

Legislative  
Assembly  
of Ontario



Assemblée  
législative  
de l'Ontario

# **OFFICE OF THE INTEGRITY COMMISSIONER**

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**REPORT**

**OF**

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

**RE: THE HONOURABLE PETER BETHLENFALVY,  
PRESIDENT OF THE TREASURY BOARD**

**TORONTO, ONTARIO  
October 21, 2020**

I. EXECUTIVE SUMMARY.....	1
II. BACKGROUND TO THE INQUIRY .....	3
1. The factual background to the inquiry .....	3
2. Overview of the position of the parties .....	4
3. The organizations and structures discussed in this report.....	5
III. THE LEGAL FRAMEWORK TO THE INQUIRY .....	6
1. The Members’ Integrity Act, 1994.....	6
2. The Public Service of Ontario Act, 2006.....	11
3. The standard of proof in this inquiry.....	13
IV. THE INQUIRY PROCESS.....	14
1. The request and Minister Bethlenfalvy’s response .....	14
2. Evidence-gathering process.....	15
3. Issue related to the Minister’s office disclosures .....	16
4. Minister Bethlenfalvy is invited to provide submissions.....	17
V. THE EVIDENCE AND FINDINGS OF FACT .....	17
1. Overview of the facts.....	17
2. The Minister’s office .....	18
3. The social media ad spend plan.....	22
4. The Minister’s office response after the riding association meeting .....	36
5. Did the Minister approve the ad spend strategy.....	44
VI. ANALYSIS AND FINDINGS.....	46
1. Issues.....	46
2. Whether Minister Bethlenfalvy breached section 2 of the MIA.....	47
3. Whether Minister Bethlenfalvy failed to comply with parliamentary convention.....	47
VII. OTHER ISSUES ARISING IN THE INQUIRY.....	59
1. Minister’s staff perform constituency work.....	59
2. MPP Bethlenfalvy’s constituency page links to his social media accounts .....	60

VIII.CONCLUSIONS.....	62
IX. RECOMMENDATIONS.....	63
1. Ongoing training for ministers’ staff.....	63
2. Review of the PSOA .....	64
3. Approval process in ministers’ and members’ offices .....	65
4. Constituency websites should not be linked to social media platforms containing partisan content.....	65
5. Social media guidelines.....	65

# I. EXECUTIVE SUMMARY

- [1] This report relates to a request made to me by Taras Natyshak, the Member of Provincial Parliament for Essex and NDP critic for Ethics and Accountability, for an opinion under section 30 of the *Members' Integrity Act, 1994* ("MIA") regarding the Honourable Peter Bethlenfalvy, Member of Provincial Parliament for Pickering-Uxbridge and President of the Treasury Board. Mr. Natyshak requested that I determine whether Minister Bethlenfalvy breached section 2 of the MIA by using his office to influence a decision to further his private interests. He also requested that I determine whether Minister Bethlenfalvy failed to follow parliamentary convention by allowing his staff to engage in partisan activities using ministerial resources which would also be contrary to the *Public Service of Ontario Act, 2006* ("PSOA"). Although provisions of the PSOA may inform the analysis with respect to parliamentary convention, this is not an inquiry under the PSOA, but rather an inquiry under the MIA where the focus is on Minister Bethlenfalvy.
- [2] The inquiry was conducted over approximately six months. Witnesses were interviewed remotely due to the current pandemic. I also adopted a new process for conducting inquiries by providing a draft of the evidence collected in the inquiry to the Minister's counsel and inviting him to make submissions, which he did at some length. The last of these was received on September 28, 2020.
- [3] In this report, I find that it is a well-established parliamentary convention that government resources, including salaried time of ministers' staff, must not be used for a partisan purpose. I find that Minister Bethlenfalvy's staff had prepared an ad spend strategy to boost his social media presence. Although originally it may have been intended to extend the government's and the Minister's messaging, I find that the strategy became a partisan exercise, in part because it targeted likely Progressive Conservative Party supporters and conservative voters. The strategy also suggested that MPP Bethlenfalvy's riding association fund the strategy. And, members of Minister Bethlenfalvy's Minister's office staff communicated with the riding association to try to get funding for the strategy.

- [4] As a result, I find that the strategy that was developed was a partisan one and that government resources, including the time of salaried staff, were used in its development and attempted implementation. However, I find on all the evidence that Minister Bethlenfalvy was not aware of the strategy as it was developed and that he never approved it, although in a rushed briefing of a few minutes he may have provided an impression to some of his staff that he had.
- [5] When the ad spend memo was presented at an executive session of the riding association, by all accounts Minister Bethlenfalvy was startled and asked that it be removed from the agenda. His concern at that time was more that the memo was on Treasury Board stationery rather than how it came into being in the first place. Nevertheless, I find that the following day – after the strategy was explained to him – the Minister brought it to an end because it was not important to him.
- [6] I find that Minister Bethlenfalvy was not aware of the ad spend strategy and never gave his approval for it. I also find that he was not in a position where he reasonably should have known about the strategy or the steps his staff may have been taking to implement it. Therefore, I find that Minister Bethlenfalvy did not breach parliamentary convention by allowing government resources to be used for a partisan purpose. Since a personal interest has been interpreted as a pecuniary or financial interest and since there was no evidence that such an interest was ever engaged, I also find that section 2 of the MIA did not apply.
- [7] Both allegations are therefore dismissed.
- [8] I make several recommendations in the report suggesting that: 1) there be a formalized training program for ministers' staff on their ethical obligations; 2) the PSOA be reviewed; 3) the approval processes in the offices of each minister and MPP be reviewed; 4) members should check their constituency office websites to ensure that they are not linked to social media accounts that may contain partisan content; and 5) I repeat my suggestion that a legislative committee be struck to examine the evolving issues with respect to social media and to develop guidelines for the appropriate use of social media for members and their staff.

## II. BACKGROUND TO THE INQUIRY

- [9] This is a report about an inquiry I have conducted under the MIA. I have considered whether Peter Bethlenfalvy, MPP for Pickering-Uxbridge and President of the Treasury Board, breached the MIA or parliamentary convention because his Minister's office staff 1) developed a partisan social media strategy using government resources and 2) shared it with his riding association, a partisan organization, to seek funding for the strategy.
- [10] The inquiry arose from a request by Taras Natyshak, MPP for Essex and NDP critic for Ethics and Accountability. Mr. Natyshak requested that I determine whether Minister Bethlenfalvy contravened parliamentary convention and section 2 of the MIA by allocating the resources of the Treasury Board Secretariat for partisan promotion of Minister Bethlenfalvy's electoral interests.

### **1. The factual background to the inquiry**

- [11] On November 19, 2019, and again on November 25, 2019, Minister Bethlenfalvy's communications team presented the Minister with a memo about his social media presence (the "ad spend memo"). In the ad spend memo, his communications team proposed that the Minister buy advertising to "boost" his social media posts. Their goal was to increase the Minister's followers and engagement. They suggested that the Minister target people who follow other Progressive Conservative Party or conservative-leaning accounts or posts. They also suggested that the Minister ask his riding association to pay for the advertising.
- [12] In December 2019, the Minister's staff shared the ad spend memo with Minister Bethlenfalvy's riding association. They asked the riding association to fund the ad spend plan.
- [13] On January 27, 2020, the riding association's vice-president of communications circulated the ad spend memo to members of the riding association's board. He asked them to review it before their meeting that night. He explained they would discuss whether to fund an ad spend for the Minister.

[14] Mr. Natyshak’s request to me enclosed a copy of the January 27, 2020 email attaching the ad spend memo.

[15] On February 5, 2020, Colin D’Mello of CTV News published a story with the headline “Top Ford government minister's office under scrutiny over social media spending plan.” Mr. D’Mello detailed the ad spend memo. He explained that it had been shared with the riding association. He also reported that at the January 27, 2020 riding association meeting Minister Bethlenfalvy appeared “startled” when the ad spend memo was first discussed, “and immediately recognized that his staff had mixed party and government business.” The news story reported that hard copies of the ad spend memo were thrown out.

## **2. Overview of the position of the parties**

[16] In his request to me, Mr. Natyshak acknowledged that Minister Bethlenfalvy stated that he acted as soon as he realized the ad spend memo had been shared with the riding association. But Mr. Natyshak said that the ad spend memo itself – and the strategy it contained of targeting conservative voters – is partisan and showed that Minister Bethlenfalvy’s staff used government resources for partisan purposes.

[17] In his response and submissions to me, Minister Bethlenfalvy said that the ad spend memo was not partisan because it was directed at boosting government and the Minister’s messaging. He also said that, in any event, he never approved his staff to consider, draft, or implement any social media ad spend. Additionally, he did not direct his staff to 1) ask the riding association to fund the plan, or 2) share the ad spend memo with the riding association.

[18] During my inquiry, I learned about two other matters related to Minister Bethlenfalvy’s obligations under the MIA. I briefly address these matters in this report. I learned that the Minister’s staff were performing significant communications work for his constituency office. I also learned that his constituency website links to the Minister’s social media accounts. These social media accounts have partisan content.

### 3. The organizations and structures discussed in this report

[19] It is helpful to explain, in broad strokes, the government structures and other organizations I discuss in this report.

#### **i. The legislative and executive branches of government**

[20] Parliament, in Ontario also known as the Legislative Assembly, is the legislative or law-making branch of government. Members of provincial parliament (“MPPs” or “members”) – who are elected – debate, amend and pass laws.<sup>1</sup>

[21] Parliament is responsible for holding the executive branch of government accountable.<sup>2</sup>

[22] The executive branch of government administers the law and sets policy. It is made up of the Executive Council (also referred to as Cabinet) and the Premier, supported by a majority of the MPPs in the Legislative Assembly and, usually, from the political party which elected the most members.<sup>3</sup>

[23] There is a separation of powers among the three branches that form Ontario’s government – the legislative, the executive and the judiciary.<sup>4</sup> Each of these branches is supreme and independent in its own sphere.

#### **ii. Funding of MPP and Ministers’ offices**

[24] The executive branch gives each member of the Executive Council a budget for an office to help them as heads of each of the ministries that form Ontario’s government. The Premier’s office is called Cabinet Office. The other members of Executive Council have Minister’s offices. The *Public Service of Ontario Act, 2006* says that staff in Cabinet Office and Ministers’ offices are public servants.

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<sup>1</sup>“Parliament vs. Government”, online: *Legislative Assembly of Ontario* <<https://www.ola.org/en/visit-learn/about-ontarios-parliament/what-parliament>> ; John Williams, *Parliament as the Pinnacle of Accountability*, 2003 26-4 *Canadian Parliamentary Review* 2, 2003 CanLIIDocs 238, <<http://www.canlii.org/t/skc8>>, retrieved on 2020-08-20

<sup>2</sup> Ibid.

<sup>3</sup> “Parliament vs. Government”, *ibid.*

<sup>4</sup> *Fraser v. P.S.S.R.B.*, 1985 CanLII 14 (SCC), [1985] 2 SCR 455 at para. 39.



[25] The Legislative Assembly gives every MPP a budget for an office that serves the members of the public living in the riding they represent (their “constituents”). The constituency office is part of the legislative branch of government. Constituency offices help constituents with issues related to the provincial government. Staff in these offices are not public servants, but rather are employees of the MPP through the budget provided by the Assembly.

**iii. Riding associations**

[26] MPPs are supported in their political careers by organizations that support them or their political party in their respective ridings. These organizations are referred to in a variety of ways: as electoral district associations, as constituency associations, or as riding associations. In this report, I use the term riding association.

[27] Riding associations are explicitly partisan. They are organizations formed in an electoral district to support a political party or individual.

## **III. THE LEGAL FRAMEWORK TO THE INQUIRY**

### **1. The Members’ Integrity Act, 1994**

**i. Overview of the MIA**

[28] This inquiry arises from the authority granted to me as Integrity Commissioner under the MIA.<sup>5</sup>

[29] The MIA requires that MPPs arrange their private affairs so that they can:

- broadly represent their constituents,
- promote public confidence, and
- maintain the respect and dignity of the Legislative Assembly of Ontario.<sup>6</sup>

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<sup>5</sup> MIA, s. 23.

[30] The MIA establishes an Integrity Commissioner. The Integrity Commissioner provides guidance to individual members about their obligations under the MIA. The Commissioner can also, upon a request by a member, conduct an inquiry regarding whether a member has failed to comply with the MIA or parliamentary convention.<sup>7</sup>

**ii. The preamble sets out that the MIA is designed to reconcile the private and public duties of members of the Assembly**

[31] The preamble to the MIA sets out the following principles to provide “greater certainty in the reconciliation of the private interests and public duties of members of the Legislative Assembly”:

- The Assembly as a whole can represent the people of Ontario most effectively if its members have experience and knowledge about 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.
- Members’ duty to represent their constituents includes broadly representing their constituents’ interests in the Assembly and to the Government of Ontario.
- 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.
- Members are expected to act with integrity and impartiality that will bear the closest scrutiny.

**iii. Members may not engage in conduct that creates a conflict of interest with their public obligations**

[32] In keeping with the preamble, the MIA prohibits members from engaging in conduct that creates a conflict with their public obligations.

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6 MIA, preamble.

7 MIA, s. 31.

[33] Section 2 of the MIA, which is at issue in this inquiry, states that a member may not participate in a decision that the member knows, or reasonably should know, presents an opportunity to “further the member’s private interest or improperly to further another person’s private interest.”<sup>8</sup>

[34] In addition, the MIA states that members shall not:

- Use information obtained as a member and that is not available to the public to “further the member’s private interest or improperly to further another person’s private interest.”<sup>9</sup>
- Use their office to seek to influence a decision made by another person to “further the member’s private interest or improperly to further another person’s private interest.”<sup>10</sup>
- Except in defined circumstances, accept a fee, gift or personal benefit that is connected to the performance of their duties.<sup>11</sup>
- Except in defined circumstances, knowingly be a party, or have an interest in, a contract with the Government of Ontario that benefits the member.<sup>12</sup>

[35] In considering if a member is in a conflict of interest, a member’s “private interest” is not engaged where their interest in a decision is one of “general application,” affects a member as “one of a broad class of persons” or concerns a member’s remuneration or benefits.<sup>13</sup>

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8 MIA, s. 2.

9 MIA, ss. 3(1).

10 MIA, s. 4.

11 MIA, s. 6.

12 MIA, s. 7.

13 MIA, s. 1.

[36] Members who sit on the Executive Council have added restrictions on their private activities.<sup>14</sup>

**iv. Members must not violate parliamentary convention**

[37] In addition to requiring members to avoid conflicts of interest, the MIA requires that members comply with “Ontario parliamentary convention.”<sup>15</sup>

[38] “Ontario parliamentary convention” is not defined in the MIA. A “convention” is a generally accepted rule or practice.<sup>16</sup> The rules or practices that parliamentarians accept as governing their ethical conduct form “Ontario parliamentary convention.”<sup>17</sup>

[39] Parliamentary convention is informed by the core principles set out in the MIA’s preamble.<sup>18</sup> Parliamentary convention is necessary for the administration of government in our democratic society and the maintenance of public trust.<sup>19</sup>

[40] It is a parliamentary convention that members cannot use government resources for partisan activities.<sup>20</sup> This parliamentary convention flows from the MIA’s preamble, which says that members must “broadly represent ... their constituents’ interests” and “act with integrity and impartiality.” The MIA requires that members perform their

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14 Sections 10-15 of the MIA set out that Executive Council members may not engage in employment or the practice of a profession. Except in defined circumstances designed to reduce the possibility of conflict between public and private duties, they also may not hold an office or directorship, hold or trade in securities, stocks, futures or commodities, engage in the management of a business, or acquire real property except for residential or recreational use.

15 The MIA states that members may request an opinion and recommendations from the Commissioner regarding their compliance with Ontario parliamentary convention (s. 28). Members may also request that the Commissioner provide an opinion about whether another member has contravened Ontario parliamentary convention (ss. 30(1)). And the Executive Council may request that the Commissioner provide an opinion about whether a member of the Executive Council has contravened Ontario parliamentary convention (ss. 30(5)).

16 Report re: The Honourable Lisa MacLeod, May 23, 2019, para.25 (quoting the Honourable Coulter A.A. Osborne) [“MacLeod Report”].

17 Ibid.

18 Report Re: Sandra Pupatello, December 12, 2002, [“Pupatello Report”], para. 25.

19 MacLeod Report, paras. 21-22.

20 As noted in the MacLeod Report at para. 32, “[g]overnment resources, including constituency offices, telephone, computers, and the salaried time of staff, should be used to assist constituents and not for matters related to partisan politics.” Cases establishing or referencing the parliamentary convention against use of governmental resources for partisan activities include Report re: Ted Chudleigh, December 11, 2008 [“Chudleigh Report”] at paras. 19 to 23 and paras. 28 to 30; Report re: Laurie Scott, October 1, 2013 [“Scott Report”] at para. 10; Report re: Jagmeet Singh, June 26, 2015 [“Singh Report”] at p. 19; Report re: Daiene Vernile and Jeff Leal, December 22, 2015 [“Vernile and Leal Report”] at p. 4; Report re Randy Hillier, July 6, 2011 [“Hillier Report”] at paras. 29-30.

obligations impartially and for the broad benefit of their constituents, not for specific groups or interests.<sup>21</sup>

[41] It is also a parliamentary convention that members do not use resources of the executive branch inappropriately to support the legislative branch. For example – except for coordinating logistical issues such as a minister’s schedule – a minister cannot use the resources of their ministerial office to support the work of their constituency office.<sup>22</sup> This convention flows from the separation of powers between the legislative and executive branches of government. It also flows from the MIA’s preamble which states that members must “act with integrity and impartiality that will bear the closest scrutiny.”<sup>23</sup>

**v. The Commissioner provides guidance about compliance with the MIA and parliamentary convention directly to individual members**

[42] A member may request that the Commissioner provide them with a confidential opinion and recommendations. They can seek guidance on any matter about their obligations under the MIA and Ontario parliamentary convention.<sup>24</sup>

[43] I received 369 of these inquiries last year and 533 the year before. I advise members in confidence about how the MIA affects them in their day-to-day activities.

**vi. The Commissioner may conduct an inquiry regarding whether a member has failed to comply with the MIA or parliamentary convention**

[44] A member who has reasonable and probable grounds to believe that another member has contravened the MIA or Ontario parliamentary convention may request that I give an opinion on the matter.<sup>25</sup>

[45] Upon receiving such a request, I may conduct an inquiry and report my opinion to the Speaker of the Assembly.<sup>26</sup>

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21 Report re The Honourable Brad Duguid, July 11, 2013 [“Duguid Report”] at para. 84.

22 Ibid.

23 Ibid.

24 MIA, s. 28.

25 MIA, ss. 30(1).

[46] I must refuse to conduct an inquiry if I determine that the referral is frivolous, vexatious, not made in good faith or that there are no or insufficient grounds for an inquiry.<sup>27</sup>

## **2. The Public Service of Ontario Act, 2006**

### **i. Ministers' staff are public servants subject to the PSOA**

[47] This inquiry relates in part to whether Minister Bethlenfalvy violated parliamentary convention because his staff failed to comply with their obligations as public servants. These obligations are set out in the PSOA and its regulations. The regulations include O. Reg. 382/07, *Conflict of Interest Rules for Public Servants (Ministers' Offices) and Former Public Servants (Ministers' Offices)*.

### **ii. The PSOA sets out restrictions on public servants' political activities**

[48] The PSOA sets out restrictions on how public servants may engage in political activity both inside and outside the workplace.

[49] The PSOA states that a public servant engages in "political activity" when they:

- Do anything in support of, or in opposition to, a federal or provincial political party or a candidate in a federal, provincial, or municipal election;
- Are, or seek to become, a candidate in a federal, provincial, or municipal election;  
or
- Comment publicly and outside the scope of their duties on matters that are 1) directly related to those duties and 2) dealt with in the positions or policies of a federal or provincial political party or in the positions or policies publicly expressed by a candidate in a federal, provincial, or municipal election.<sup>28</sup>

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26 MIA, s. 31.

27 MIA, ss. 31(5).

28 PSOA, s. 72.

**iii. Ministers' staff cannot engage in political activity in the workplace or with work equipment unless part of a ministerial duty**

[50] Employees working in a minister's office can participate in political activity in the workplace that supports a ministerial power, duty or function and does not conflict with the interests of the Crown.<sup>29</sup> This differentiates them from other public servants who cannot engage in *any* political activity in the workplace. This means that a minister's staff may consider, for example, how materials prepared by a ministry align with a political party's position on an issue.<sup>30</sup>

[51] Ministers' staff cannot engage in political activity in the workplace – or use government premises, equipment, or supplies – that is unrelated to the performance of a ministerial power, duty, or function.<sup>31</sup>

[52] If it does not conflict with their obligations to the Crown, and does not use government resources, ministers' staff are free to engage in political activity outside of their workplace.<sup>32</sup>

**iv. Ministers' staff are entitled to decline to engage in political activity**

[53] The PSOA also states that ministers' staff are – unless related to performance of a ministerial power, duty, or function – entitled to decline to engage in political activity.<sup>33</sup>

**v. Ministers must ensure their staff are familiar with the conflict of interest rules and promote ethical conduct by their staff**

[54] Under the PSOA, ministers must ensure that their staff are familiar with the conflict of interest rules that apply to them.<sup>34</sup>

[55] Ministers also must promote ethical conduct by public servants who work in their offices.<sup>35</sup>

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29 PSOA, s. 97.

30 Office of the Integrity Commissioner. (n.d.). Retrieved October 04, 2020, from <http://www.oico.on.ca/home/ministers'-staff-ethical-conduct/guidance-on-political-activity>

31 PSOA, s. 97.

32 PSOA, ss. 95, 97.

33 PSOA, s. 96.

34 PSOA, s. 67.

**vi. The Integrity Commissioner is the ethics executive for ministers' staff**

- [56] Each public servant in Ontario has an ethics executive who can make determinations about their compliance with the PSOA and its regulations.
- [57] The ethics executive for ministers' staff is the Integrity Commissioner.<sup>36</sup> If a public servant who works for a minister has any question about how the PSOA or its regulations apply to them, they can ask me to provide a determination. This includes a determination about their rights to engage in political activity.<sup>37</sup> Ministers' staff must notify me, as their ethics executive, if their political activities could conflict with the interests of the Crown.<sup>38</sup>
- [58] In addition, the supervisor of a public servant who works in a minister's office can ask me to determine any question about how the PSOA or its regulations apply, including about a public servant's right to engage in political activity.<sup>39</sup>
- [59] A public servant must comply with my determination under the PSOA.<sup>40</sup>

### **3. The standard of proof in this inquiry**

- [60] The standard of proof I must apply in this inquiry is proof on a balance of probabilities. This means that I must find that the evidence proves that it is more likely than not that the Minister breached the MIA or parliamentary convention. The evidence must be clear, convincing, and cogent to satisfy the balance of probabilities test.<sup>41</sup>

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35 PSOA, s. 67.

36 PSOA, s. 68.

37 PSOA, ss. 98 (1).

38 PSOA, ss. 98 (2)

39 PSOA, ss. 98 (1).

40 PSOA, ss. 98 (5).

41 *F.H. v. McDougall*, 2008 SCC 53 (CanLII), [2008] 3 SCR 41 at para. 40.



## IV. THE INQUIRY PROCESS

### 1. The request and Minister Bethlenfalvy's response

- [61] On February 5, 2020, Mr. Natyshak filed a request that I provide an opinion about whether Minister Bethlenfalvy failed to comply with the MIA and parliamentary convention. His request consisted of a letter and affidavit. He filed his request with the Speaker of the House as required by the MIA.
- [62] Mr. Natyshak attached two documents to his affidavit: 1) a memo on Treasury Board Secretariat letterhead, titled “Minister’s Social Media Promotional Spend,” and dated November 25, 2019, and 2) an email from the Vice President, Communications, Pickering/Uxbridge P.C. Riding Association to several recipients, dated January 27, 2020.
- [63] Mr. Natyshak alleged that Minister Bethlenfalvy “contravened parliamentary convention and Section 2 of the MIA by allocating the resources of the Treasury Board Secretariat to improperly assist the Progressive Conservative Party in partisan promotion of the Member’s electoral interests.”
- [64] Mr. Natyshak also asked that I determine whether Minister Bethlenfalvy’s staff breached the rules of the PSOA. I have conducted this inquiry under the MIA because it is the appropriate forum to address Minister Bethlenfalvy’s actions. In addition, under the MIA, my report is filed with the Speaker and then laid before the Legislative Assembly where its contents will be public. A determination made under the PSOA, by contrast, would simply be provided to the public servant’s minister without being made public.
- [65] Mr. Natyshak argued that the ad spend memo – and the strategy it contained of targeting conservative voters – is partisan and shows that Minister Bethlenfalvy’s staff used government resources for partisan purposes.
- [66] On February 11, 2020, I asked the Minister for submissions about whether I should conduct an inquiry under the MIA.

[67] On March 6, 2020, Minister Bethlenfalvy made submissions through his counsel Arthur Hamilton arguing that there was no basis for me to conduct an inquiry under the MIA.

[68] On March 11, 2020, I told Minister Bethlenfalvy that I was starting an inquiry under section 31 of the MIA. I also told Mr. Natyshak.

## **2. Evidence-gathering process**

[69] At the outset of my inquiry I chose to use the powers given to me under section 33 of the *Public Inquiries Act, 2009*. These powers allow me to require any person, by summons, to give evidence on oath or affirmation at the inquiry and to produce such documents as I may specify. Section 33 of the *Public Inquiries Act, 2009* also provides protections to witnesses at an inquiry, including protection from reprisal for their participation in the inquiry.

[70] On April 7, 2020, Minister Bethlenfalvy's counsel provided me with requested documentary disclosures. I requested more information, which Minister Bethlenfalvy produced on May 13, 2020.

[71] Counsel and investigators in my Office interviewed nine witnesses in June and July 2020, including Minister Bethlenfalvy. Attached at Appendix A is a list of these witnesses. I attended four of the interviews, including that of the Minister and his chief of staff, Karl Baldauf.

[72] As a result of the restrictions in place due to the COVID-19 pandemic, all the interviews were conducted via videoconference. Several of the witnesses attended with counsel. I did not need to summons any of the witnesses. The investigators gathered documentary evidence from several of these witnesses. The investigators conducted one follow-up interview with Mr. Baldauf, which I also attended.

[73] My Office gathered documentary evidence only from four witnesses who had specific and discrete involvement in the events.

[74] The COVID-19 pandemic caused some delays in the inquiry process, but these were not significant. I was satisfied with the cooperation of all witnesses, and their counsel, in scheduling their interviews and producing relevant documents in a prompt way.

[75] I made a change to the inquiry process with respect to this matter. Other jurisdictions, like the federal Ethics and Conflict of Interest Commissioner, provide the subject of an inquiry with the evidence gathered during the inquiry and invite submissions before the final report is released. This has not been the practice of this Office in the past, but I adopted it in the interests of fairness. Needless to say, there was some delay as a result of this additional step to the inquiry, but I found that it was not excessive.

[76] I am indebted to counsel and investigators in my Office for their help in the preparation of this report.

### **3. Issue related to the Minister's office disclosures**

[77] During my inquiry, witnesses alerted me to an issue within the Minister's office about the disclosure of documents to my inquiry. They said that Mr. Baldauf, before my Office told the Minister that I had started my inquiry, suggested that a manager not disclose an email in which Mr. Baldauf directed the manager to create the ad spend memo. The manager raised concerns about this conversation with some senior staff in the office. He was concerned that his job was at risk if he failed to comply. One of these senior staff raised these concerns with the Minister. The Minister said to tell the manager his job was safe. The Minister also called Mr. Baldauf to explain that full compliance was required with my inquiry.

[78] Three days after their original conversation, Mr. Baldauf told the manager to provide all relevant information to me during this inquiry. The email in question was provided to my Office by Minister's counsel. Mr. Baldauf said he never intended to direct the manager not to disclose relevant evidence. There appears to have been a miscommunication between Mr. Baldauf and the manager which I do not need to address because I am satisfied that I received all relevant information from the Minister's office related to this matter.

#### **4. Minister Bethlenfalvy is invited to provide submissions**

- [79] After I completed the fact-finding part of the inquiry, as discussed above, I provided Minister Bethlenfalvy with the opportunity to make submissions. I provided the Minister, through his counsel, with a draft of the facts the inquiry had established, copies of the documentary evidence gathered and the transcript of his interview.
- [80] On September 8, 2020, Minister Bethlenfalvy's counsel, Mr. Hamilton, supplied detailed submissions on behalf of the Minister. I have carefully considered these submissions in completing this report. These submissions are addressed in the analysis and findings below. On September 28, Mr. Hamilton withdrew one of his submissions which I therefore do not address.

### **V. THE EVIDENCE AND FINDINGS OF FACT**

#### **1. Overview of the facts**

- [81] This inquiry revealed that, in November 2019, Mr. Baldauf developed a strategy designed to increase the reach of the Minister's social media accounts. This strategy involved an "ad spend" that would target the accounts of people who would likely follow or engage with the Minister's social media accounts. An ad spend involves paying a social media platform for your posts to show up as sponsored content on the accounts of people who do not follow you. This increases your account's exposure. Minister Bethlenfalvy's staff recommended that the ad spend target people who had previously followed or engaged with PC party and conservative-leaning accounts.
- [82] When staff determined that they could not obtain government funding for the ad spend, Mr. Baldauf recommended that they seek funding from Minister Bethlenfalvy's riding association.
- [83] Minister's staff told Minister Bethlenfalvy about this strategy, and sought his approval for it, through a memorandum first provided to the Minister on November 19, 2019 and again on November 25, 2019. On November 26, 2019, Minister's staff met with the Minister in person to advise about the strategy and seek direction. However, Minister

Bethlenfalvy told me that he did not recall reviewing the ad spend memo nor did he recall discussing it with his staff. He denied that he approved the strategy contained in the memo.

[84] Following this meeting, Minister's staff shared the ad spend memo with the riding association. On January 27, 2020, the ad spend memo was circulated to members of the riding association in advance of a meeting that evening. Minister Bethlenfalvy attended the riding association meeting. When the ad spend memo was raised during the meeting, Minister Bethlenfalvy immediately asked that it be removed from the agenda.

[85] These events came to public attention through the CTV article on February 5, 2020.

## **2. The Minister's office**

### **i. Minister Bethlenfalvy is elected and becomes President of the Treasury Board**

[86] On June 29, 2018, Peter Bethlenfalvy was appointed President of the Treasury Board.

[87] Minister Bethlenfalvy had been elected as the Progressive Conservative MPP for Pickering-Uxbridge in the general election of June 7, 2018.

[88] Prior to his election, Minister Bethlenfalvy had a career of more than 25 years in capital markets, risk management and investments.

[89] While experienced in business, Minister Bethlenfalvy took on the responsibilities as President of the Treasury Board without previous experience holding political office.

### **ii. The Treasury Board Secretariat performs oversight and accountability functions**

[90] The Treasury Board Secretariat ("TBS") performs the following functions within the Ontario government:

- Plans expenditure management and controllership through the Treasury Board, including support and due diligence for decision-making related to capital;
- Oversees labour relations between the government and the Ontario Public Service and broader public sector;

- Oversees and communicates corporate policy and agency governance to support more accountability, openness, and modernization;
- Performs internal audit functions; and
- Performs internal Human Resources policy functions.

**iii. The Minister's staff**

[91] Minister Bethlenfalvy's office has a staff of between 15 and 20 people.

[92] The Minister's office has four departments: communications, policy and expenditure management, issues management and legislative affairs, and stakeholder relations.

**iv. Minister Bethlenfalvy relies upon his chief of staff for daily management of his office**

[93] As chief of staff, Mr. Baldauf provides general oversight of the Minister's office. He is the Minister's chief advisor. He oversees the staff. He takes responsibility for the activities of the office and ensures general operations. Mr. Baldauf has full responsibility for hiring. Both the Minister and Mr. Baldauf testified that Mr. Baldauf, as chief of staff, had a lot of autonomy about how to run the office.

[94] Mr. Baldauf has a special interest in the Minister's communications work because that is his professional background.

**v. Minister Bethlenfalvy uses daily briefing binders to review and approve work**

[95] Minister Bethlenfalvy receives a daily "day-ahead" binder. The binder informs him about the next day's agenda and events. It is also the main way that staff give the Minister materials to review and approve.

[96] The chief of staff reviews and approves all materials that go into the day-ahead binder. The Minister's executive assistant prepares the binder and sends it to the Minister via email, usually late in the evening.

[97] The Minister told me that he tries to get through all the material in the binder. But at times – because of its length and competing demands on his time – he cannot review it all.

[98] The Minister attends a morning briefing with his chief, executive assistant, and directors. They review the day-ahead binder at a high level. They focus on the events of the day and decisions the Minister needs to make.

**vi. Minister Bethlenfalvy's process for approving materials or strategies**

[99] Requests for approval are usually provided to the Minister at the end of his day-ahead binder. The Minister's executive assistant highlights requests for approval by marking them in yellow and with "your review and consideration or approval requested."

[100] The Minister said that he approves documents or strategies either by signature or verbally. Minister Bethlenfalvy said that he does not always provide a formal signed approval. His staff said that, in fact, such a formal signed approval is exceptional. They said that the Minister's approvals are primarily provided verbally.

[101] I heard that the responsible director will prompt the Minister at the morning briefing for his approval of items in the day-ahead binder. They may also put materials in his day-ahead binder over multiple days to prompt a response.

[102] Senior staff in the Minister's office had concerns about the approval process. A director told me that the verbal approval process is "difficult as staff ... get approval verbally but then [do] not have any proof of that approval." In this director's experience at other government offices, other methods were used to track approvals more reliably. Mr. Baldauf said that the approval process has been an "ongoing challenge." The Minister's staff tried several ways to improve it. They tried just asking the Minister for his approvals at the morning meeting. This "did not take." Currently, they include a specific box at the top of a memo when something needs approval.

[103] Mr. Hamilton suggested in his submissions that I oversimplified the approvals process at TBS but failed to provide any examples of inaccuracies in the evidence I obtained and outlined above which, after all, related only to approvals within the Minister's office. Discussion of the approval processes within TBS as a whole, rather than within the Minister's office, is beyond the scope of this report.

[104] During his interview, Minister Bethlenfalvy said he did not recall any concerns or discussions about improving or changing the approval process in his office. In Mr. Hamilton's submissions of September 8, 2020, however, he said that the Minister had implemented measures intended to improve the approval process, including tracking of outstanding approvals on an ongoing basis, which the Minister reviews every week.

**vii. Ethics training in the Minister's office primarily consisted of a training session with the Integrity Commissioner and routine onboarding**

[105] Minister Bethlenfalvy explained that he models ethical behaviour for his staff by acting ethically himself (by his "walk the talk"). He also has an open-door policy for all his staff. And, he said he encourages staff to contact my Office with any questions they may have.

[106] In terms of specific training, ethics training in the Minister's office consisted of a staff training session with my Office in January 2019. Staff also told me that – during routine onboarding with human resources – they were advised about the ethics rules that apply to them.

[107] Some of the Minister's staff also attended a one-hour session with me that the Premier's Office hosted in November 2019 as part of a more general program for all Ministers' staff.

**viii. Minister Bethlenfalvy's understanding of his ethical obligations**

[108] Minister Bethlenfalvy stated that he understood he had an obligation to "not get engaged in partisan activity through the ministerial office." He could not recall any conversations about partisan activities in the office. He said in his Minister's office they "don't conduct any partisan activities whatsoever." Minister Bethlenfalvy stated he understood this obligation from day one. He understood his staff had the same obligations.

[109] Minister Bethlenfalvy stated he reviewed the *PSOA* upon being elected and sworn in as a cabinet member.



### **3. The social media ad spend plan**

#### **i. Minister Bethlenfalvy uses social media to broaden his reach**

[110] Minister Bethlenfalvy stated that his goals for his social media accounts are to, within ethics requirements, communicate the government’s message and initiatives. He does not consider his social media accounts a high priority.

[111] The Minister’s communications staff maintain his social media accounts. They develop weekly plans for his social media. They post on Facebook, Twitter, Instagram, LinkedIn, as well as the blog site Medium.

[112] Minister Bethlenfalvy does not personally post on his social media accounts.

[113] In September 2019, the Minister’s office developed a new social media plan. Its goals included a 10% monthly increase in the number of followers and engagement during the initial implementation of the plan, and a 25% increase after full implementation.

#### **ii. The Minister’s understanding of his social media accounts as governmental**

[114] Minister Bethlenfalvy said that he considers his social media accounts governmental and not in any way partisan. He said they are “governmental in terms of government time and resources, 100 percent governmental”.

#### **iii. Mr. Baldauf is unhappy with the Minister’s social media performance**

[115] In the fall of 2019, Mr. Baldauf wanted to improve the Minister’s reach through his social media. While the office had hired a communications manager to “professionalize” the Minister’s social media presence, it continued to fall behind the targets Mr. Baldauf and the communications team had set. They lagged behind their goal for follower growth of 10% per month.

[116] Mr. Baldauf explained that, in the face of not achieving their growth numbers, he looked at an earlier success: they had used social media ads in rolling out TBS’s Building Smarter Government Initiative (“Smarter Initiative”) in October 2019. He thought these had been a great tool. He wondered if an ad spend could help boost the Minister’s social media reach.

[117] The Minister's staff told me that, with a small budget, a social media ad spend can accomplish a significant increase in followers.

**iv. Mr. Baldauf directs the creation of a memo about a social media ad spend**

[118] On November 3, 2019, Mr. Baldauf directed a manager on the communications team, David Woolley, via email, to prepare a memorandum about whether they should do an ad spend for the Minister's social media accounts. Mr. Baldauf noted in his email that this might be something to consider "given that we need to lift our numbers to achieve the goals we've set." Mr. Baldauf asked the manager to prepare the memo by the time the Minister returned on November 18, 2019.

[119] Minister Bethlenfalvy did not direct Mr. Baldauf to create the memo or consider the idea of a social media ad spend.

**v. Mr. Baldauf directs the manager to consider funding sources for a social media ad spend**

[120] Mr. Baldauf also instructed the manager to explore what sources of money could be used to pay for the ad spend.

[121] On November 18, 2019, the manager exchanged emails with a staff member at PC Caucus Services, who suggested the manager instead contact someone at TBS. He then contacted an assistant director in digital and internal communications at TBS. She told him that, generally, government funds cannot be used for a Minister's social media accounts.

**vi. Mr. Baldauf and the manager have different views about the prospects of government funding for the ad spend**

[122] Mr. Baldauf told me that, at the outset, he thought government funds from TBS could be used to fund the ad spend, just as they had done with the Smarter Initiative ad spend. Mr. Baldauf understood that there were "technicalities that inhibited that, because you cannot have the Minister's person involved." He then thought about how else the plan could be enabled.

[123] The manager was less sure. He believed he "knew from the get-go that we couldn't get funding from the Ministry." His research on November 18, 2019 confirmed this view. He

thought it was different from the Smarter Initiative ad buy because “this was specifically focused on the minister’s social accounts, which are separate from the Ministry’s social account.”

**vii. Mr. Baldauf decides that they will need to seek funding from the riding association**

[124] Once the manager had confirmation that they could not use government funds, he spoke to Mr. Baldauf. Mr. Baldauf directed him that the Pickering-Uxbridge PC Association, MPP Bethlenfalvy’s riding association, might be a possibility. I find that this must have occurred on or before November 19, 2019 because, as noted below, that is when Mr. Baldauf reviewed the manager’s draft of the ad spend memo. The ad spend memo recommended that the Minister ask his riding association to fund the ad spend.

**viii. The manager drafts a social media promotional support memo**

[125] On or around November 19, 2019, Mr. Baldauf reviewed the manager’s draft of the ad spend memo.

[126] At the top of the document, a “Request to the Minister” was set out in a text box. The request to the Minister said that, to improve his social media follower growth rate, the communications team recommended “a \$1,000-per-month spend to be funded by your riding association budget.” The ad spend memo included proposed budgets (ranging from \$100 - \$1000 over 30 days) and the proposed “reach” for each budget.

[127] The rest of the ad spend memo outlined the purpose and details of the ad spend strategy that the communications team recommended. The memo recommended “boost[ing] (pay to advertise)” the Minister’s posts “to increase their visibility among users who are likely to be interested in your account.” The goal was to increase the number of page “likes” and followers across Facebook, Instagram, and Twitter.

**ix. The ad spend memo recommends targeting a demographic profile based on political leanings**

[128] In the ad spend memo, the Minister’s communications team explained the targeted demographic profiles they developed for the ad spend.

[129] For Facebook and Instagram, they would target people of all genders between the ages of 18-65+, living in Ontario, and who had shown interest in conservative and conservative-leaning accounts including the Ontario PC Party, Conservative Party of Canada, Andrew Scheer, Stephen Harper, The National Post and The Toronto SUN.

[130] For Twitter, they would target people living in Ontario, of all genders, above age 18, who follow:

- Conservative politics (broad "interest" category)
- Ontario PC Party
- Premier Doug Ford
- Minister Rod Phillips
- Minister Christine Elliott
- Minister Stephen Lecce
- Conservative Party of Canada
- Andrew Scheer
- MP Erin O'Toole
- The National Post
- The Toronto SUN
- The Ottawa SUN

[131] In the ad spend memo, the team anticipated that the targeted audience demographic profile “will ensure our boosted posts appear in front of likely PC Party supporters and conservative voters across the province – this group is most likely to engage with your posts online and follow your accounts for future content and updates.”

**x. The staff target PC supporters and conservative voters to maximize the value of their ad spend in increasing followers**

[132] The manager said the communications team targeted PC supporters and conservative voters “[b]ecause we wanted to maximize the value of our ad spend, and we figured if we ... if you advertise to people who don’t like you to begin with, they won’t ... that won’t transfer over to engagement for ... to likes.”

[133] For his part, Mr. Baldauf said, “So, you think to yourself, we want to target with audiences that would be most likely to embrace the message that we’re trying to share. That’s, I think, genuinely what informed this process.”

**xi. The Minister is provided with the ad spend memo**

[134] On November 19, 2019, the ad spend memo was provided to the Minister in his day-ahead binder. It was found at the end of that day’s binder, at pages 70-71.

[135] The ad spend memo as provided to the Minister had the Ontario Trillium logo at the top and was titled “Social Media Promotional Spend: For your review and approval.”

[136] The ad spend memo provided to the Minister on November 19, 2019 included a highlighted heading stating, “For your review and approval.” Minister Bethlenfalvy indicated this was standard practice where his approval was required.

[137] The text box at the top of the ad spend memo set out:

**Request to Minister**

This memo outlines the challenges currently presenting your social media strategy. Our follower growth rate consistently falls behind our plan for a 10% increase month-over-month, despite success in increasing engagement online.

This memo outlines the options to increase follow count. Because rules limit your MO from spending constituency office or DMO funds on promotions, your communications team proposes a \$1,000-per-month spend to be funded by your riding association budget to support these promotions.

After your review of this memo, please inform your team whether you are comfortable with us moving forward with the proposed ad spend.

[138] The Minister told me that he did not review the ad spend memo on or around November 19, 2019. He did not discuss it with anyone or approve it. Minister Bethlenfalvy and his staff all said that it was not discussed at the November 20, 2019 morning briefing.

**xii. The Minister is provided with the ad spend memo a second time**

[139] On November 25, 2019, at 10:16 pm, the Minister’s executive assistant sent him his day-ahead binder. The binder included the ad spend memo again, this time titled “MO Briefing: Social Media.” The ad spend memo was found at pages 20-22 of his binder, which that day was 37 pages long.

[140] This version of the ad spend memo was essentially the same as that provided to the Minister on November 19, 2019, with the exception that it recommended a one-month

trial of the plan. Like the first version, the November 25, 2019 ad spend memo had the Ontario Trillium logo at the top.

[141] Like the first version, a text box at the top of the memo set out a “Request to Minister.” The request stated that, to improve his social media follower growth rate, the team recommended that they ask his riding association to fund a \$1,000-per-month ad spend.

[142] While it did include a “Request to Minister” text box, the ad spend memo provided to the Minister on November 25, 2019 did not include a highlighted heading stating, “For your review and approval”, as was standard practice where his approval was required.

[143] Staff put an updated version in the Minister’s binder because they assumed he had not reviewed the first version.

[144] This time the ad spend memo was provided in advance of a meeting scheduled with the Minister from 2:45 p.m. to 3 p.m. on November 26, 2019.

**xiii. Minister Bethlenfalvy does not remember seeing the ad spend memo**

[145] Minister Bethlenfalvy told me that, despite receiving this memo twice in his day-ahead binder, he had no memory of seeing it until, months later, a version of it was tabled at the meeting of his riding association.

**xiv. The Minister attends a meeting with his staff about the plan presented in the ad spend memo**

[146] On November 26, 2019, the Minister attended a 15-minute briefing with his staff about the ad spend plan. Staff recalled it was difficult to schedule this meeting because of the Minister’s busy schedule.

[147] Minister Bethlenfalvy acknowledged that he attended this meeting, but he had no memory of it. The Minister did tell me that, from his review of the materials, the meeting occurred between an intense hour-and-a-half caucus meeting and a scheduled Treasury Board meeting that the Minister was chairing and for which he needed to prepare.

[148] Aside from noting that the meeting was very quick – a “fly-by” – Mr. Baldauf also had no independent memory of the meeting.

[149] Therefore, I was required to rely upon the evidence of the Minister's staff who attended the meeting and remembered it. Staff told me that it seemed to them that the Minister had not reviewed the ad spend memo in advance of the meeting. The meeting itself was very brief, perhaps 10 to 15 minutes. They were rushed. A staff member explained that the Minister was "sort of half-in and half-out of the conversation."

[150] At the meeting, the manager said that he presented the Minister with a "super brief overview of the plan" as follows:

- He explained to the Minister the idea of spending money on some ads to boost the Minister's social media profile.
- He explained to the Minister "the groups we would target in the ads and this is what different ad buys would get us."
- He did not think he would have reviewed the specific people they were going to target. He would have just explained they were targeting audiences who are inclined to support the Minister in the first place.

[151] He then asked the Minister, "Are you comfortable ... what amount of money would you be comfortable spending per month? Are you okay with this plan, broadly speaking?"

[152] The acting communications director had a similar recollection of the meeting. He said that, before the Minister came in, Mr. Baldauf explained to the manager how to present the issue to the Minister – namely to present the issue at a high level and explain "what your ask is and then seek his advice on how to proceed." He recalled that, when the Minister came into the room, the manager quickly walked the Minister through the document. The acting communications director did not recall the Minister asking any questions.

[153] The manager did not think that they talked about the riding association funding the ad spend. The acting communications director thought that, near the end of the meeting, Mr. Baldauf mentioned something to the manager about contacting the riding association. But he did not recall if the Minister was still in the room at the time.

**xv. Minister Bethlenfalvy denies approving the plan set out in the ad spend memo**

[154] Minister Bethlenfalvy told me that he is sure that he did not approve the strategy set out in ad spend memo. He did not approve the idea of asking his riding association to fund it. Minister Bethlenfalvy said that “someone should have put in front of me a request for approval, and none was done.”

[155] Minister Bethlenfalvy said that he would have expected his staff to seek “formal approval” for such a plan, and this did not happen. When asked what such formal approval should have looked like, he said “probably a document and a meeting.” He said that “the only meeting that was ever scheduled was that 15-minute meeting ... at best, it was a discussion. It was a draft.” When asked what the final document that signaled his approval should have looked like, compared to the memo he was provided, he said, “It would be probably the only thing on the piece of paper. The strategy would have been attached, and it would have been a request for approval to ask the constituency riding association for funding for this purpose.”

[156] He said, “you submit a 15-page document, and one sentence you make an ask, I don’t think that is ... anyone would say that constitutes approval.” He said, “it would say “Request approval,” you know, and it would outline very clearly what the ask is, and what I would be approving.”

[157] Minister Bethlenfalvy said that if he had approved the plan, he probably would have given a formal approval verbally, not by signature.

**xvi. Some Minister’s staff believe he approved the plan set out in the ad spend memo**

[158] The manager and the acting communications director believed they had at least the Minister’s implicit approval for the plan. The manager said:

I mean, again, as I said, [the November 26 meeting] was a very quick overview. It was pitched to him as, you know, "This is a way to increase followers. I have done this before in my previous ... I personally have done this before for private businesses, and it has worked to get us ... to get them more followers. So, you know, your chief of staff is recommending this, I'm recommending this, your director of communications is recommending this." And so, he just said ... I mean, I don't actually remember what he said, but it was to the effect of, "Okay. You all seem to have this in hand. You could go forward on it.



[159] The acting communications director had a similar understanding. He said that the Minister listened to the manager without asking questions. He thought the Minister “in general seemed to think it was a good idea.”

**xvii. The chief of staff does not know if the Minister approved the plan**

[160] As noted above, Mr. Baldauf had no memory of the November 26, 2019 meeting. He did not remember if the Minister approved the ad spend strategy. Mr. Baldauf refused to speculate about whether he would have moved forward with the ad spend plan if the Minister did not approve it. He told me that, in some circumstances, he provides direction to staff “on his own thinking.”

[161] Mr. Hamilton takes exception to Mr. Baldauf having been asked whether he would have gone ahead with the ad spend plan if the Minister had not approved it. Mr. Hamilton claims that the Minister and Mr. Baldauf have given evidence that allows only one conclusion — that no approval was given. He further asserts that no person claims the Minister approved the ad spend. With respect, I find that this submission amounts to a tautology. It is premised on there being only one conclusion from the evidence. As I discuss below, there is both direct and circumstantial evidence which could lead to an inference that approval was given. I must weigh that with the evidence that approval was not given. Accordingly, I must reject Mr. Hamilton’s submission on this point.

**xviii. Minister Bethlenfalvy provides contact information for the riding association “re social media ask”**

[162] On November 28, 2019, Mr. Baldauf sent an email to Minister Bethlenfalvy titled “Pat Milloy”. The text of the email stated “Do you have Pat Milloy’s [sic] email address. I’d like to connect him with [the manager] re social media ask.” Pat Molloy is the President of MPP Bethlenfalvy’s riding association in Pickering-Uxbridge.

[163] Early the next morning, on November 29, 2019, Minister Bethlenfalvy replied to Mr. Baldauf saying, “I don’t have his email, but his cell is [phone number].”

[164] Minister Bethlenfalvy told me that he replied to Mr. Baldauf because “Well, I – my blink ... you know, my blink response is to give him the contact info. I get asked for information all the time. I didn’t think anything of it.”

[165] Even though Mr. Baldauf’s email referenced the “social media ask,” Minister Bethlenfalvy told me he did not connect the request to the meeting three days earlier about the social media ad spend.

[166] Minister Bethlenfalvy acknowledged that such a request from his chief was not a common occurrence.

[167] Mr. Baldauf told me that he could not confirm that the “social media ask” he referenced in his email was the ad spend strategy discussed on November 26, 2019. But he was unable to explain what else the email could have been referencing. I find on the evidence that it is more probable than not that he was referring to the ad spend strategy discussed only three days earlier.

**xix. Mr. Baldauf directs the manager to contact the riding association**

[168] On December 2, 2019, Mr. Baldauf sent an email (from his Gmail account) to the manager (on his Gmail account) asking him to reach out to the riding association president “about the need to bring forward the piece on paid social.” He suggested that the manager ask for contact information for the communications person on the riding association board.

[169] Mr. Baldauf said he thought it was appropriate to ask the riding association to fund the ad spend because they had “this campaign that we developed in good faith, focused on extending government’s messaging” and “[b]ecause the work had been done, and we didn’t want to lose that good thinking, or that work.” He said he directed the manager to contact the riding association to “hand it over” to the riding association.

**xx. The Minister, Mr. Baldauf and the manager use their Gmail accounts**

[170] Mr. Baldauf and the Minister used their personal Gmail accounts in exchanging emails about approaching the riding association. Mr. Baldauf explained that he used his Gmail because “[i]t became inappropriate in terms of using government assets to talk about what was now being transitioned into something that was non-Treasury Board related.” Mr. Baldauf said that he sent the emails about contacting the riding association on his lunch break.

[171] Mr. Baldauf told me that, after he realized they would have to ask the riding association to fund the ad spend, he decided the ad spend was no longer the work of the Minister's office. He told me he "pretty much absolved [himself] at that point" because "it was clear that this was not going to be an activity of the Treasury Board."

[172] The manager agreed that Mr. Baldauf told him to use his Gmail account when contacting the riding association. He understood this was because the matter related to the riding association and not Ministry work. He probably also used his personal cell phone to contact the riding association. But the manager said that he contacted the riding association on work time and because of a specific direction from Mr. Baldauf as his boss. He was never told not to contact the riding association during work hours.

[173] The manager said the direction from Mr. Baldauf did not raise any ethical alarm bells for him. He just thought, "I will just listen to my boss and go forward and do this."

**xxi. The manager contacts the riding association**

[174] On December 5, 2019, the manager sent an email to the vice-president (communications) of the riding association. He sent the email from his Gmail account. He wrote, "I'm Minister Bethlenfalvy's Manager of Strategic Communications at Queen's Park." He noted that their office had been "speaking with the Minister about having the riding association spend some money to advertise his social media accounts online." The manager asked if they could find a time to talk. He signed off with both his personal and his work cell phone numbers.

**xxii. The manager speaks to the riding association vice-president**

[175] On or around December 10, 2019, the manager had a phone call with the riding association vice-president. They spoke during work hours.

[176] The manager explained that, after he arranged the call, he told Mr. Baldauf about it, expecting that Mr. Baldauf would attend. Mr. Baldauf told him to do the call on his own.

[177] During the call, the manager explained the ad spend idea to the vice-president. They discussed some high-level aspects of the plan – the amount to spend and the target audience. It was a brief call. The vice-president thought the plan made sense for the

riding association; they had already been looking for ways to increase exposure for the Minister. The manager asked if he should attend the riding association meeting to help in presenting the request. The vice-president said this was not necessary.

[178] The riding association vice-president explained his understanding of the social media plan was, “It was all about getting exposure, more exposure, more hits, more likes, reaching out to members of the party, those sorts of things.”

**xxiii. The manager sends the vice-president a revised copy of the ad spend memo**

[179] On December 10, 2019, the manager sent the vice-president a revised copy of the ad spend memo by email. They had discussed that the vice-president would use some key parts in talking to the riding association in January or February 2020 about whether they could fund the plan.

[180] The manager sent a version of the ad spend memo that was on TBS letterhead. Prior to sending it, he changed the ad spend memo by adding a statement that the spend would target only likely supporters within MPP Bethlenfalvy’s Pickering-Uxbridge riding. He told me he added this because the vice-president was unclear if they were targeting the whole province or just the riding – he wanted to clarify the intention was to target the riding. The manager told me he edited the ad spend memo using his work computer and during work hours.

**xxiv. The ad spend is discussed in two regular monthly reports to the Minister about his social media**

[181] The Minister’s communications staff prepared regular monthly analytics reports for him about the performance of his social media.

[182] On or around December 7, 2019, the Minister’s communications team provided him with the November 2019 analytics report in his day-ahead binder. The analytics report stated that, as discussed previously, the communications team “has developed a paid social advertising strategy and will engage with your riding executive to implement it.” The memo stated on page 1:

While engagement continues to grow on Instagram, Twitter, and LinkedIn, we have not seen the same high levels of growth for followers. As discussed with you previously,

your team has developed a paid social advertising strategy and will engage with your riding executive to implement it. We believe this will help increase our follower numbers to the levels outlined in the original long-term social media plan.

[183] On or around January 10, 2020, the Minister’s communications team provided him with the December 2019 analytics report in his day-ahead binder. The December 2019 analytics report stated that, as discussed previously, the communications team has engaged the riding association about the ad spend strategy. The memo explained that the riding association was expected to discuss the strategy in January or February. The memo stated on page 1:

As discussed with you previously, your team has developed a paid social advertising strategy. Your constituency board was been engaged on this topic on **December 5, 2019**, by your Communications Team. Currently, your constituency board communications lead is discussing next steps with other board members. A final discussion is yet to be scheduled but is expected to take place in **January** or **February**. We believe this will help increase our follower numbers to the levels outlined in the original long-term social media plan. (**emphasis** in original)

[184] Mr. Baldauf reviewed the draft December 2019 analytics report that the manager had prepared. He suggested that the manager highlight the date he communicated with the riding association and the date of the expected riding association meeting. Mr. Baldauf told me that he reviewed the analytics report during work hours and with work equipment. He believed reviewing the analytics report was proper because it was necessary to give the Minister “circumstantial context ... for him to understand as he read an overarching social media report.”

**xxv. The Minister says he did not read the social media analytics reports**

[185] The Minister told me that he likely flipped right by – and did not read – either the November or December 2019 analytics reports.

[186] He told me he often gets documents from 25 to 100 pages long in his daily binder. He must prioritize which documents he reviews. He said, “it’s highly probable that I would have seen a social media analytics report and completely bypassed it. ... And frankly, I still do.”

[187] Minister Bethlenfalvy also told me that he expects his staff to fully review all the issues and flag any concerns they would have “from an ethics or otherwise perspective.”

**xxvi. The riding association vice-president sends the ad memo to riding association board members**

[188] On January 27, 2020, at 11:22 a.m., the riding association vice-president sent an email titled “Tonight’s meeting” to members of the riding association board. He also sent the email to MPP Bethlenfalvy at his Gmail address. And, he copied the manager at his Gmail address. Mr. Baldauf was not copied on the email.

[189] The vice-president attached the ad spend memo.

[190] In the email, the vice-president asked recipients to take a moment to review the ad spend memo. He said he would make a short presentation to the board and then they would vote “(Hopefully) to allot some funds each month to increase the Ministers [sic] social media presence, views and Likes.”

[191] The vice-president said he did not talk to the manager before sending the ad spend memo to the riding association. He did copy the manager on his email.

[192] Minister Bethlenfalvy did not see this email before the riding association meeting that evening. He does not check his Gmail during the day.

[193] One of the Minister’s staff, who sat on the riding association board, saw the email. He was concerned. The email referred to MPP Bethlenfalvy as “Minister;” he did not think it was appropriate for riding association correspondence to refer to Peter Bethlenfalvy in his ministerial role. He was also concerned that someone sent a TBS memo to the riding association. He spoke to the manager on January 27, 2020. The manager explained to him that he had not expected the actual memo to be shared. They thought that – because it was on TBS letterhead – the riding association vice-president should not have circulated it. But they thought it was not a “huge” issue.

[194] The staff member who sat on the riding association did not raise his concerns with Mr. Baldauf, or the Minister, at that time.

**xxvii. The ad spend memo is tabled at the January 27, 2020 riding association meeting**

[195] The riding association meeting took place at 7:30 p.m. on January 27, 2020.

- [196] The ad spend arose late in the agenda. When the vice-president started to address it, Minister Bethlenfalvy interjected immediately. He said they should not be discussing it. The Minister said the ad spend memo was official government business. He asked that the board withdraw the item from the agenda. The vice-president recalled that the Minister said, "This is not right."
- [197] Minister Bethlenfalvy said that, at this time, he did not know what was in the ad spend memo. He just saw that it said TBS on top.
- [198] Minister Bethlenfalvy told me that – from his own “blink response” to the ad spend memo when he saw it at the riding association meeting – he believed he had not seen it before.
- [199] Members of the riding association collected printed copies of the ad spend memo that had been distributed to attendees. The vice-president sent an email later that night to the riding association board saying that the memo was circulated by mistake. He asked the recipients to delete their electronic copies of the ad spend memo.

#### **4. The Minister’s office response after the riding association meeting**

- [200] At the outset, I should note that Mr. Hamilton objects to the evidence gathered under this section. Mr. Hamilton argues that evidence about what took place after the riding association meeting of January 27, 2020 is irrelevant “*ex post facto*” [after the fact] evidence. I do not accept Mr. Hamilton’s position that this evidence is irrelevant. In assessing the Minister’s credibility about when and whether he ended the ad spend plan, I need to explore the aftermath of the meeting. In addition, this evidence – and particularly the understanding the Minister and his staff had of the issue – is relevant in understanding the full dimension of what occurred here. Was this merely an error in sending out the ad spend memo on Ministry stationery, or was it a deeper problem involving the misuse of government resources to create and distribute a partisan document?

**i. The Minister does not immediately see the issue as giving rise to ethical questions**

[201] Minister Bethlenfalvy said he was not sure after the riding association meeting that this was an “ethical situation.” He “just was not comfortable with something that I had not seen, with my ministerial letterhead, going forward.”

**ii. The Minister discusses the riding association meeting with his chief and asks his chief to find out what happened**

[202] Minister Bethlenfalvy recalled that he spoke to Mr. Baldauf about the riding association meeting. He was not sure if this was the next day. He was not sure if it was on the phone or in person.

[203] From the Minister’s recollection, the essence of their conversation was “What the heck just happened? ... [P]lease review and report back.” He asked his chief to look into the matter immediately, “because you can imagine my surprise that this was a document, a TBS document, at a riding association meeting.” Mr. Baldauf replied that he would look into it and report back. Mr. Baldauf did not – as far as the Minister could remember – explain what he knew about the events leading to the ad spend memo being shared with the riding association.

[204] Minister Bethlenfalvy also thought he asked Mr. Baldauf to look into refresher ethics training for his staff.

[205] Mr. Baldauf’s recollection of this meeting was different. He recalled that he and the Minister spoke, in person. He believed they spoke the morning after the riding association meeting. The Minister was very frustrated – he was upset that a government document was presented at a partisan riding association meeting. The Minister asked him, “Did you know that this document was going to be presented at the riding association meeting?” Mr. Baldauf said, “Yes”. He explained that they had intended that Treasury Board would fund it, but when that was impossible, they found a different funding source. Mr. Baldauf “recall[ed] taking responsibility, and apologizing” during the conversation.



[206] Mr. Baldauf said that the Minister “conveyed the need for us to be clear in terms of what is permissible and what is impermissible, and he asked [Mr. Baldauf] to convey that as well.” They discussed if there had been wrongdoing and how to prevent this from happening again.

[207] Mr. Baldauf remembered that the Minister told him that they should not proceed with the ad spend or communications with the riding association. Mr. Baldauf did not recall if he told the Minister that the ad spend idea had been raised with him – several times – prior to the riding association meeting. He said he would not have been trying to “fault” the Minister.

**iii. The Minister does not take other steps at this point**

[208] Minister Bethlenfalvy did not remember other steps he took immediately following the riding association meeting. He did not speak to any other members of his staff or the riding association. He did not have a team meeting to discuss the matter. He thought that would be premature because Mr. Baldauf had not yet reported to him about the events leading to the riding association meeting.

**iv. Minister’s staff believe the problem is the TBS letterhead, not the plan itself**

[209] During the riding association meeting, the manager and acting communications director exchanged text messages with a riding association board member who was at the meeting. The board member was also a staff member at the Minister’s constituency office. In these text messages, it was clear that they thought the main problem was that the memo was presented on TBS letterhead. The riding association member counselled the manager, “Hey so for future purposes just take the header off and like cut down to like a paragraph on a blank page.”

**v. Mr. Baldauf talks to the manager**

[210] Mr. Baldauf and the manager both said they spoke the day after the riding association meeting, but their recollections of the conversation differ. Mr. Baldauf said that after he spoke with Minister Bethlenfalvy, he told the manager that 1) the Minister said not to proceed with the ad spend and 2) the Minister said to cease communication with the riding association. He also explained that the Minister was frustrated that the memo was shared with the riding association.

[211] The manager had a different recollection. He said their conversation was just, "That shouldn't have been on TBS letterhead, but, you know, generally speaking, we didn't break any rules, so let's ... like, that was the only rule that was broken, so let's go forward ... through appropriate channels." The manager said that Mr. Baldauf said, "Hey, the Minister was ... I understand the Minister was not very happy about that memo being included on TBS letterhead." The manager's understanding was that the plan itself was fine.

[212] The manager said that since he thought they would move forward with the social media plan, at 2:52 p.m. on January 28, 2020, he sent an email to the riding association vice-president asking that he let him know when the next riding association board meeting was scheduled so he could attend to answer any questions about the plan.

**vi. The ad spend idea is ended**

[213] Minister Bethlenfalvy said that once he understood the goal of the ad spend was to amplify the government's message, he decided it was "not a priority, and I just shut it down." He said, "spending money to amplify a message was not something I considered a priority." Mr. Baldauf recalled that the Minister said the ad spend plan was ended after the riding association meeting.

[214] Notwithstanding the conflict in the evidence between the manager and Mr. Baldauf as to their conversation the day after the riding association meeting, I am prepared to accept the Minister's evidence that he ended the ad spend strategy. I find that he likely ended the ad spend strategy during his discussion with Mr. Baldauf the day after the riding association meeting. Unfortunately, Mr. Baldauf and the manager had a miscommunication resulting in the manager reaching out to the riding association on January 28. However, since there is no further evidence that the manager took additional steps to continue with the ad spend strategy, beyond the email he sent to the riding association vice-president, I am satisfied that the ad spend strategy was effectively ended on the same date.

**vii. The Minister views the ad spend memo as non-partisan**

[215] The Minister told me that, once he took the time to review the ad spend memo, he determined that the goal of the plan was to amplify the government’s message. He did not view this as a partisan document. He thought that, nonetheless, no ministerial document should find its way to the riding association regardless of the ethics. Of the recommendation in the memo to target the accounts of likely PC Party supporters and conservative voters, Minister Bethlenfalvy stated: “channels and target audiences are way beyond my social media expertise.”

[216] I heard a different view from some of the Minister’s staff. One staff member who was not involved in developing the ad spend memo told me that – while the idea of an ad spend to promote the Minister’s accounts could be a legitimate communications exercise – “specifically targeting certain political interests” was problematic.

**viii. The Minister responds to a CTV reporter about the ad spend memo and says he did not approve the strategy**

[217] In early February 2020, CTV reporter Colin D’Mello contacted the acting communications director in the Minister’s office for comment. Mr. D’Mello had been provided a copy of the ad spend memo. A source told him the manager had shared it with the riding association.

[218] The acting communications director and director of issues management prepared a response for the reporter. The chief reviewed and approved it. They presented the statement to the Minister for approval. Minister Bethlenfalvy pointed out during his interview with my Office that the statement said he did not approve the strategy. He believed this meant that his staff also thought he had not approved the strategy: he said, “I don’t believe my staff would put anything in front of me that they didn’t believe to be true.”

**ix. The CTV article**

[219] On February 5, 2020, Mr. D’Mello published a news story titled, “Top Ford government minister's office under scrutiny over social media spending plan.”

[220] Minister Bethlenfalvy told me that his statement, as reported in the CTV story, is still correct in his view. It read:

Bethlenfalvy issued a statement to CTV News Toronto suggesting that the social media strategy was a “draft memo” that was “proactively submitted” to the riding association “in error”.

“I did not provide approval of this strategy,” Bethlenfalvy said in a statement.

[221] The CTV article quoted Mr. Natyshak stating that the social media strategy was an “inappropriate use of government resources and ministerial resources.” The article stated that Mr. Natyshak was considering sending a letter to the Integrity Commissioner requesting an investigation.

[222] Mr. Hamilton takes exception to the fact that Mr. Natyshak spoke to the media before formally filing a request for an opinion with the Speaker. In earlier reports, I have reminded members that they should avoid speaking publicly on the matter of a complaint before it has been formally filed because it may prejudice the investigation process. In this case, as will be seen below, Mr. Natyshak filed his request on the same day as the CTV article, so I find that there was no prejudice to the investigation process.

**x. The complaint from Mr. Natyshak**

[223] On February 5, 2020, Mr. Natyshak filed a request that I provide an opinion about whether Minister Bethlenfalvy failed to comply with the MIA and parliamentary convention.

[224] On February 7, 2020, my Office wrote to Minister Bethlenfalvy via email to tell him about the complaint by Mr. Natyshak. I requested that the Minister provide submissions by February 21, 2020 as to whether I should conduct the inquiry.

**xi. The Minister’s chief asks the director of issues management to review the events**

[225] On the evening of Saturday, February 8, 2020, Mr. Baldauf sent an email to the director of issues management. He asked him to look at the correspondence around the ad spend. He also asked for advice about how to prepare for the Integrity Commissioner investigation.

[226] Mr. Baldauf asked if the director could provide advice. He noted that the Minister was “uneasy,” and Mr. Baldauf wanted to offer him an assessment on Monday.

[227] Mr. Baldauf described the events in the email to the director as follows:

- They investigated funding options at the same time as they developed a strategy for paid promotion of the Minister’s social posts.
- They realized through the investigation that the riding association was the most viable possibility for funding of the ad spend.
- At that point, they “handed this work over to [the riding association].”
- Their intention was to follow the rules. The strategy was drafted on TBS letterhead “because it had been formatted for the Minister’s night binder ... [a]nd that was the document that [the manager] erroneously sent to the riding association without removing the letterhead.”

[228] The director replied to Mr. Baldauf by email on Sunday, February 9, 2020. He commented that the boosting of social media numbers was a legitimate communications activity, but stated: “I’m not sure if the specific targeting of Conservatives by MO staff is allowed, as it is by definition political.” He thought that, if the plan had involved boosting without political targeting, it would probably not create an issue.

[229] The director further observed that sharing the memo with the riding association was “the root of all problems.” Had the riding association been asked by a staffer, during non-business hours, to come up with its own social media strategy, this likely would not have created an issue. But, “[w]hile the original intent was not to use government resources to create a plan for the Riding to implement it, by sending the memo to the Riding, arguably that’s what it became (not just the letterhead, but using government time to create the memo).”

[230] Mr. Hamilton objects to the introduction of this evidence on the grounds that it is irrelevant and constitutes opinion evidence from an individual who was not involved in

the development of the ad spend memo. Mr. Hamilton further submits that the director did not understand the strategy behind it and the opinion that “there was specific targeting of Conservatives by MO staff” was not accurate. He claims that the opinion was coloured by the fact of the media inquiries and the complaint by Mr. Natyshak.

[231] Although there is a general exclusionary rule that a lay witness may not give opinion evidence, it is often not applied. As Justice Dickson said in *Grant v. R*: “Except for the sake of convenience there is little, if any, virtue in any distinction resting on the tenuous and frequently false antithesis between ‘fact’ and ‘opinion.’ The line between ‘fact’ and ‘opinion’ is not clear.”<sup>42</sup>

[232] I have already determined that the evidence of conduct after the riding association meeting is relevant to the issues I have to decide in this matter. The February 8, 2020 email from Mr. Baldauf to the director of issues management is of particular relevance since it frames Mr. Baldauf’s understanding of what occurred with respect to the development of the ad spend memo and his request for advice from the director. To exclude the director’s response would remove an important contextual element in the narrative of the events under consideration.

[233] The Minister’s evidence, as will be seen below, that the ad spend memo was not partisan is also arguably opinion evidence. It will be up to me to determine whether the ad spend memo was partisan and problematic. In making that determination, the respective views of the Minister, and a senior member of his staff, can be helpful to me. Mr. Hamilton’s objections to the director’s evidence are noted for the purpose of weight and not admissibility.

**xii. The Minister meets with his staff to discuss their ethical obligations**

[234] Minister Bethlenfalvy advised me that he had a meeting with his whole staff after the CTV article came out. It appears that this meeting took place on Monday, February 10, 2020. He told his staff he expected them to act with integrity and comply with the rules,

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42 [1982] 2 S.C.R. 819 at 835.

and if unclear, go to the Commissioner's office. He reiterated that people could come talk to him. He also told them he had confidence in the team because they tried to do the right thing.

## **5. Did the Minister approve the ad spend strategy**

### **i. The factors to consider**

[235] One of the central issues to determine is whether the Minister ever approved the ad spend strategy contained in the ad spend memo. There is evidence pointing both ways which I must weigh before reaching a conclusion.

[236] I have considered the following factors that could support a finding that the Minister approved the ad spend strategy:

- The ad spend memo was included in the Minister's briefing binder on two occasions;
- A meeting was set up with the Minister for November 26, 2019 specifically to discuss the ad spend strategy and the memo was placed in his briefing binder the night before;
- The Minister's chief of staff, acting communications director and manager were present for the meeting at which the Minister was to be briefed about the ad spend strategy;
- The manager was left with the impression that the Minister had implicitly approved the strategy following the briefing because the Minister said something to the effect that "you seem to have this in hand;"
- The Minister provided Mr. Baldauf with the riding association president's phone number in response to Mr. Baldauf's email to him three days after the November 26, 2019 meeting. The email referenced the "social media ask;" and
- The ad spend memo was referenced in two separate monthly analytics reports produced by the Minister's staff.

[237] Factors which indicate that the Minister did not approve the strategy are:

- The monthly analytics reports provided to the Minister in December 2019 and January 2020 are regular documents which the Minister says he does not review in depth;
- The ad spend memo was placed in the Minister’s nightly briefing binder on two occasions, but it was included with many other matters for the Minister to consider;
- Staff did not believe that the Minister read the ad spend memo when it was placed in the binder the first time which is why it was inserted again immediately before the November 26 meeting;
- The ad spend memo in the second insertion, unlike the first one, did not include a heading stating “For your review and approval;”
- The meeting itself was a “fly-by” of relatively short duration coming immediately after what the Minister described as an “intense hour and a half caucus meeting” and immediately before he was to chair a TBS meeting for which he had to prepare; and
- The Minister in his evidence has affirmed before me that he had not seen the memo until the riding association meeting in January 2020. He said that when the strategy was finally explained to him, after that meeting, he put an end to it since it was “not that important to him.”

**ii. Finding**

[238] Although the Minister’s reaction on seeing the ad spend memo at the riding association is consistent with him having seen it for the first time, I find that this is a neutral factor since, according to his evidence, he had no appreciation of what the document was at the time, only that it was on TBS letterhead and was being distributed to his riding association. This does not negate the possibility that he had earlier given his approval to the strategy.



[239] I find it somewhat remarkable that Mr. Baldauf has no recollection of what was said at the November 26, 2019 meeting given his enthusiasm for the strategy from the beginning and that the meeting was arranged to brief the Minister and obtain his approval. I find it less remarkable that the Minister would have no recollection of the subject matter of this meeting. The Minister has made it clear to me that he had a limited interest or understanding of his social media accounts.

[240] I find that the manager's evidence could lead to a conclusion that the Minister gave his implicit approval to the ad spend strategy following his briefing. However, that briefing was rushed, the Minister was distracted, and the element of funding was never discussed.

[241] I accept the Minister's evidence that his response to Mr. Baldauf's request for contact information for the president of the riding association was merely a "blink response" and that he did not comprehend that it related to an ad spend strategy which, I find, was never fully explained to him until after the riding association meeting.

[242] Faced with the Minister's firm denial that he had ever seen the memo before the riding association meeting, that he never gave his approval to the strategy, and the directions he gave to Mr. Baldauf to end the strategy the day after the riding association meeting, I accept the Minister's evidence that he never gave his approval to the ad spend strategy, although some of his staff may have mistakenly thought that he had given his implicit approval.

## **VI. ANALYSIS AND FINDINGS**

### **1. Issues**

[243] The issues in this inquiry are:

- Did Minister Bethlenfalvy breach section 2 of the MIA by using his office to make, or participate in, a decision to further his private interests?
- Did Minister Bethlenfalvy breach parliamentary convention by allowing staff to engage in partisan activities using ministerial resources?

## **2. Whether Minister Bethlenfalvy breached section 2 of the MIA**

[244] The conflict of interest provision at section 2 of the MIA states:

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

[245] The cases in which I, and my predecessors, have dealt with section 2 state that actions that members take to further their political or partisan interests are not decisions to "further their private interests." A political interest is not a "private interest." Rather, private interests are those that engage a member's pecuniary (financial) interests.

[246] I have acknowledged that, in exceptional circumstances, gaining some kind of political benefit by achieving a fundraising target could be a "private interest." But those circumstances have no application to the facts of this case.

[247] I find that Minister Bethlenfalvy did nothing in this matter to advance his pecuniary or private interests and that therefore he did not breach section 2 of the MIA.

## **3. Whether Minister Bethlenfalvy failed to comply with parliamentary convention**

### **i. Overview**

[248] The first Integrity Commissioner, The Honourable Gregory T. Evans, led an all-party group that drafted the legislation that included parliamentary convention. In his first annual report following passage of the MIA he said:

The words "*Ontario parliamentary convention*" are new in legislation of this nature. They apply to certain activities previously carried out by Ontario Parliamentarians which are now accepted by them as being inimical to the proper administration of government in our democratic society. Parliamentary conventions result from practices and customs and may not be the same in every jurisdiction.<sup>43</sup>

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43 Commission on Conflict of Interest, Annual Report 1994-1995, "Office of the Integrity Commissioner", online: *Archived Annual Reports* <<http://www.oico.on.ca/info/office-of-the-integrity-commissioner/publications/archived>

[249] In 2019, in my Report Re: The Honourable Lisa MacLeod, I reviewed the unique nature of parliamentary convention. I explained that there is no definition contained in the MIA. Ontario’s Integrity Commissioners have grappled with the concept on a case-by-case basis. Out of this work, a body of jurisprudence has emerged that has given legislators guidance about the rules, customs and practices that have been well-enough accepted that they are parliamentary conventions.

[250] In the MacLeod Report, I also reviewed previous decisions dealing with Ontario parliamentary convention. In my Report Re: Patrick Brown in 2016, I grouped Ontario parliamentary conventions into six categories, one of which is relevant to the matter before me. This category of parliamentary convention states that members shall not use government resources for partisan purposes. Specifically, “[g]overnment resources, including constituency offices, telephones, computers, and the salaried time of staff, should be used to assist constituents and not for matters related to partisan politics.”<sup>44</sup>

[251] There are two elements to this breach of parliamentary convention: 1) the activity must be partisan and 2) government resources must have been used to further the activity.

**ii. The interpretation of “partisan”**

[252] The Minister and his counsel assert that the ad spend memo was not partisan, but rather was intended to increase his social media following so that his Ministry would reach more members of the public and spread the government’s message about its Smarter Initiative program. Mr. Natyshak alleges that the decision to target followers based on their political leanings – and seek funding for it from the riding association – was partisan. Therefore, I will need to consider what constitutes “partisan activity.”

[253] Based on the definition of “partisan,” and the cases in Ontario, it is likely that activity that supports or opposes a particular party or candidate – and is not related to the government’s work for the public at large – is “partisan.”

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annual-reports> at 6.

44 MacLeod Report, supra at para. 32, citing Report Re: Patrick Brown, July 14, 2016 [“Brown Report”].

[254] The MIA does not contain or define the term “partisan.” The term "partisan" is defined in Black's Law Dictionary as:

Partisan, An adherent to a particular party or cause as opposed to the public interest at large.<sup>45</sup>

[255] In the Shorter Oxford English Dictionary, "partisan" as a noun is defined as "one who takes part or sides with another; esp. a zealous supporter of a party, person or cause" and as an adjective is defined as "of, pertaining to, or characteristic of a partisan; biased, prejudiced, one-sided."<sup>46</sup>

[256] These definitions suggest that “partisan” activity is activity in support of (or in opposition to) a particular political party or cause rather than activity in support of an interest belonging to the public at large.

[257] I can also take guidance about the purpose of the MIA, and the meaning of parliamentary convention, from its preamble. The preamble states that members must be “impartial” and must “broadly represent their constituents’ interests.”<sup>47</sup> Black’s Law Dictionary defines “impartial” as “Not favoring one side more than another; unbiased and disinterested; unswayed by personal interest.”<sup>48</sup> In the context of the MIA, these principles in the preamble do not mean that members are required to act apolitically in carrying out their duties. But members need to act broadly in the interests of all of their constituents, not only for certain constituents, and need to act in the public interest not based on private interests.

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45 Black's Law Dictionary, (St. Paul; West Publishing Co.) 5th ed, 1979, at 1008, as cited in *Re Fraser and N.S. (Attorney-General)*, 1986 CanLII 3977 (NS SC) at para. 6 and *R. v. Canadian Broadcasting Corp.*, 1992 CarswellOnt 887, [1992] O.J. No. 957, 16 W.C.B. (2d) 110, 42 C.P.R. (3d) 252, 72 C.C.C. (3d) 545, aff'd Ont. C.A. 1993 CarswellOnt 925, at para. 43.

46 3rd ed. (1979), London: Oxford University Press, at p. 1519, as cited in *R. v. Canadian Broadcasting Corp.*, *ibid.*

47 *Legislation Act, 2006*, ss. 69(1): “A preamble to a new Act is part of that Act and may be used to help explain its purpose”; MIA, Preamble.

48 Black's Law Dictionary (11th ed. 2019).

[258] Earlier reports of this Office can provide some guidance about what type of activity is partisan. These cases suggest that “partisan” activity involves support of or opposition to a particular party or cause.

[259] The most useful consideration occurs in the Vernile and Leal Report.<sup>49</sup> In that case, Commissioner Morrison determined that Ms. Vernile and Minister Leal did not use governmental resources for partisan purposes related to a government funding announcement they arranged. A federal Liberal Party candidate attended the event. In deciding that the event was not partisan, Commissioner Morrison said:

- There was no evidence the purpose of the event was anything other than to announce the granting of funds.
- The members did not try to control or limit who attended the event.
- They did not invite the local federal Member of Parliament because they were concerned he was currently campaigning.
- The candidate attended because he was already at a different event earlier in the day and decided to “tag along” with some people to the funding announcement.
- The candidate had no official role in the event. There was no evidence he campaigned at the event. And, the members did not promote the candidate at the event.

[260] Commissioner Morrison also determined that photographs of the event on Ms. Vernile’s Twitter accounts were not partisan because they did not identify the candidate or his affiliation with any political party.<sup>50</sup> She found it ill-advised, though not a breach of parliamentary convention, for Minister Leal’s Twitter account to “like” a post from the

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<sup>49</sup> Vernile and Leal Report, *supra* note 20.

<sup>50</sup> *Ibid.* at p. 17.

candidate's social media account when the account was clearly being used for campaign purposes.<sup>51</sup>

[261] The following are activities that Integrity Commissioners have considered “partisan” activities capable of giving rise to a breach of parliamentary convention if government resources were used to further them:

- Allowing the member's constituency office website to contain information such as a request for donations to a political party and information about fundraisers.<sup>52</sup>
- Using priority access to Queen's Park to fundraise for a political party.<sup>53</sup>
- Allowing an email supporting a particular candidate in an upcoming election to appear to link to a constituency office website.<sup>54</sup>
- Using constituency office resources to support (or appear to support) a political party rally.<sup>55</sup>

**iii. Whether the ad spend memo was “partisan”**

[262] I accept that the initial purpose of the ad spend strategy may have been non-partisan. Minister's staff told me their goal was to promote the government's message. But I find that the social media strategy, as developed by Minister's staff, was partisan. I have considered the following factors:

- The strategy itself as outlined in the ad spend memo was targeted at likely PC Party supporters and conservative voters. Minister's staff told me they decided to target PC supporters and conservative voters because, “if you advertise to people who don't like you to begin with, they won't ... that won't transfer over to engagement” and because that audience “would be most likely to embrace the message that we're trying to share.”

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51 Ibid at p. 18.

52 Chudleigh Report, supra note 20.

53 Brown Report, supra note 44.

54 Hillier Report, supra note 20.

55 Singh Report, supra note 20.

- As of November 18, 2019, it was evident to both the manager and Mr. Baldauf that the Ministry could not fund the social media ad spend. The manager testified that this was his understanding “from the get-go.” This made it different from the earlier Smarter Initiative program that the Ministry did fund.
- As soon as they realized that they needed to look to the Minister’s partisan riding association as a funding source for the ad spend strategy, Mr. Baldauf and the manager should have known that the character of the strategy, whatever its original intentions, might be political and partisan.
- Mr. Baldauf testified that, after he realized they would have to ask the riding association to fund the ad spend, “it was clear that this was not going to be an activity of the Treasury Board.”
- Mr. Baldauf testified that, at that point, he used his Gmail account to deal with the matter and he instructed the manager to do the same. He said he realized it was no longer government business and so government resources should not be devoted to advancing it.
- As directed, the manager used his Gmail account to contact the riding association. But he continued to do all work on the strategy, including contacting the riding association, during normal working hours. He said he was never told otherwise. He just thought, “I will just listen to my boss and go forward and do this.”
- It should have been obvious at this point that, if the ad spend strategy was not government business - and if the riding association was being asked to fund it - then there must have been a political or partisan dimension to the effort.

[263] I am left with no doubt that the ad spend strategy had become a partisan exercise at least by the time the memo was prepared in November 2019 and before it was first inserted into the Minister’s briefing binder. I also find that the Minister’s staff engaged in its implementation even beyond the riding association meeting. Until the Minister’s action to

end the strategy was finally communicated to him, the manager was still reaching out to the riding association.

[264] I find that, in targeting likely PC supporters and conservative voters, the ad spend strategy was partisan. I believe that a fair analogy would be a scenario involving a more historical method of reaching constituents. Previously, Commissioners have treated digital spaces as akin to more traditional methods of government communication (e.g. with respect to constituency offices and constituency websites). If ministers decided to mail informational brochures to Ontarians about a new government initiative, and instead of sending them to everyone in the province at the same time they developed a plan to target regions repeatedly in which more of the government's supporters lived, that activity would be partisan even if the brochures themselves did not contain any partisan content.

**iv. Whether government resources were used**

[265] To be clear, there is nothing wrong with developing a partisan strategy. Politicians are expected to do so. The parliamentary convention is simply that government resources should not be used to develop and implement the partisan purpose.

[266] I find that government resources were used during the ad spend strategy as follows:

- The Minister's staff prepared and formatted the ad spend memo for the Minister's nightly binder on two occasions. They also referenced the strategy in two monthly analytics reports. In addition, Minister's staff contacted the riding association during business hours.
- Of course, the most significant action taken during this period was the November 26 meeting. This was a meeting arranged by staff so the manager, the chief of staff and the acting director of communications could assemble, during normal working hours, to brief the Minister and seek his approval to facilitate an ad spend paid for by his riding association. The meeting took place in an office in Queen's Park during business hours. There may be some lack of recollection as to what actually transpired at that briefing but there is no doubt as to why the meeting was arranged.



**v. The significance of the fact that no expense allocation was made**

[267] The Minister's counsel asserted that since "no expense allocation" decision was made with respect to the ad spend, the parliamentary convention against the use of government resources was "not engaged." Mr. Hamilton argued that "no degree of time spent, even by Ministerial office personnel, can engage a parliamentary convention, in the absence of an expenditure of government resources."

[268] I cannot accept this argument. For one thing, it flies in the face of reports previously issued by this Office.<sup>56</sup> Furthermore, it would lead to an absurd consequence – partisan conduct is acceptable if a member uses their existing government resources without a specific new expense decision. This would undermine the entire premise of this convention: that democracy requires MPPs not to use government resources to improve partisan electoral prospects.

[269] As Erwin Chemerinsky stated in *Protecting the Democratic Process: Voter Standing to Challenge Abuses of Incumbency*, the parliamentary convention against the use of government resources for partisan activities is integral to democracy. If MPPs use government resources to campaign for partisan interests, they undermine the ability of candidates without such resources to participate in democratic elections.<sup>57</sup>

**vi. Ministerial responsibility**

[270] I have found that government resources, including the salaried time of the Minister's staff, were used for a partisan purpose in developing the ad spend strategy. I am also prepared to find that the Minister knew nothing about the ad spend strategy until he received a very fleeting briefing from his staff for a few minutes between meetings. I have accepted his evidence concerning that briefing and find that the significance of the ad spend strategy was not fully explained to him and that he was not made aware that his

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<sup>56</sup> See Vernile and Leal Report at p.16-17 and MacLeod Report at para.32.

<sup>57</sup> Chemerinsky, Erwin, *Protecting the Democratic Process: Voter Standing to Challenge Abuses of Incumbency*; *Ohio State Law Journal*, vol. 49, no. 3 (1988), 773-798. Chemerinsky stated:

"Such allegations, that an incumbent is trying to use the powers of the government to stay in office, strike at the very heart of a democratic society. The American political system is premised on the ability of the people to hold their officials accountable through open elections. The integrity of the electoral process is threatened if the government's powers and resources are used to aid one candidate and to oppose another".

riding association would be required to fund it. I find that he had not read the ad spend memo until after the riding association meeting and so that he never gave his approval for it to be implemented.

[271] These findings, however, do not end the matter. The MIA concerns members' compliance with rules set out in the MIA and developed through parliamentary convention. In some cases, a member may be found in breach of the MIA or parliamentary convention because of the mistakes of their staff. However, this will only be the case where the member engaged – through action or inaction – in blameworthy conduct. My powers under the MIA do not include enforcing “ministerial responsibility,” a constitutional principle whereby ministers are responsible to parliament and the public for everything that happens in their ministries.<sup>58</sup>

[272] This Office's reports show that a member can be responsible for a breach of parliamentary convention if the member 1) directed or knew about their staff's mistakes, or 2) reasonably should have known about their staff's mistakes:

- A member did not breach parliamentary convention where a partisan web-based pop-up was, by mistake, linked with his constituency office website. The mistake was made by an IT service provider. The Commissioner said that it was not “possible for [the member] to foresee or avoid this error;” therefore, he did not breach parliamentary convention.<sup>59</sup> The Commissioner did note that the member was responsible for public perception arising from the mistake, “as any member is responsible for their own reputation, their public statements or the acts of their staff

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<sup>58</sup> Ministerial responsibility is a constitutional principle in the British Westminster parliamentary system. According to this principle, ministers are responsible to the parliament for the conduct of their ministry and government as a whole. Ministerial responsibility ensures the accountability of the government to the legislature and thus, ultimately, to the population; Ken Kernaghan, “Ministerial Responsibility: Interpretations, Implications and Information Access” (August 2001); André Munro, “Ministerial responsibility”, Encyclopaedia Britannica, Inc. (23 November 2016); David E. Smith, “Clarifying the Doctrine of Ministerial Responsibility as It Applies to the Government and Parliament of Canada” in *Restoring Accountability* - Research Studies, Vol.1 Parliament, Ministers and Deputy Ministers, Commission of Inquiry into the Sponsorship Program and Advertising Activities, 101-43. Ottawa: Public Works and Government Services, 2006 at 104.

<sup>59</sup> Hillier Report, supra note 20 at para. 32.

and other agents.” But such responsibility did not mean that he breached parliamentary convention.

- A minister did not breach parliamentary convention where, without his knowledge, a staff member mistakenly used a free postage program that was only available to federal government officials, not MPPs. The Commissioner said that “the error related to a routine administrative task that is outside the type of tasks that a reasonable person could expect [the minister] himself to have responsibility for supervising or directing.” This type of task was, “entirely distinct from a policy or procedural decision,” which the minister would have been expected to supervise.<sup>60</sup>
- A member breached parliamentary convention where – while she had no direct knowledge of the partisan post on her constituency website – she should have supervised the website because of its importance as a “critical communication tool.”<sup>61</sup>
- A member breached parliamentary convention where 1) both he, and his staff, used government (Legislative Assembly) emails to communicate about a partisan rally and 2) the member’s website (which appeared as if it was his constituency website) was set up by his staff to ask for donations. The Commissioner found that the member did not adequately oversee, and train, his staff about their ethical obligations and this, in part, resulted in the breach. He should have provided better oversight and training especially because his staff did volunteer partisan work for him and so it was foreseeable that “lines [would become] blurred.”<sup>62</sup>

[273] The principles set out in these reports strike a reasonable balance. It would be unfair to find members in breach of the MIA where – through no fault of their own and without their knowledge – their staff make mistakes. On the other hand, members cannot hide

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60 Duguid Report, supra note 21 at para. 73. In this report, Minister Duguid was found to have breached parliamentary convention because he assigned a member of his ministerial staff to oversee his constituency office.

61 Scott Report, supra note 20 at para. 15.

62 Singh Report, supra note 20 at pp. 17-18.

from accountability under the MIA where, through undue carelessness or inattention, they fail to oversee important policies or decisions in their offices.

**vii. Application of ministerial responsibility in this inquiry**

[274] Based on these principles, I need to answer two questions to decide if the Minister breached parliamentary convention based on the actions of his staff in this matter:

- Did Minister Bethlenfalvy know about his staff's conduct?
- Should Minister Bethlenfalvy have reasonably known about his staff's conduct?

[275] In answer to the first question, I have found that the Minister was unaware of his staff's work on the ad spend strategy.

[276] In considering whether the Minister should reasonably have known about his staff's conduct, I note that it is true that the Minister neglected to read the ad spend memo placed in his day-ahead binder by his staff on two occasions. Also, he did not devote as much attention to the briefing he received on the strategy as he might have. He may have left his staff with the impression that he had approved it implicitly.

[277] In spite of these factors, I have to recognize that all MPPs are subject to enormous demands on their time and energy in their role of representing, on average, more than 115,000 constituents in their respective ridings. When an MPP enters Executive Council, the additional responsibilities increase those demands. Some degree of delegation becomes necessary or the risk of the machinery of government being ground to a halt becomes all too probable.

[278] I think it would be unrealistic to hold a member, particularly a minister, to a standard that required every document placed in a voluminous briefing binder be carefully scrutinized or that a member be expected to give full attention to a matter under discussion, no matter how transitory, failing which the member could be found to have breached the MIA, which includes parliamentary convention, and suffer possible sanctions under the MIA.

[279] Broadly speaking, the Minister is responsible for the conduct of his staff. The Minister has stated that he bears that responsibility. Occasionally mistakes will occur from

delegation, misinformation, or inattention. These may have personal and political consequences, but I find that the conduct of the Minister in this matter should not be considered as blameworthy conduct which would attract the sanctions of the MIA.

[280] Before leaving this section, I should note that I considered the Minister's obligations under the PSOA. Section 67 of the PSOA provides that ministers must:

(a) ensure that public servants who work in the minister's office are familiar with the conflict of interest rules that apply in respect of the minister's office; and

(b) promote ethical conduct by public servants who work in the minister's office.

[281] Some reference was made in the evidence to the fact that the Minister's staff had received training from my Office. Although not my specific responsibility, I did take it upon myself last year to attend each minister's office, including Minister Bethlenfalvy's, to provide training sessions. However, those sessions were largely confined to the conflict of interest rules and less to general ethical conduct that might more closely relate to this matter.

[282] I am concerned that there may have been a misunderstanding by the Minister that the training provided by me and my Office is sufficient to relieve him of his obligations under the PSOA. That obligation is on him and there it remains. I can say that from the time he entered Cabinet, the Minister has directed his staff to contact my Office for advice, which I provide to all ministers' staff as their ethics executive under the PSOA.

[283] I can also confirm that the Minister has requested that refresher training be provided to his staff and a session is being arranged following the issuance of this report which, I suspect, will be required reading before the session takes place. As noted below, the Minister's office has responded positively, although belatedly, to suggestions I have made relating to other matters which came to light during this inquiry and which are discussed below.

[284] I am satisfied that the Minister is taking his responsibilities under the PSOA seriously and will continue to do so.

## VII. OTHER ISSUES ARISING IN THE INQUIRY

[285] During my inquiry I learned about two other elements of the Minister’s social media and communications work. These issues were that 1) Minister Bethlenfalvy’s staff were performing substantive communications work for his constituency office and 2) MPP Bethlenfalvy’s constituency website linked to his social media accounts; accounts containing partisan content about the 2019 federal election.

[286] These issues did not directly relate to the ad spend memo. Mr. Hamilton objected to the inclusion of these matters in this report since they did not form part of the complaint filed by Mr. Natyshak. I note his objection. Nevertheless, these issues raised questions about the Minister’s compliance with the MIA or parliamentary convention. It is the practice of this Office when conducting an inquiry to note other matters which emerge from the evidence.<sup>63</sup> I do not intend to rely on these matters to create an additional complaint or amplify the one filed, otherwise Mr. Hamilton’s objection may have more merit.

[287] In the end Mr. Hamilton and the Minister cooperated in addressing the issues raised.

### **1. Minister’s staff perform constituency work**

[288] As outlined at paragraph 41 above, it is a parliamentary convention that Ministers’ staff should not perform substantive work for MPPs’ constituency offices.

[289] During my inquiry, Minister’s staff informed me that they regularly performed communications work for MPP Bethlenfalvy’s constituency office. They wrote and reviewed his constituency office’s communications materials. A staff member explained to me that “our communications department had more experience, more capability, perhaps more professional approach to communications than the constituency office might.”

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<sup>63</sup> See, e.g. Report Re: Patrick Brown, April 26, 2018 [“Brown Report 2”], at paras. 235-239, in which I addressed whether Mr. Brown accepted hockey tickets though it was not within the direct scope of the complaint filed before me.

[290] After this inquiry began in February 2020, the Minister's office reviewed and changed how it interacts with the constituency office. They contacted my Office for clarity about the proper boundaries between the two offices, which I provided. Since this review, Minister's staff no longer perform communications work for the constituency office.

[291] Minister Bethlenfalvy told me he did not know that his communications staff were performing communications work for his constituency office. He was also unaware of the review his office conducted in 2020 and the change to its practices.

## **2. MPP Bethlenfalvy's constituency page links to his social media accounts**

[292] It is a parliamentary convention that governmental resources shall not be used in partisan activities. This includes MPP's constituency websites. Therefore, where MPPs' social media accounts contain partisan information, I, and Commissioners before me, have advised that their MPP websites should not link to these social media accounts.

[293] In the Vernile and Leal Report, *supra*, Commissioner Morrison explained that the parliamentary convention that government resources not be used for partisan purposes applies in the context of social media. She said:

Social media can be a useful way for the public to obtain current information and interact directly with elected officials. MPPs must remember that although this is an evolving area of communications, existing rules about the appropriate use of government resources still apply. This means that MPPs and their staff are prohibited from using government email accounts and computers to post partisan messages on social media, and that constituency websites must not be linked to social media accounts which contain partisan messaging.<sup>64</sup>

[294] Commissioner Morrison made recommendations to allow members to comply with the parliamentary convention she had identified:

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64 Vernile and Leal, *supra* note 20 at pp. 19-20.

- All “MPPs with social media accounts linked to their constituency websites cease posting partisan messages [on their social media accounts].”<sup>65</sup>
- In the alternative MPPs should “remove any links between their social media accounts and their constituency websites.”<sup>66</sup>

[295] Commissioner Morrison cautioned that MPPs who did neither might be subject to penalties in the future, presumably for breaching the “existing rules about the appropriate use of government resources” she had set out.<sup>67</sup>

[296] Mr. Hamilton suggested in his submissions that Commissioner Morrison merely recommended in the Vernile and Leal Report that MPPs not link to social media if they contain partisan content, and that she did not establish a parliamentary convention to that effect. I disagree. For one, Commissioners do not establish parliamentary conventions; they identify those that have been established. In addition, Commissioner Morrison’s analysis that constituency websites not be used for partisan purposes has been echoed in several other reports of this Office: the Chudleigh Report, the Hillier Report, and the Singh Report.<sup>68</sup>

[297] This inquiry revealed that, in September and October 2019, the Minister’s social media accounts included several posts in which the Minister expressed support for Conservative Party candidates in the October 2019 federal election. The posts included photos of the Minister at various campaign events for Conservative Party candidates.

[298] During the inquiry, I learned that Minister Bethlenfalvy’s MPP website, <https://peterbethlenfalvympp.ca/>, included on its home page links to his Twitter, Instagram, and Facebook pages. In his submissions, Minister Bethlenfalvy’s counsel said that a third-party website design vendor had added the social media links to the constituency website. Minister Bethlenfalvy did not direct the vendor to add the links.

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65 Ibid at p. 20.

66 Ibid.

67 Ibid.

68 Supra, note 20.



[299] On April 30, 2020, after discovering this issue, my Office wrote to the Minister through his counsel to tell him of my concerns about this matter. At the time I interviewed the Minister on July 6, 2020, his MPP constituency website continued to link through to his social media accounts. The Minister explained that the links were not removed because of an administrative error. The links were eventually removed on August 27, 2020, after my Office again notified the Minister that the links remained on the website.

## VIII. CONCLUSIONS

[300] I have found that Minister Bethlenfalvy did not breach the MIA or parliamentary convention.

[301] The evidence did not disclose that Minister Bethlenfalvy attempted to further his “private interest” since that term has been defined to apply only to pecuniary or financial interest. That allegation is dismissed.

[302] It is a well-established parliamentary convention that members breach parliamentary convention if they use government resources for a partisan purpose. I found that government resources, including the salaried time of the Minister’s staff, were used for a partisan purpose in developing a social media ad spend strategy targeting likely PC Party supporters and conservative voters which was to be funded by the MPP’s riding association.

[303] On all the evidence I have concluded that the Minister did not appreciate the significance of the ad spend strategy or that his riding association was going to be asked to fund it until the ad spend memo was presented at a riding association meeting. I found that the strategy was explained to him the following day after which he brought it to an end. I also found that he never approved the ad spend strategy.

[304] A breach of parliamentary convention can be attributed to a member if the actions of their staff were directed by the member and the member knew of their actions or they reasonably should have known about their staff’s actions. On the facts of this case I found

that the Minister's conduct should not be considered sufficiently blameworthy to attract the sanctions of the MIA.

[305] This inquiry has been conducted under the MIA. My focus has been on Minister Bethlenfalvy and whether he breached the MIA or parliamentary convention. References to the statutory obligations of his staff under the PSOA can inform my findings on parliamentary convention but it is not appropriate for me to make any specific findings about individual members of the Minister's staff. As I said in my Report re: The Honourable Bob Chiarelli and The Honourable Charles Sousa, which involved the conduct of ministers' staff in political fundraising from stakeholders,

It would be inappropriate for me to comment on the specific conduct of Ministers' staff in this report because my jurisdiction under section 30 of the MIA extends only to providing an opinion about whether a member contravened the MIA.<sup>69</sup>

## **IX. RECOMMENDATIONS**

### **1. Ongoing training for ministers' staff**

[306] Given the influence ministers' staff may wield, their ethical conduct is critical to ensuring public trust in the work of the public service.

[307] Over the past two fiscal years, I have received more than 900 inquiries from MPPs about their obligations under the MIA. In addition, I have received more than 400 inquiries from ministers' staff. I have provided written advice to almost all inquiries. My Office is a resource for all ministers' staff since I am their ethics executive, but under the PSOA the ultimate responsibility falls on each minister to promote ethical conduct and to see that ministers' staff are familiar with the Conflict of Interest Rules. I suggest that the Premier's Office should share this responsibility, not only for public servants working in the Premier's Office, but also for the several hundred public servants working in all ministers' offices.

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<sup>69</sup> Report re: The Honourable Bob Chiarelli and The Honourable Charles Sousa, August 9, 2016 at para. 70.

[308] I have conducted training sessions on the Conflict of Interest Rules for the staff of each minister, but it took almost a year to complete because staff were being hired and offices set up following the election. The Premier's Office arranged a two-day general training session in November 2019 for all staff in which I participated and which touched on ministers' staff ethical obligations. At my suggestion, the Premier's Office has arranged for me to conduct ongoing training sessions with new staff as they are hired. This is a good development. It is consistent with the practice of the previous government and I recommend that it be a permanent fixture and formalized. I do note, however, that this training should not be the only time that ministers' staff are taught about their ethical obligations. That responsibility continues to rest with each minister.

## **2. Review of the PSOA**

[309] It is not unusual for MPPs and members of the public to write to me with concerns about the ethical conduct of ministers' staff. Some MPPs have written to me with concerns about the conduct of a specific minister's staff, such as occurred here. I receive similar complaints from members of the public on occasion about ministers' staff. I always reply that my jurisdiction to conduct inquiries under the PSOA is quite limited. As I explained to the legislative committee reviewing amendments to the *Election Finances Act*, if I determine that a minister's staff inappropriately fundraised with government stakeholders, I am merely allowed to file a report with the minister who may very well have directed the staff person to do the fundraising in the first place.<sup>70</sup> The report would, in those circumstances, not likely be made public so the remedy would be entirely toothless. In some situations, given the labour relations aspect to the PSOA and the legitimate privacy concerns of public servants, this may be entirely appropriate. However, I think it is time that at least this portion of the PSOA be reviewed.

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<sup>70</sup> On August 11, 2016, I appeared before the Standing Committee on General Government to discuss Bill 201, An Act to amend the *Election Finances Act* and the *Taxation Act*, 2007.

### **3. Approval process in ministers' and members' offices**

[310] A considerable amount of time was spent in this inquiry gathering and hearing evidence about whether the Minister approved the ad spend strategy. This could have been avoided if a practice was in place that made it clear to staff and others whether the Minister had given his approval and to what. I gather that, as a result of this experience, Minister Bethlenfalvy's office has implemented measures intended to improve the approval process, including tracking of outstanding approvals on an ongoing basis. I would encourage all ministers' and members' offices to review their own approval processes to ensure that it is clear to all when approvals have been given.

### **4. Constituency websites should not be linked to social media platforms containing partisan content**

[311] As I outlined at paragraph 296 above, this is not a recommendation but an application of the existing rules about the appropriate use of government resources.

[312] My Office has advised that, if MPPs' social media accounts contain partisan content, they may not use taxpayer-funded resources, including staff and equipment, to manage these accounts. For example, MPPs are provided with funds to staff their constituency offices. It is Ontario parliamentary convention that these staff are non-partisan and provide service to all people in the constituency to assist them in navigating provincial programs and services. During working hours, staff are not to be involved in managing or assisting an MPP's partisan presence. For example, they should not be providing campaign material at the constituency office. This principle from the bricks-and-mortar constituency office extends to the digital world. There should be no links from a constituency office website to a social media account that contains partisan content. Similarly, while they are in the constituency office, staff should not work on digital accounts, products or projects that have partisan content.

### **5. Social media guidelines**

[313] As Commissioner Morrison noted, the use of social media by members and their staff is an evolving area. She declined "to extend the scope of parliamentary convention against

using constituency websites to prohibiting ‘liking’ posts on Twitter accounts connected to constituency websites.”<sup>71</sup>

[314] Similarly, in the MacLeod Report, I suggested that it would be a difficult task for an Integrity Commissioner to discern which generally accepted rules and practices should govern a member’s use of social media as a parliamentary convention. Some cases, like linking constituency websites to other social media accounts with partisan content, as noted above, are obvious. But others are not. That is why I recommended that the members themselves explore the issue in a committee struck for this purpose. I repeat that recommendation here, and again remind members that they can take advantage of their right under section 28 of the MIA to seek an opinion from me or simply request that I assist them in their deliberations. This is an area that is not going to go away and the complexities of this form of communication from an ethical standpoint should be examined sooner than later.

Dated at Toronto this 21<sup>st</sup> day of October, 2020.

A handwritten signature in black ink, appearing to read "J. David Wake". The signature is written in a cursive style with a long, sweeping horizontal line above the first few letters.

The Honourable J. David Wake  
Integrity Commissioner

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<sup>71</sup> Vernile and Leal Report, supra at p. 18.

## Appendix “A

### Witness List

<b>Witness Name</b>	<b>Position</b>	<b>Counsel</b>
Baldauf, Karl	Chief of Staff, President of the Treasury Board, Treasury Board Secretariat	
Bethlenfalvy, Peter	Member of Provincial Parliament for Pickering-Uxbridge and President of the Treasury Board	Arthur Hamilton <i>Cassels Brock &amp; Blackwell LLP</i>
Clarke, Chris	Manager of Operations and Executive Assistant to the Minister, President of the Treasury Board, Treasury Board Secretariat	
Craddock, Andrew	Vice-President, Communications, Pickering-Uxbridge PC Association	
Kenez, Hayden	Deputy Director of Communications, President of the Treasury Board, Treasury Board Secretariat <i>Formerly Director of Communications (Acting)</i>	Greg Temelini <i>Wright Temelini LLP</i>
Nazar, Bradley	Executive Director of Issues and Enterprise Risk Management, President of the Treasury Board, Treasury Board Secretariat <i>Formerly Director of Legislative Affairs and Issues Management</i>	Greg Temelini <i>Wright Temelini LLP</i>
Putnam, Taylor	Senior Advisor, Public Sector Modernization and Digital Government, President of the Treasury Board, Treasury Board Secretariat <i>Formerly Communications Advisor</i>	
Skamski, Sebastian	Press Secretary, President of the Treasury Board, Treasury Board Secretariat	
Woolley, David	Manager, Strategic Communications, President of the Treasury Board, Treasury Board Secretariat <i>Formerly Manager of Communications</i>	Greg Temelini <i>Wright Temelini LLP</i>