

OFFICE OF THE INTEGRITY COMMISSIONER

REPORT

OF

LYNN MORRISON ACTING INTEGRITY COMMISSIONER

RE: TED CHUDLEIGH, MEMBER FOR HALTON

> TORONTO, ONTARIO December 11, 2008

RE: TED CHUDLEIGH, MEMBER FOR HALTON

- [1] In a complaint made on August 6, 2008 under section 30 of the *Members' Integrity Act, 1994* (the "Act"), Liz Sandals, the member for Guelph, has alleged that Ted Chudleigh, the member for Halton, breached parliamentary convention and thus contravened the Act by certain uses of his constituency office resources. The complaint centres on Mr. Chudleigh's website that is found at www.tedchudleigh.com (the "website").
- [2] Ms. Sandals filed the complaint with this office in accordance with the Directive regarding the procedure for complaints under section 30 of the *Act*, and Mr. Chudleigh filed responding submissions on August 20, 2008. Ms. Sandals filed reply submissions on September 2, 2008. In the course of my investigation I requested additional information from Mr. Chudleigh in writing, obtained with Mr. Chudleigh's consent, information from Financial Services at the Legislative Assembly, and interviewed Mr. Chudleigh.

The Complaint by Ms. Sandals

- [3] In her complaint, Ms. Sandals asserts:
 - 1. the website is the sole means on the Internet by which Mr. Chudleigh offers services and information to his constituents;
 - the website forms part of Mr. Chudleigh's virtual constituency office because it
 offers information about the constituency office, services available to
 constituents, information on provincial government programs and links to
 ministries, agencies and the Legislative Assembly of Ontario;
 - 3. the website contains information about the Halton PC Association, including a direct appeal for political donations to the Progressive Conservative Party and, at the time of the complaint, information regarding a "PC fundraising event", the "Annual Ted Chudleigh Golf Tournament";
 - 4. the promotional material on the website in relation to the Golf Tournament directed potential participants to fax registration forms for the Golf Tournament

to the fax machine at Mr. Chudleigh's constituency office and it directed interested participants to call the phone number for the constituency office for additional information.

- [4] Ms. Sandals originally asserted that the website was maintained and operated by his constituency staff and that it was funded from the Communications budget of the Legislative Assembly.
- [5] As discussed further below, Mr. Chudleigh's reply indicated that his website is not funded by the Communications budget of the Legislative Assembly. In response to this new information, Ms. Sandals acknowledged that the Halton PC Association, as the owner of the website, is not bound by parliamentary convention. However, she asserts that Mr. Chudleigh is required to adhere to parliamentary convention in all aspects of his work, including his website, which is in his name and which offers "constituency services."
- [6] Ms. Sandals also asserts that Mr. Chudleigh did not have proper procedures in place to prevent the use of the constituency office fax machine and phone being used for riding association activities.

[7] Ms. Sandals submits that:

- 1. there is a need for a clear separation between campaign or riding association websites and constituency office services;
- 2. it is contrary to Ontario parliamentary convention for Mr. Chudleigh to include partisan material on the Chudleigh website;
- it is contrary to Ontario parliamentary convention for the website to include a mechanism to solicit contributions to the PC Riding Association;
- 4. it is contrary to Ontario parliamentary convention to use constituency office resources for purposes of fundraising.

- [8] The Affidavit provided in support of Ms. Sandals' complaint contained the following exhibits, which are appended to this Report:
 - [a] six screen shots of various components of the website (Appendix A);
 - [b] the flyer for the Golf Tournament (Appendix B); and,
 - [c] a screen shot of Mr. Chudleigh's contact information contained on the web page of the Legislative Assembly of Ontario (Appendix C).
- [9] Ms. Sandals supports her complaint with reference to prior rulings by former Integrity Commissioners contained in the Annual Reports of the Office of the Integrity Commissioner, which I will refer to below.

The Response by Mr. Chudleigh

- [10] As noted above, Mr. Chudleigh states that his website is maintained and paid for by the Halton PC Riding Association, which he asserts, is not bound by parliamentary convention under the *Act*. I have made inquiries of Financial Services at the Legislative Assembly and confirm that no costs to maintain the Chudleigh website have been paid for out of the Members' Communication budget.¹
- [11] For completeness, the records of Financial Services indicate that a \$50 fee was paid in December 2006 in relation to a 2007 registration of a domain name for the web address www.TedChudleighMPP.com, which is a different address than that used for the website at issue. Mr. Chudleigh advised the address, www.TedChudleighMPP.com, was registered by the PC Caucus but it has never been used by him. I can confirm that when one enters the URL www.TedChudleighMPP.com into a web browser no web page is located.
- [12] In his response to Ms. Sandals' complaint Mr. Chudleigh acknowledged that it was contrary to parliamentary convention to include the constituency office fax and phone numbers on the Golf Tournament flyer, and that as soon as it was brought to his attention when he reviewed Ms. Sandals' complaint, he had the link to the flyer removed.

¹ Information was obtained for the past two years.

- [13] Subsequently, I interviewed Mr. Chudleigh, and he confirmed that he has no objection to the principle at the heart of Ms. Sandals' complaint that a constituency office is no place for partisan activity.
- [14] He confirmed that he only has one web page. He advised that if changes are required to be made to the website, he advises either the President of the Riding Association or one of the Riding Association volunteers who are responsible for maintaining the site. Mr. Chudleigh explained that if his constituency staff suggest a change to the constituency component of the website, Mr. Chudleigh himself communicated the required change to the Riding Association.
- [15] Although Mr. Chudleigh was not able to provide me with specifics, he stated generally that the website did not have significant traffic. Furthermore, he did not believe that the traffic on his website warranted the development of two web pages.
- [16] Mr. Chudleigh explained that his constituency staff do not use the website as a tool when they field calls from constituents. For example, if a constituent called seeking information about obtaining a birth certificate, his staff would mail the form to that person rather than directing the constituent to links on the website.
- [17] Mr. Chudleigh also explained that although he does not use the Internet, he accepts that it is important for him to have a presence on the Internet. He candidly stated that an Internet presence is particularly useful during an election campaign.

Constituency Offices and Ontario Parliamentary Convention

[18] Both Ms. Sandals and Mr. Chudleigh agree with the principle that because a constituency office represents all constituents in the riding and the expenses of that office are paid by the Legislative Assembly, it is imperative that constituency offices be non-partisan at all times.

[19] In the 2004-2005 Annual Report, Commissioner Coulter Osborne stated:

Issue:

The constituency office of an MPP sought guidance regarding the use of constituents' names and addresses.

Opinion:

A constituency office represents all constituents in the riding and the expenses of that office are paid by the Legislative Assembly. It is imperative that the office remain non-partisan at all times and in that respect, it is inappropriate to permit any partisan political activities in the office.

MPPs are entitled to participate in initiatives which are political in nature, however, <u>such participation must be outside the constituency office, after hours,</u> and must not interfere with their responsibilities as MPPs. (Emphasis added)

A constituency office is permitted to compile lists of contacts made with the office either from organizations promoting or opposing their work or individuals who have sought assistance from the office. Such lists may be used for purposes of sending invitations for "Information Sessions" that are intended to keep constituents informed. This kind of activity is considered one of the responsibilities of a Member of Provincial Parliament.

Although the constituency offices are not subject to the Freedom of Information and Protection of Privacy Act, providing such a list to the Riding Association or any other outside organization is inappropriate and may violate the privacy of the constituents.

[20] In the 1998-1999 Annual Report Commissioner Robert Rutherford stated:

Issue:

A Riding Association is sponsoring a post-budget breakfast, hosted by two members and it is considered a riding event and a community/political event inviting all constituents. Is it appropriate that the invitation be sent from the constituency office on blank paper?

Opinion:

If the Riding Association, a political organization, is funding the breakfast, the invitation should appear on the Association's letterhead and/or should indicate that the Riding Association is sponsoring the breakfast.

It is inappropriate to use the constituency office to further Riding Association activities, political meetings or to display partisan, politically oriented signs. Therefore, distribution of the invitations on behalf of the Riding Association from the constituency office is inappropriate. (Emphasis added)

[21] And in the 2002-2003 Annual Report Commissioner Osborne commented on the issue in the context of websites:

Issue:

An MPP's campaign team has asked the MPP if they can provide a link from their web site to the MPP web site, in preparation for the upcoming election.

Opinion:

The Members' Integrity Act does not apply to the riding associations or the members' campaign offices. However, <u>linking the MPP web site to the campaign or riding association web site would be inappropriate</u>, as such link would be political in nature. (Emphasis added)

[22] This principle that constituency offices be non-partisan is an Ontario parliamentary convention as referred to in the *Members' Integrity Act, 1994*. In this case, the parliamentary convention is buttressed by the rules and procedures in place for members with respect to their constituency offices and Communication budget. For example, websites funded out of the Communication budget of the Legislative Assembly are subject to clear rules relating to content.² The Members Handbook clearly states, "Please note that Global Budget funding support is limited to websites that have non-partisan and non-political content only" (page 15).

[23] In summary, using the constituency office resources (i.e. phone, fax lines, websites) for partisan purposes is not appropriate, is contrary to Ontario parliamentary convention and accordingly is a contravention of the *Members' Integrity Act*.

The Virtual Constituency Office

General Observations about MPP Web Sites

[24] I have searched for and reviewed, if available, the web sites of every MPP. An overwhelming majority of MPPs have a web site that offers information for constituents such as contact information for the constituency office, frequently accessed government information and links, reports about the MPP's activity at Queen's Park and in the community, petitions and events. With a few exceptions, most of these web sites are

² See pages 15 and Appendix D of the Members Handbook

neutral; that is they do not have information about riding associations, partisan fundraising or campaign activities and they do not contain party logos (although some display similar colour schemes of their respective party).

- [25] A handful of MPPs are associated with <u>riding association</u> websites that are partisan in nature in that they include information about fundraising efforts, party news and information about the MPP. Some of these <u>riding association</u> websites contain a link to the MPP's constituency web page. This practice of including a link from the riding association website to the constituency website is appropriate.
- [26] Where an MPP has two web presences (i.e. the constituency site and the riding association site) the URL for each web site was distinct. For example,
 - (a) A member had a constituency web page titled "[member's name].onmpp.ca" and a riding association titled "team[member's name].com".
 - (b) Another member had a constituency web page titled "www.[member's name].com" and a riding association web page titled "www.vote[member's name].com".
 - (c) Another example is those members who have a constituency web page with the address "[member's name].com" and a riding association web page with an address "[riding association name].ca".
- [27] In those cases where a member has two web presences, I also observed that the design of the web pages provided some indication to the user that they were either on the constituency web page or the riding association web page.

Parliamentary Convention

[28] Parliamentary convention was defined by former Commissioner Osborne as follows:

[T]hat which is generally accepted as a rule or practice in the context of norms accepted by parliamentarians. The elements of parliamentary

convention are framed by the core principles which provide the general foundation for the Act as set out in the Act's preamble. (Annual Report 2002-2003)

[29] My review has confirmed that there is a practice in Ontario that members who offer constituency services on the internet – a virtual constituency office – have followed the same rules that are applicable to traditional constituency offices. Whether or not this practice is a function of the funding rules is irrelevant. The practice has created an expectation on the part of constituents in Ontario that constituency services they access will be non-partisan. This practice is consistent with the objectives of the *Members' Integrity Act* and, I find, is a parliamentary convention. Consequently, any conduct that is not permitted within the four walls of a constituency office is not permitted within a virtual constituency office.

[30] The issue is whether Mr. Chudleigh's website forms part of his virtual constituency office. Mr. Chudleigh takes the view that since the website is not funded by the Legislative Assembly it does not form part of his virtual constituency office.

The Chudleigh website

[31] Other than the removal of the link to the Golf Tournament flyer, Mr. Chudleigh has not advised me of any substantive changes he has made to the website since the complaint was filed. As evidenced by the screen shots at Appendix "A", at the time of the complaint, the website contained a modified trillium which forms part of the Ontario PC logo. I note that at the time of filing of this report, the modified trillium has been removed from the website.

[32] A review of the website on the date of this report also indicates that the content categories available on the website continue to be "About Ted", "Constituency Services", "Self Help Links", "Halton PC Association" and "News", "Videos", "Contact", "Petitions" and "Blog." In addition to these headings, the website also provides a message from Mr. Chudleigh.

- [33] All of the information <u>except the information under "Halton PC Association</u>" is information that is routinely found on a constituency website. The information under the Halton PC Association section describes the Association and invites political contributions.
- [34] In my view, the fact that the website is not funded by the Legislative Assembly does not automatically determine the matter. The website must be looked at in its entirety. For the reasons that follow, I find that the website forms a part of Mr. Chudleigh's "virtual constituency office."
- [35] This is the only web page available to Mr. Chudleigh's constituents. A review of the content on the website clearly indicates that there are portions on the site that are designed and intended to be for the benefit of constituents. One of the main sections available to visitors to the Chudleigh website is titled "Constituency Services," which contains a description of the constituency services available. The "Contact" section provides contact information to reach Mr. Chudleigh at his constituency office and at his Queen's Park Office. The "Self Help Links" section contains links to frequently accessed government services. The main page provides updates regarding Mr. Chudleigh's activity at Queen's Park.
- [36] Due to the content, a constituent who searches the Internet for information regarding Mr. Chudleigh's constituency office and the services offered there would locate the website. A constituent would reasonably come to the conclusion that the website was the constituency web site. Furthermore, a constituent might also reasonably conclude, as did Ms. Sandals, that a website such as this was paid for by the Legislative Assembly.
- [37] Web pages are an important component of the business of private corporations, not-for-profit agencies and government. They are increasingly becoming an important component of the activities of constituency offices. A review of the Members Handbook makes clear that web pages have become a routine part of the communication repertoire available to MPPs in carrying out constituency functions. While there is no requirement

for MPPs to have a constituency web site, should they decide to have a web presence with the intention of providing information normally provided by constituency offices, it is my view that it must be non-partisan in its content.

Conclusion

[38] Mr. Chudleigh acknowledged that his conduct in relation to the golf tournament flyer was contrary to the *Act* and he took corrective action to address the matter. There are no circumstances where constituency office resources such as fax and phone should be used to support riding association events in any respect and all members should take the necessary precautions to ensure that this parliamentary convention is respected.

[39] I find that Mr. Chudleigh has contravened parliamentary convention by creating a virtual constituency office, through his website, that has partisan content. However, I am also of the opinion that, with an eye to achieving some economic efficiency by creating only one web site, Mr. Chudleigh acted in good faith. He deliberately avoided the use of public funds to develop the Chudleigh website so that he would have flexibility with respect to content. However, it is my opinion that in so doing he did not have sufficient regard to the experience of those constituents who choose to access constituency services through his website. The Chudleigh website, as it presently exists, improperly blurs the lines between partisan information and constituency information.

[40] In order to assist Mr. Chudleigh and other members who may be affected by this report, I offer the following guidelines:

- If a member decides to offer constituency information on the Internet, it must be available in a non-partisan format. Specifically, the website must not display a party logo, any reference to a riding association including a link to a riding association website, information about riding association activities or an invitation to make political donations.
- 2. Members can have both a constituency and a riding association website. If they choose to do so, the URLs must be distinct from each other.

[41] I recommend that Mr. Chudleigh review these guidelines and make the necessary

adjustments to his web site in a timely fashion and, in any case, by January 31, 2009.

[42] It is important that I note in my review of the web sites of MPPs I also observed

that in many cases an astute reader would easily detect whether the member was a

government MPP or an opposition MPP. For example, almost all Liberal MPP web

pages contain the Premier's press release feed and almost all Conservative and New

Democratic Party MPP web pages contain press releases that are critical of the

government. This type of content is a component of our democratic system and MPPs

are entitled to have divergent view points. For the sake of clarity, I do not intend this

report to be interpreted so as to impact this type of content on MPP web pages.

[43] In light of my finding that Mr. Chudleigh's actions constitute an error made in good

faith, I recommend that no penalty be imposed.

DATED at Toronto this 11th day of December, 2008.

Lynn Morrison

Acting Integrity Commissioner

Appendix A

Exhibit "A"

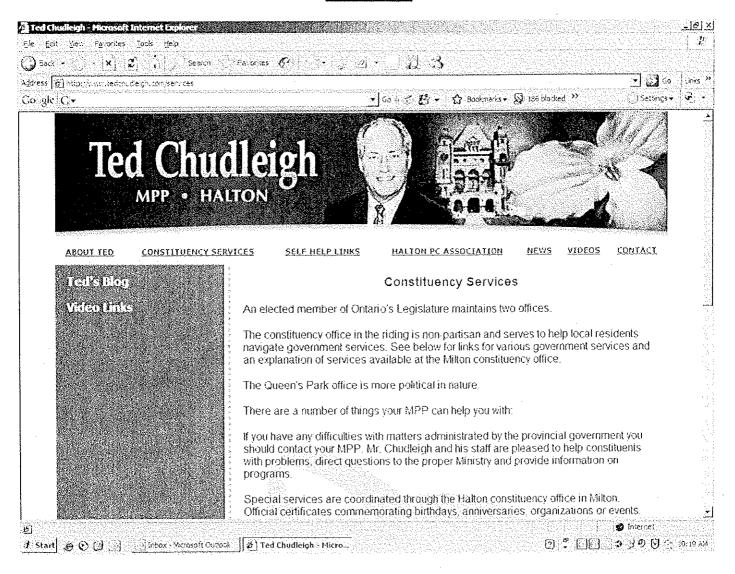


Exhibit "B"

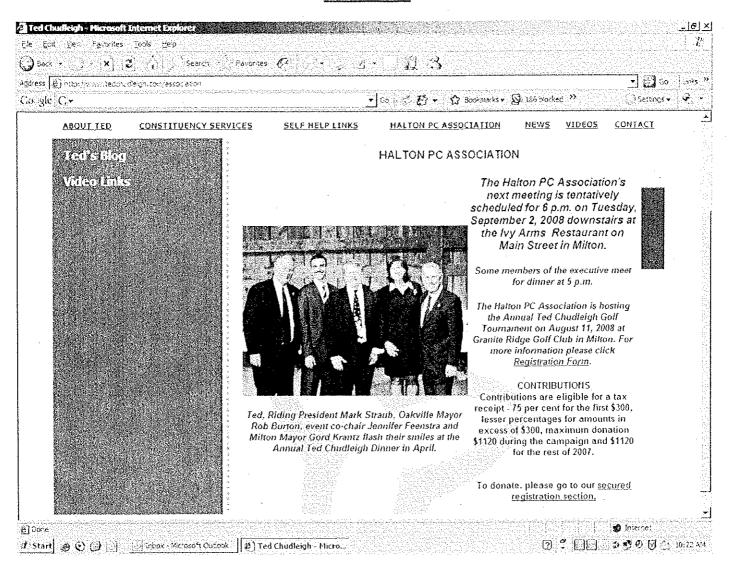


Exhibit "C"

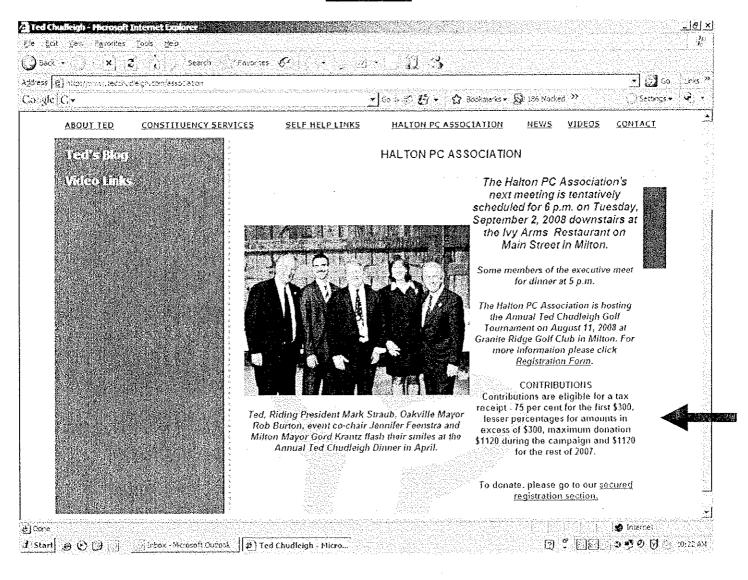


Exhibit "D"



Exhibit "E"

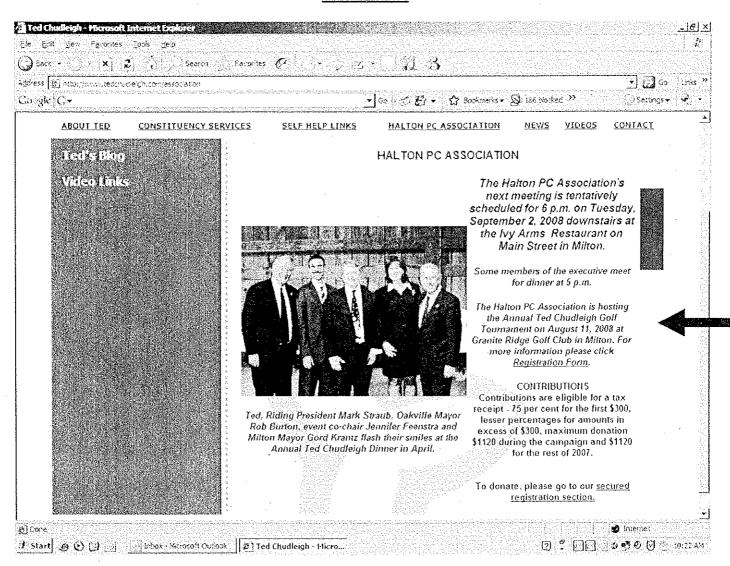
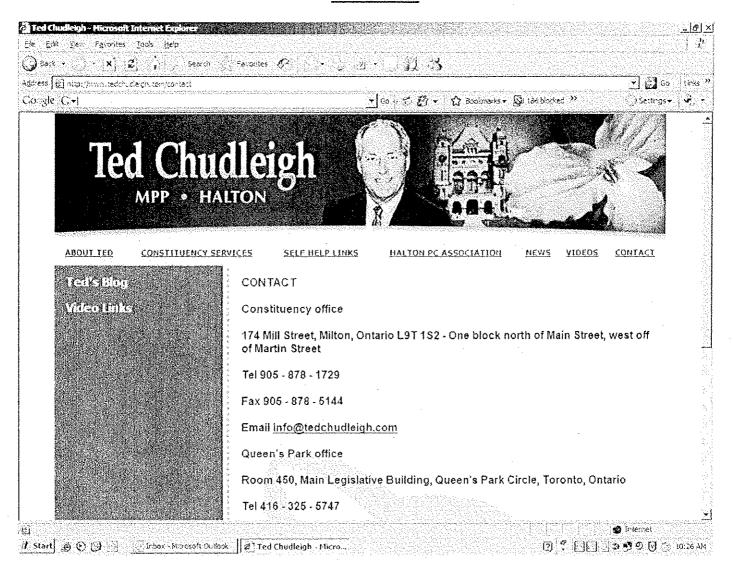


Exhibit "H"



Appendix B

Exhibit "F"

THE 2008 TED CHUDLEIGH GOLF TOURNAMENT

Monday, August 11 Granite Ridge Golf Club

Dublin Line, Milton between Highway 25 and

Tremaine Road north off Campbellville Side Road							
A portion of the proceeds will be giv	ven to a local charity						
Golf, cart, lunch, dinner Dinner only Hole or event sponsorship	\$150 X () = \$75 X () = \$125 X () =						
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not your intention please have each person issue their own payment an tax receipt. For tax purposes a company refers to a corporation register porated business or partnership please include the name of the owner of tax receipts will be issued net of expenses. Sponsorships will receive a	red in the province of Ontario. For an unincor- or partners the receipt is to be issued to. Income						

Soft spikes only!

Appendix C

Exhibit "G"

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