Legislative Assembly of Ontario

OFFICE OF THE INTEGRITY COMMISSIONER

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REPORT

OF

THE HONOURABLE COULTER A. OSBORNE
INTEGRITY COMMISSIONER

RE: MR. ERNIE EVES, FORMER MEMBER OF THE LEGISLATIVE ASSEMBLY, MINISTER OF FINANCE AND DEPUTY PREMIER

TORONTO, ONTARIO
MAY 6, 2002

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RE: MR. ERNIE EVES, FORMER MEMBER OF THE LEGISLATIVE ASSEMBLY, MINISTER OF FINANCE AND DEPUTY PREMIER

The Complaint

[1] On January 31, 2002 Michael Colle the member for Eglinton-Lawrence asked me to inquire into certain aspects of the conduct of Ernie Eves, formerly the Deputy Premier, Minister of Finance and a member of the Legislative Assembly. In his letter Mr. Colle contended that Mr. Eves had breached sections 2 and 16 of the *Members' Integrity Act, 1994* (the Act) by introducing and defending Bill 42, which when given royal assent became the *MPP's Pension and Compensation Reform Act, 1996*. I will refer to this *Act* by its short title, the *MPP's Pension Act, 1996.*

[2] On January 31, 2002 I asked both Mr. Colle and Mr. Eves for their submissions on the issue of my jurisdiction to deal with the matters raised in Mr. Colle's letter. My concern was premised on the fact that as at the date of the complaint, Mr. Eves was not a member of the Legislative Assembly or the Executive Council, although he was a member of both the Legislative Assembly and the Executive Council when it is alleged that he acted in such a way as to breach the conflict provisions of the Act.

[3] I received Mr. Colle's submissions on the jurisdiction issue on February 11, 2002. Mr. Eves elected not to make submissions on the jurisdiction issue. On February 14th I advised both Messrs. Colle and Eves that I would address all of the issues, including jurisdiction, in one report and that his allegations of conflict should be set out in an affidavit, consistent with a Directive issued by this office. On February 22, 2002 I received Mr. Colle's affidavit setting out the particulars of his allegations. Mr. Colle's affidavit satisfies the conditions of the Directive. On February 26, 2002 Mr. Colle advised this office that he had further or supplementary material to file in support of his allegations of conflict. I received that material on March 1, 2002. On March 27, 2002 I received Mr. Eves' response and on April 19, 2002 I received Mr. Colle's reply to Mr. Eves' response.

[4] There are two aspects to Mr. Colle's allegations of conflict. They are:

(a) that Mr. Eves as Minister of Finance presided over the development and introduction of Bill 42 which when passed by the Legislature and given Royal Assent became the *MPP's Pension Act, 1996* s.o. 1996 c. 6 (the MPA). Mr. Colle contended that Mr. Eves stood to gain personally from the lump sum payment provided for in the MPA, available to members having time of service for pension purposes as members of the Legislative Assembly before June 8, 1995.

(b) that Mr. Eves, in his capacity as Minister of Finance, ignored warnings that the pension scheme payment for members having time of service before June 8, 1995 was excessive having regard to the relevant provisions of the *Income Tax Act* (ITA) and its Regulations.

[5] In his reply to Mr. Eves' response to his allegations, Mr. Colle emphasized actions taken by Mr. Eves in connection with, "...the manner in which existing rights under the previous plan have been converted". Mr. Colle's reply when compared with his original and supplementary submissions clearly placed less weight on Mr. Eves' conduct in introducing and developing the legislation (Bill 42) that brought about changes in members' salary and pension arrangements. In the circumstances, I will deal with all aspects of Mr. Colle's submissions.

[6] As stated, Mr. Colle relies on sections 2 and 16 of the Act. They provide:

2. 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. 1994, c. 38, s. 2.

16. A member of the Executive Council who has reasonable grounds to believe that he or she has a conflict of interest in a matter requiring the member's decision shall ask the Premier or Deputy Premier to appoint another member of the Executive Council to perform the member's duties in the matter for the purpose of making the decision, and the member who is appointed may act in the matter for the period of time necessary for the purpose. 1994, c. 38, s. 16.

Jurisdiction

[7] Mr. Colle's complaint raises the question whether a former member of the Legislative Assembly and Executive Council is subject to the provisions of the Act, in circumstances where the conduct upon which the complaint is based occurred when the former member was a member of both the Legislative Assembly and the Executive Council.

[8] As is made clear by the Act and its Preamble, the Act concerns the conduct and obligations of members of the Legislative Assembly and the Executive Council. The Act's stated purpose is to, "...provide greater certainty in the reconciliation of private interests and public duties of members of the Legislative Assembly,...". The provisions for the enforcement of the Act (see section 30), any inquiry by this office (see section 31) and any recommendation as to the penalty in the event that I were to determine that a member has contravened the Act all work to impose a certain ethical rigor on members of

the Legislative Assembly and Executive Council. That is to say the Act is intended to have, and I think does have, a deterrent effect.

[9] The conflict provisions of the Act are found in sections 2, 3 and 4 as related to members of the Legislative Assembly. The conduct of members of the Executive Council is regulated by sections 10 to 18 in mostly negative terms, that is in terms setting out what a member of the Executive Council cannot do. Section 30 provides that a "member", on reasonable and probable grounds, may request the Commissioner to give an opinion on the questions whether "another member" has contravened the Act. As a matter of first impression the "another member" reference suggests that the targeted person must be a member when the Commissioner's opinion is sought. However, it may well be that the "another member" reference is a reference to the status of the targeted person as a member when the conduct in issue took place. In due course the legislature might see fit to clarify this issue. The legislature might also usefully consider clarifying the obligations and duties imposed upon a member of the Executive Council who is not in fact a member of the Legislative Assembly. Defining "member" to include a member of the Executive Council would be one way to eliminate any uncertainty in this regard. As matters now stand "member" is not defined in the Act.

[10] Through section 18, a former member of the Executive Council is subject to the jurisdiction of the Act for 12 months after the Executive Council member ceases to hold office. A violation of section 18(1) or (4) constitutes an offence under the Act and exposes the former member of the Executive Council on conviction to a fine of not more

than $50,000. In addition contravention of section 18 (and other sections of the Act) may, after an inquiry, lead to the range of penalties set out in section 34 of the Act. When this complaint was made Mr. Eves was subject to the restrictions set out in section 18 of the Act. In his case the 12 month restriction period set out in section 18 of the Act expired on February 8, 2002.

[11] As is evident from the specific provisions of the Act dealing with conflict related issues, my jurisdiction under the Act is based upon the status of the person alleged to have breached some provision of the Act. Simply put, that person must, at least, have been a member when the act (or omission) said to have constituted a conflict took place. There is no explicit provision in the Act which resolves the issue whether I have jurisdiction to consider a complaint about the conduct of a member if the targeted member is no longer a member as a result of death, retirement or defeat in an election.

[12] In the circumstances that prevail here, I am prepared to deal with this matter since Mr. Eves took no serious issue with my jurisdiction and was subject to the burdens and benefits of the Act when the complaint was made. I leave the broader issue of jurisdiction to which I have referred to be determined on another day in another complaint of conflict where the issue of jurisdiction is raised by the target of the complaint and I receive full submissions on that issue from both sides.

The Facts underlying the Complaint

[13] Mr. Colle contends that Mr. Eves, as Minister of Finance "presided over" the MPA when he stood to gain personally from the lump sum payout scheme under the MPA. He submits that in the circumstances Mr. Eves as a member of the Executive Council should have recused himself from Executive Council deliberations on the MPA in accordance with the provisions of section 16 of the Act. The second part of Mr. Colle's submission (the part of Mr. Colle's complaint which he has stressed in his reply submission) is that Mr. Eves breached the conflict provisions of the Act because he, "failed to heed warnings that a lump sum payment scheme under which Mr. Eves stood to gain personally, would be in violation of federal tax laws".

[14] Although both aspects of Mr. Colle's complaint implicate the pension arrangements set out in the MPA, it seems to me that they raise separate issues, or at least issues that ought to be considered separately.

[15] Some reference to the circumstances leading to the enactment of the MPA is required to put the complaint in some understandable context.

[16] In the 1995 election campaign, and before, the Progressive Conservative Party of Ontario promised that if elected the existing MPP's defined benefit pension plan, rhetorically referred to as "gold-plated", would be changed and that the tax-free part of the salaries of members of the Legislative Assembly would be eliminated.

[17] It was, therefore, not surprising that on April 10, 1996 Mr. Eves, as Minister of Finance, introduced the MPA, an act which dealt with members' pensions and salaries. The new MPA pension was intended to replace the pension arrangements set out in the *Legislative Assembly Retirement Allowances Act* (LARAA). The change from the LARAA to the MPA pension arrangements was somewhat complicated and for purposes of this report does not require detailed analysis. It will be sufficient to note that under the MPA, the members' existing (LARAA) pension plan was converted from a defined benefit plan to a defined contribution plan, effective June 8, 1995. I will refer to the pension plan options that were considered in more detail shortly.

[18] The MPA affected all members in the sense that it changed the kind of pension that all members had. It also changed the quantum and structure of members' salaries. The MPA had a particular effect on 61 members, including Mr. Eves, who had acquired vested pension rights under the defined benefit LARAA registered pension plan, referable to their service as members before June 8, 1995. The conversion aspects of the MPA only affected the 61 members who were re-elected on June 8, 1995.

[19] Through the MPA, the existing registered pension plan, (the LARAA plan) was amended to create the new defined contribution pension arrangements. The MPA did not create a new plan, although, it did establish new pension arrangements for all members of the Legislative Assembly. Under the MPA, members with pre June 8, 1995 time of service under the LARAA defined benefit registered pension plan were credited with the commuted value (the conversion value) of their vested pre June 8, 1995 pension benefits.

I take it that the idea was to recognize, protect and reasonably value those members' vested pension benefits.

[20] The pension credit for each member re-elected in June 1995 was determined by actuaries retained for that purpose. The underlying premise was that the 61 members re-elected in June 1995 should be made whole, that is put in the same economic position that they occupied under the LARAA pension plan as related to their pre June 1995 time of service as members. Whether the quantum of the credit to each members registered plan account was appropriate is not an issue before me. All that need be added on that subject is that the varying conversion credits to the 61 members' registered plan accounts were determined by resort to a common method of calculation.

[21] The 61 members with vested LARAA pension rights were required to elect whether to have the credit remain in the registered plan account or to have an amount equal to the credit transferred to the members' locked-in retirement account (see MPA section 20). The actual transfer of funds representing each member's conversion entitlement was effected by a one-time payment from the Consolidated Revenue Fund which received all pension contributions and paid all pension benefits under the LARAA pension arrangements. As it turned out, the commuted value of the accrued benefits (including interest) under the LARAA registered pension plan, referable to a member's time of service before June 8, 1995 was credited to every eligible member's locked-in retirement account.

[22] All similarly situated members of the Legislative Assembly were in the same boat. That is to say the MPA treated all members with time of service as members before June 8, 1995 (the MPA conversion date) equally. Moreover, the payment from the Consolidated Revenue Fund into the members' locked-in retirement accounts, referable to members with pre June 8, 1995 time of service, was not a gift that somehow came out the blue. That payment represented the commuted value, determined actuarially, of the relevant members' LARAA vested pension entitlements.

[23] As it has turned out, the transfer of the eligible members' credits under the LARAA defined benefit registered pension plan to eligible members' locked-in retirement accounts was not accepted by Revenue Canada (now Canada Customs and Revenue Agency). I can briefly summarize why Revenue Canada takes the position it now appears to assert with respect to a not insignificant part of the funds transferred to the locked-in retirement accounts of those members re-elected in the June 1995 election.

[24] Section 147.3 of the ITA only permits transfers between registered pension plans on a tax-free basis where certain conditions are satisfied and in the case of a change, as occurred here, from a defined benefit to defined contribution plan, where the amount transferred is within the limits prescribed by section 147.3 and Regulation 8517 of the ITA. Although section 147.3 appears to apply only to transfers between separate plans, the transfer rules in section 147.3 are made applicable to intra-plan transfers by Regulation 8502 (k). The tax question which has arisen in connection with the MPA pension arrangements is whether the ITA transfer limitation provisions found in section

147.3 apply and thus make part of the funds paid into the eligible members' locked-in retirement accounts taxable.

[25] Before the conversion was effected the government received a number of opinions on this subject. For present purposes I see no reason to review those opinions in any detail. What is important is that Revenue Canada has taken the position that the MPA conversion and associated transfers to members' locked-in retirement accounts engaged paragraph 8502 (k) of the regulations and through it the transfer restrictions found in section 147.3 of the ITA. If Revenue Canada position prevails, the members' RRSP credit, to the extent that it exceeds the section 147.3 transfer limits would be subject to tax. As matters now stand Revenue Canada wants that tax.

[26] Mr. Colle contends that in respect of this tax imbroglio Mr. Eves:

> ...failed to heed warnings that a lump sum payment scheme under which Eves stood to gain personally, would be in violation of federal tax laws. Eves' personal position was improved by ignoring those warnings.

[27] For reasons to follow, I fail to see how the above allegation raises conflict issues under the Act or how Mr. Eves' personal position was improved by ignoring the warnings referred to in the complaint. Even taking the most negative view of the material before me from Mr. Eves' standpoint, I do not think that this aspect of the complaint

constitutes a breach of any of the provisions of the Act. I also see no merit in the contention that in 1996 as one of 61 beneficiaries under the then contemplated MPA pension arrangements, Mr. Eves should have recused himself from the Bill 42 Executive Council discussions, (the s.16 breach issue) and that in participating in the Executive Council and Legislative Assembly deliberations on Bill 42, which as I have said, became the MPA, he furthered his own private interest (the s.2 breach issue).

Analysis

Section 16

[28] Section 16 of the Act sets out the procedure that members of the Executive Council must follow if they have reasonable grounds to believe that they are in a conflict position on any matter requiring a decision. Section 16's clear purpose is to establish a procedure which, if followed, will avoid a conflict of interest. Although, on its face, section 16 deals with no more than the procedure to be followed, it appears from section 34 of the Act, which provides for penalty recommendations following an inquiry, that a finding that a member has breached various sections of the Act, including section 16, can lead to the range of penalties referred to in section 34 (a), (b), (c) and (d). Thus section 16 has substantive effect in the sense that failure to follow the path mandated by section 16 can lead to a penalty recommendation following an inquiry held under the Act.

[29] In my opinion section 16's reference to "conflict of interest" must be informed by what the Act specifies constitutes a conflict of interest. That is to say section 16 is not a stand-alone section. In the circumstances that prevail here, one must consider both the

section 2 reference to conflict of interest and the section 1 definition of "private interest" in determining whether Mr. Eves breached either section 2 or section 16 of the Act by failing to recuse himself at relevant times.

[30] For ease of reading I will set out section 2 of the Act again:

> 2. 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. 1994, c. 38, s. 2.

[31] Apart from the reference to furthering another person's private interest, section 2 deals with making decisions when the member knows, or reasonably should know, that "...there is an opportunity to further the member's private interest...". In non-statutory language, section 2 prohibits a member from making a decision, or participating in making a decision, that the member knows or should know will enhance his/her private interest. [1]

[32] "Private interest" is defined in section 1 of the Act in these terms:

[1] Section 3 deals with the inappropriate use of insider information and section 4 deals with a member influencing (as opposed to making) a decision that would further the member's or a third party's private interest. Neither section 3 nor section 4 is relevant in these circumstances. All three sections refer to the members' and third parties' private interests.

"private interest" does not include an interest in a decision,

(a) that is of general application,

(b) that affects a member of the Assembly as one of a broad class of persons, or

(c) that concerns the remuneration or benefits of a member or of an officer or employee of the Assembly

[33] Against that background I will consider what happened when Bill 42 (the MPA) was introduced and debated in the Legislative Assembly. I will then address what constitutes a private interest as related to the complaint.

The History of Bill 42

[34] The MPA (Bill 42) received first reading on April 10, 1996 and second reading on April 18, 1996. It was approved by the Legislature, sitting in committee of the whole, on April 23, 1996. The MPA received third reading on the same day and was given Royal Assent on April 25, 1996. I will deal with the positions taken in the Legislature (and in committee) with respect to the MPA shortly.

[35] Hansard (a public record) reveals that Bill 42 received the support of both opposition parties. The Leader of the Opposition acknowledged that the Opposition had been kept informed about the proposed salary and pension changes. She stated in the

Legislature, "Our Caucus were fully briefed on the announcement that the Minister would be making today...". She also said, in concluding, "...that we are pleased that the issue of MPPs pay and pension is now being dealt with."

[36] Furthermore the Leader of the Opposition specifically acknowledged that the salary and pension changes in the MPA affected every member of the Legislative Assembly directly and that as legislators members of the Legislative Assembly were required to deal with their own compensation issues. The Leader of the Opposition put it in this way:

> This initiative [the MPA], however, is a little bit different, because it affects every single member of the legislature directly. I cannot think of another matter in which a member has a direct pecuniary interest, where we will benefit financially or perhaps not benefit financially but which affects us financially, in which a member would not declare a conflict of interest and not participate in a vote and yet on this particular issue we are required to vote on legislation which sets out our compensation as MPPs. I do not think any member votes on their own compensation comfortably, and that is particularly true in these very difficult times of financial restraint and rather drastic cut backs, but we have no alternative but to have legislators themselves take the responsibility of addressing and determining this issue. (Emphasis added.)

[37] When speaking specifically about the proposed new pension arrangements, the Leader of the Opposition stated:

> This matter [the matter of pensions] had to be dealt with because pensions for MPPs were clearly out of step with pensions received by employees in either the public or the private sector. It had to be addressed in this particular session because all three parties were committed to reform of the current plan.
>
> ...
>
> Therefore, since this proposal to convert existing pension plans to a RRSP follows through on that commitment, we will support the legislation and support the replacement of our pension plan with a RRSP contribution plan.

[38] Section 8 of the Act is also of some significance, although it has no direct application in these circumstances. It provides:

> 8. A member of the Assembly who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the Assembly or the Executive Council, or a committee of either of them, shall, if present at a meeting considering the matter,
>
> (a) disclose the general nature of the conflict of interest; and

(b) withdraw from the meeting without voting or participating in consideration of the matter.

[39] Section 8 sets out the procedure to be followed by members of the Legislative Assembly faced with a potential conflict situation, just as section 16 sets out the procedure to be followed by members of the Executive Council faced with a conflict situation. Indeed, both sections bear the same title, "Procedure on conflict of interest".

[40] I refer to section 8 only as background against which Bill 42 played itself out in the legislature. No member in any party followed the path mandated by section 8 when Bill 42 came before the legislature. That is to say no member present in the Legislative Assembly when the MPA was dealt with took the position that he/she was in a conflict situation and no member present from any party withdrew from the discussion in the legislature without participating in Bill 42 and voting on it.

The Private Interest Issue

[41] To repeat, the Act defines "private interest" in this way:

"private interest" does not include an interest in a decision,

(a) that is of general application,

(b) that affects a member of the Assembly as one of a broad class of persons, or

(c) that concerns the remuneration or benefits of a member or of an officer or employee of the Assembly

[42] In my view the clear limitations on what is meant by private interest are necessary. To illustrate, if private interest were interpreted on the basis of the dictionary definition of those words, members would be in a conflict position by participating in a decision to reduce provincial income taxes since the members, who are all taxpayers, would benefit from that decision. Accordingly, the legislature provided that decisions of general application are to be excluded from the concept of private interest for purposes of determining whether a member has breached sections 2, 3 or 4. The legislature also excluded decisions that concern the salaries and benefits of members. The Act's definition of private interest makes this clear.

[43] Given the Act's definition of "private interest" there was no reason for any member from any party to follow the section 8 procedure. Nor was there any reason for any member of the Executive Council, including Mr. Eves, to follow the section 16 procedure. Since Bill 42 dealt with the remuneration (salaries) and benefits (pensions) of members of the Legislative Assembly private interest as defined by the Act was not engaged. The clash which the Act seeks to avoid, that is the clash between private interest and public duty did not exist because of the Act's definition of private interest.

[44] I see no merit in the submission that by participating in Bill 42 (the MPA) Mr. Eves breached either section 2 or section 16 of the Act.

The Income Tax Issue

[45] The second branch of Mr. Colle's complaint concerns Mr. Eves' role in the as yet unresolved tax problem connected with the transfer of funds equivalent to the 61 eligible members accrued vested pension benefits under the former defined benefit (LARAA) registered pension plan to the members locked-in retirement accounts. Mr. Colle submits that Mr. Eves ignored "warnings" that there would be, or at least could be, tax problems attendant upon the conversion from the defined benefit LARAA plan to the defined contribution MPA plan.

[46] Unlike the first branch of Mr. Colle's complaint, which as I have said relates to Mr. Eves' involvement as Minister of Finance in the MPA legislation, this second branch of Mr. Colle's complaint is at least relatively new news. I say that because the tax problems and the advice Mr. Eves is alleged to have ignored have only come to light relatively recently. On the other hand Mr. Eves' involvement in Bill 42 and the MPA was known to everyone almost 6 years ago.

[47] I have resisted the urge to dismiss the second branch of Mr. Colle's complaint on the basis that it is premature since there has not been a final resolution of the tax issue. In fairness to both parties it seems to me to be preferable to address this part of the complaint directly on its merits. Not dealing with this part of the complaint would result in it being put on the back burner until there is a final resolution of the tax issue. I think both parties are entitled to my views on the issue now.

[48] Various options to give effect to the pension changes promised during the 1995 election campaign were considered before the MPA was proclaimed in force. One of the options considered was to wind-up the LARAA pension plan and replace it with a new plan. This option was rejected after David A. Dodge, the federal Deputy Minister of Finance, wrote to his Ontario counterpart, Michael L. Gourley, in February 1996. This letter is an exhibit to Mr. Colle's affidavit, sworn on February 22, 2002. Mr. Colle's reliance on the "warning", as he put it, in Mr. Dodge's letter is misplaced. The Dodge letter resulted in the abandonment of the plan wind-up option. It does not refer to the particular pension changes arising from the MPA.

[49] Price Waterhouse advised the government on the broad issue of how the advertised pension changes could be brought about without members with the existing LARAA vested pension rights being exposed to an income tax liability. The affidavit of Paul Love, a Price Waterhouse partner involved in the pension changes, explains that Price Waterhouse was instructed to consider ways other than winding-up the LARAA pension plan to bring about the promised pension changes without members with vested LARAA pension rights being exposed to an income tax liability. In the end, according to Mr. Love's affidavit:

> PwC proposed an approach which it believed represented a possible way to avoid the transfer rules for this particular pension plan, but warned that it was likely that the proposal would be challenged by Revenue Canada.

[50] Because of Price Waterhouse's concern about the pension transfer limitation rules, the proposed new pension arrangements were referred to Revenue Canada for what amounts to an advance ruling. According to Mr. Love, Revenue Canada accepted the changes proposed by Price Waterhouse.

[51] In summary form, it is apparent from the material filed that:

(a) a wind-up of the LARAA pension plan and its replacement with an entirely new plan was considered but rejected because of Revenue Canada's objections. See the February 1996 letter from David Dodge setting out Revenue Canada's concerns.

(b) Price Waterhouse abandoned the wind-up solution and proposed a different approach which it hoped would avoid the ITA pension transfer restrictions.

(c) Price Waterhouse recognized that its pension proposals could be challenged by Revenue Canada. Thus, it submitted the proposed plan amendments to Revenue Canada and sought an advance ruling.

(d) In a letter from the Registered Plans Division of Revenue Canada

dated December 20, 1996, Revenue Canada stated that, " we hope this resolves the final compliance issue for this plan". Further, in a letter dated March 12, 1997, Revenue Canada stated, "[T]he amendments are acceptable to us and have been added to our files."

(e) Price Waterhouse and the Ontario government took Revenue Canada's December 20, 1996 and March 12, 1997 letters as evidence of Revenue Canada's acceptance of the proposed pension plan amendments, although, both Price Waterhouse and the Ministry of Finance recognized that Revenue Canada's apparent acceptance of the amendments was not binding.

(f) the conversion payments to the 61 eligible members was calculated so that these members could purchase a pension equal to the pension which the member had earned up to the date of the MPA conversion. The assumption that the conversion would not attract income tax was critical to the calculation of the 61 members earned conversion payments. Simply put, if a member's conversion payment were reduced by income tax attracted by the conversion transaction, the lower after-tax payment would not be sufficient to replicate the pension which the member had earned under the LARAA plan. Thus, if Revenue Canada's current position is

maintained all 61 members re-elected in 1995 will be put in a position of economic disadvantage in the sense that they will not receive the economic equivalent of their vested LARAA pension benefits.

(g) What was transferred to the 61 eligible members locked-in retirement accounts was determined by actuaries retained for that purpose. The plan actuaries took into account factors such as the member's age, time of service, level of remuneration and the assumed rate of return on invested funds. No bonus was paid to any of the 61 eligible members, including Mr. Eves. The actuarial calculations were based on the assumption that income tax would be payable on what was transferred to a members locked-in retirement account only when funds were withdrawn from that account.

(h) In December 1997, after the conversion funds had been transferred to the 61 members locked-in retirement accounts, Revenue Canada advised that it intended to audit the conversion payments made under the MPA. Revenue Canada later took the position that the ITA transfer limitations applied to the MPA intra-plan transfer. Revenue Canada thus advised that each of the 61 members was required to pay income tax on that part of the funds transferred to

their locked-in retirement accounts which exceeded the ITA transfer limits.

[52] There is no doubt that the promised pension changes could have been structured differently and in hindsight perhaps in a better way. However, that is not the point. Although there were clearly other options, the government went with the Price Waterhouse proposal once it appeared that Revenue Canada accepted that approach.

[53] Mr. Colle submits that Mr. Eves has advanced no reason for preferring the Price Waterhouse opinion over existing conflicting opinions. This submission is at odds with the record which establishes that the government took it from Revenue Canada's letters of December 1996 to March 1997 that Revenue Canada took no issue with the MPA conversion transaction.

[54] Mr. Colle takes it further. In his reply dated April 19, 2002 he submits that in light of, "recent events south of the border", (I assume that this is a reference to the Anderson – Enron fiasco), "it is particularly curious" that Mr. Eves would rely on a tax/pension opinion from an accounting firm rather than an opinion from a law firm. This submission is out of sync with the facts and is, in any event, preposterous; it deserves no further comment.

[55] In my opinion, this part of Mr. Colle's complaint does not withstand scrutiny for three general reasons. First, under the MPA conversion arrangements, Mr. Eves gained

nothing that all 60 similarly situated 1995 re-elected members did not gain. Second, the payment to the 61 eligible members' locked-in retirement accounts was actuarially determined on the premise that the eligible members were entitled to the commuted value of their vested pension benefits under the LARAA pension arrangements, as at June 8, 1995. All eligible members had a shared expectation that each member's RRSP would be credited with an amount equal to the actuarially determined value of that member's vested benefits under the LARAA pension plan. It was understood, or assumed, that the conversion would not result in a tax liability to any of the 61 members re-elected in June 1995. Third, in the absence of other arrangements for the payment of tax because of the RRSP transfer limitations to which I have referred, the tax liability in question is the members' tax liability. Thus, absent remedial action, the 61 members with pre-June 8, 1995 time of service are losers, not winners, in the conversion transaction.

[56] It is therefore difficult to accept Mr. Colle's submission that Mr. Eves (and the other 60 members) benefited from the taxation aspects of the conversion arrangements. Indeed, as I have said, rather than benefiting from the MPA conversion, given Revenue Canada's current position as to the applicability of the ITA intra plan transfer limitations, the 61 1995 re-elected members are exposed to an income tax liability with the result that the conversion payment that they received did not put them in the same economic position that they occupied under the LARAA pension arrangements.

[57] I see no merit in this part of Mr. Colle's complaint. Taken at their worst from Mr. Eves' standpoint the tax problems arising out of the MPA have political, not conflict of

interest, implications. Whatever the course of the tax problem turns out to be, neither Mr. Eves nor the 60 other members whose LARAA pension benefits were paid into those members' locked-in retirement accounts breached any provisions of the Act.

Conclusion

[58] For the reasons stated above, I see no merit in either branch of Mr. Colle's complaint. No inquiry is warranted.

DATED at Toronto, this 6th day of May, 2002.

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The Honourable Coulter A. Osborne