

**2. Did the Ministers Instruct Their Senior Political Staff to Contact Stakeholders to Promote Fundraising Events?**

[70] All three ministers and each of their respective staff persons have strenuously denied that there was any direction to staff to be involved in a fundraiser at all, let alone a direction that stakeholders be contacted. In the absence of any proof to the contrary I am prepared to accept the evidence that staff were not required to participate in the fundraising activities in question.

[71] There was a comment from Mr. Gerretsen when he appeared before the legislative committee referred to above that he "let his staff look after it", on which Ms. Fife relies as proof of "a standard expectation as part of their duties." I do not see how this comment from a former minister who, admittedly, did not like or wish to be a part of fundraising activities, can be attributed to all ministers to reach the broad conclusion sought by Ms. Fife, particularly over their denials of it having occurred in this case.

**3. Did the Involvement of Senior Staff in Political Fundraising Deliberately Blur the Lines Between Partisan Fundraising and Government Business and Operate so as to Contravene Section 2 of the Act?**

[72] Given that I have found no proof that the Ministers directed their senior staff to participate in fundraising activities it therefore follows that I am unable to find that there was any deliberate attempt by the Ministers to blur the lines between partisan fundraising and government business. Nevertheless, Ms. Fife's affidavits and submissions on this matter do raise larger issues about the political activities and, in particular, fundraising activities of ministers' staff.

[73] It is not accurate to say, as suggested by each of the Ministers in this case, that the activities are acceptable as long as they are done outside of normal office hours and no

government resources are used. Section 97(c) of the PSOA also requires that ministers' staff not engage in political activity that could conflict with the interests of the Crown.

[74] Equally important, ministers' staff are public servants under the PSOA and although they are subject to different political rules than most public servants, they are still subject to the Conflict of Interest Rules. Section 6 of the Conflict of Interest Rules requires ministers' staff to avoid creating the *appearance* that they are giving preferential treatment to any person or entity. In some circumstances there may be a risk that the solicitation of a stakeholder for funds by a minister's chief of staff or senior advisor of stakeholder relations may create an appearance that some form of preferential treatment will flow from the donation regardless of the time of day the solicitation was made or even if a government resource was not used to make the contact.

[75] As my predecessor Commissioner Morrison stated in the Ministers' Staff Report:

I have long made it clear to ministers that they always carry ministerial authority with them, regardless of whether they mean to employ it. The same follows true for ministers' staff – especially those in the most senior roles – where the public may not perceive that there is any difference between the role and responsibilities of a staff employee, and those of a party worker, just because the activity takes place on a particular day. The public expects transparency of these roles and accountability for the actions taken. I caution ministers' staff to be acutely aware of how they manage these roles and responsibilities, and ensure that there is always a distinct line between the two.<sup>9</sup>

[76] I agree with this statement as to the proper role of ministers' staff and the need to draw boundaries between their government responsibilities and political fundraising.

[77] Generally the objection to the practice of “cash for access” which underlies this complaint is with the appearance that ministers and their staff are providing preferential access to individuals who are prepared to make financial contributions to their political party. This practice is now viewed as inappropriate and has been the subject of considerable criticism of late both in the legislature and in the Standing Committee on General Government in its examination of the *Elections Finances Act* and the *Taxation Act, 2007*. I will deal with the outcome of that examination later in this report.

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<sup>9</sup> Office of the Integrity Commissioner: A Report on a Consultation into the Role of Ministers' Staff at Queen's Park, March 10, 2015 at pgs. 15-16.

- [78] In fact, it was precisely this practice which the federal government attempted to address in its *Open and Accountable Government 2015* guide, released in November 2015.
- [79] Unfortunately there currently appears to be no meaningful vehicle to address these concerns. Federally the practice has continued unabated, in part because there is no independent mechanism to enforce the principles in *Open and Accountable Government 2015*, as it is administered by the Privy Council Office and not the Conflict of Interest and Ethics Commissioner.
- [80] Similarly in Ontario the Act, as I have found, would not apply to restrict the practice so long as no private interest is engaged.
- [81] Even if it were proven that a minister directed a senior staff person to contact a stakeholder for political fundraising purposes, no meaningful remedy exists in the PSOA<sup>10</sup>. The staff person might be found in breach of the rule in the Conflict of Interest Rules against giving preferential treatment, but all I can do as Ethics Executive to the staff person under the PSOA is refer the matter to the staff person's minister for possible discipline. This would be unlikely if that minister had directed the activity in the first place.
- [82] Further, under the PSOA the conduct of the staff member cannot be attributed to ministers themselves. The only provision in the PSOA relating to ministers is section 67 which requires that they ensure their staff are familiar with the conflict of interest rules that apply in respect of a minister's office and that they promote ethical conduct by their staff. There is no enforcement provision in the PSOA if a minister fails to live up to these requirements.
- [83] Although I have found that neither the PSOA or the Act provide a meaningful vehicle to address the preferential access concerns related to the practice of cash-for-access I do note the recent enactment of the *Election Finances Statute Law Amendment Act, 2016*. One of the provisions of that Act bans members, candidates, party leaders, nomination

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<sup>10</sup> An exception to this may be that under Part VI of the PSOA a public servant can make a disclosure of wrongdoing alleging that a minister directed a public servant to engage in "wrongdoing" (as that term is defined in the PSOA). The PSOA sets out a mechanism to address such disclosures, a review of which is beyond the scope of this Report.

contestants and some political staff from attending political fundraising events. This measure should attenuate the concerns noted above but not eliminate them. There is still nothing to restrict members and their staff from contacting stakeholders for the purpose of political fundraising. Similarly there is nothing in legislation preventing ministers or their staff from providing contact or identifying information to those involved in political fundraising. Nevertheless this legislation is an important start.

## VII. CONCLUSION

[84] Based on the evidence I have found that the Ministers did not further their respective private interests since they had no mandatory fundraising targets and any benefit to them as future candidates would be too remote to be considered as a private interest. Since a private interest must be engaged before there can be a conflict of interest within the meaning of section 2 of the Act it follows that none of the Ministers has contravened the Act.

[85] I have also found no proof that the ministers directed their senior staff to participate in fundraising activities. Accordingly there was no deliberate attempt by the Ministers to use their offices in such a way that the lines between partisan fundraising and government business were blurred.

[86] The role of both ministers and their staff in political fundraising will be affected by the *Election Finances Statute Law Amendment Act, 2016*. It is to this enactment and any further amendments to it that the concerns over the practice of “cash-for-access” should be directed as opposed to the *Members’ Integrity Act, 1994* or the *Public Service of Ontario Act, 2006*.

DATED at Toronto this 8<sup>th</sup> day of December 2016.



The Honourable J. David Wake  
Integrity Commissioner