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OFFICE OF THE INTEGRITY COMMISSIONER

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REPORT

OF

**THE HONOURABLE COULTER A. OSBORNE
INTEGRITY COMMISSIONER**

**RE: MR. ERNIE EVES, MR. TONY CLEMENT,
MR. JAMES FLAHERTY AND MR. BRIAN COBURN**

**TORONTO, ONTARIO
NOVEMBER 28, 2003**

RE: MR. ERNIE EVES, MR. TONY CLEMENT, MR. JAMES FLAHERTY
AND MR. BRIAN COBURN

[1] This report is responsive to a complaint made by Caroline Di Cocco, the member for Sarnia-Lambton, about what she alleges was partisan political conduct by Ministers who were engaged at the time in Ministry, not political, business. Those identified in Ms. Di Cocco's complaint are Ernie Eves, then Premier of Ontario, Tony Clement, then Minister of Health and Long-Term Care, James Flaherty, then Minister of Enterprise, Opportunity and Innovation, and Brian Coburn, then Minister of Tourism and Recreation.

[2] To her credit Ms. Di Cocco withdrew the complaint against Messrs. Eves and Clement when their counsel, Brian Bellmore, Q.C advised that their involvement in the events in question was promoted and paid for by their then ongoing Progressive Conservative Party leadership campaigns and not by the resources of government. It follows that the complaint as it relates to Messrs. Eves and Clement must be dismissed.

[3] On September 2, 2003 then Premier Eves called the October 2, 2003 election. The election has had a direct impact on the destiny of this complaint since Mr. Clement and Mr. Coburn were not re-elected. I have no jurisdiction to deal with complaints against former members, except in circumstances where there is consent or perhaps other circumstances which are not present here. Thus, I propose not to deal with the complaint as it relates to Mr. Clement and Mr. Coburn.

[4] In the end by way of preliminary summary, I need not consider the complaint as related to Mr. Eves and Mr. Clement because of Ms. Di Cocco's concession. Furthermore, I do not need to consider the complaint as related to Mr. Clement or Mr. Coburn because they were defeated in the October 2, 2003 election. Thus, apart from the fact that Ms. Di Cocco withdrew her complaint against Mr. Clement I have no jurisdiction to deal with it in any event.

[5] This leaves Mr. Flaherty alone to be dealt with.

THE ALLEGATION

[6] The combined effect of Ms. Di Cocco's complaint and her reply to the responses of the targets of her complaint is that in March 2003, Mr. Flaherty, while in Sarnia, breached parliamentary convention by mixing ministerial business and partisan political activity.

[7] The factual basis for Ms. Di Cocco's complaint can be briefly summarized. In March 2003 Mr. Flaherty came to Sarnia as Minister of Enterprise, Opportunity and Innovation. On his visit he toured the Lambton College Robotics Laboratory and then met with some members of the community for lunch. During this visit Mr. Flaherty is reported to have responded to a question from a member of the media in this way:

“There may be an event in Ontario before too long. Sarnia – Lambton has done well under a Conservative Government.... We sure want an MPP from Sarnia-Lambton as a member of the Government...”

[8] The nominated Progressive Conservative Party candidate was present during Mr. Flaherty's tour of Lambton College and when he responded to the media question as he did.

[9] In her reply, Ms. Di Cocco set out the crux of her complaint in this way:

“My inquiry is not about whether or not the political candidate was invited or not, it is about whether or not it is acceptable for a Minister of the Crown to use his office paid for by tax payers to promote a party candidate. As well, I have no issue as to a Minister interacting with any person whether they are a candidate or not.”

[10] Ms. Di Cocco made it clear in her reply that she took no issue with the fact that the nominated Progressive Conservative candidate was part of Minister Flaherty's Lambton College tour. Nor does Ms. Di Cocco complain about not being invited to the Lambton College events in which Mr. Flaherty participated.

ANALYSIS AND DECISION

(i) Jurisdictional Issues

[11] In his response, Mr. Guy Giorno, counsel for Flaherty, raised a number of jurisdictional issues centered on the content and timing of Ms. Di Cocco's complaint. He submitted that I have no jurisdiction to deal with Ms. Di Cocco's complaint, although Mr. Giorno acknowledged it would be useful for me to clarify the rules governing partisan political activity by Ministers when they are engaged on Ministry business. Mr. Giorno accepted, as I do, Ms. Di Cocco's statement of the general principle that since tax payers pay the expenses incurred by Ministers engaged in Ministry business, Ministers should discharge their duties and responsibilities as Ministers in a non-partisan manner. I would add that quite apart from the expense rationale, parliamentary convention has long recognized that while engaged in Ministry business, Ministers should not mix that business with partisan political activity.

[12] I should address Mr. Giorno's jurisdictional submissions first since this complaint would have to be dismissed without considering its merits were I to give effect to his jurisdictional arguments.

[13] Mr. Giorno contends that Ms. Di Cocco's original complaint raises issues that differ from those contained in her reply, or to put it in reverse, that Ms. Di Cocco's reply raised new issues. The argument is that since Ms. Di Cocco's reply was filed after the election was called, when Members ceased to be Members, Ms. Di Cocco was no longer a Member and thus had no status to bring that part of her complaint forward. This submission is based on the reference in Section 30 of the *Members' Integrity Act, 1994* which permits complaints about Members' conduct in certain circumstances to be brought only by Members.

[14] There is no doubt that Ms. Di Cocco's reply put her complaint into a much clearer focus. However, I think that in considering the contents of a complaint under the *Members' Integrity Act, 1994* the responses by Members targeted by a complaint and any reply submitted by the complaining Member, general principles of fairness, not a reverence for technicalities, should be the operative principle.

[15] It seems to me that the crux of Ms. Di Cocco's complaint from the beginning was the allegedly inappropriate mixing of ministerial and political business by the Ministers that she named in her complaint. I therefore think that to dismiss Ms. Di Cocco's complaint on jurisdictional grounds would represent an unfortunate triumph of form over substance.

(ii) The Complaint

[16] Mr. Flaherty does not take issue with the accuracy of the report in the Sarnia Observer concerning his comment in March 2003 during his tour of Lambton College. What he does do is to ask that the relevant context be taken into account. Specifically, in his response Mr. Flaherty notes that the utterance which is at the core of Ms. Di Cocco's complaint was made in response to a question from a member of the media. Thus, it was not a stand-alone, gratuitous comment. Although newspaper reports and comments will not generally constitute admissible evidence, or at least evidence to be given much weight, in this case since there is no issue about the accuracy of the remarks attributed to Mr. Flaherty, I think it would be sensible to proceed on the basis that Mr. Flaherty did say what the Sarnia Observer says he said during his Lambton College tour.

[17] Since Mr. Flaherty was in the Sarnia area in March 2003 on Ministry business, and since he has not stated otherwise, I assume the Ministry paid the expenses attendant upon his Lambton County visit.

[18] In my view, this complaint raises two general issues which deserve some comment. First there is the principle, now part of parliamentary convention, that

Ministers of the Crown should act in a non-partisan way while engaged on Ministry business. Second there is the money part of the equation. Where a Ministry, as opposed to a political party of a leadership campaign, is paying the Minister's expenses there is a further reason why Ministers should not engage in partisan political activity while on Ministry funded business.

[19] Before I turn to the central issue, that is whether Mr. Flaherty mixed ministerial and political business to an extent that contravenes the *Members' Integrity Act, 1994*, I should address the application of Sections 2 and 4 of the *Members' Integrity Act, 1994*. These sections were referred to in the first response of the then Premier and the several Ministers involved. In my opinion, Sections 2 and 4 of the *Members' Integrity Act, 1994* have no application to this complaint. Sections 2 and 4 both refer to a "decision" and the furtherance of a Member's or another's "private interest". In my opinion, Sections 2 and 4 are not relevant to this complaint. Nor do I think that Ms. Di Cocco based her complaint on Sections 2 and 4.

(iii) The Applicable Principles

[20] Against this general background, I turn to the allegation made against Mr. Flaherty. As I have said, it centres on comments he made that are alleged to have been of a partisan political character while on a visit to Sarnia as Minister in March 2003.

[21] The issue is whether Mr. Flaherty's comment crossed the line to the extent that he should be found to have breached the provisions of the *Members' Integrity Act, 1994* by acting in a way that is contrary to parliamentary convention. The specific issue of the mix of ministerial and partisan political activity has not been the subject matter of previous complaints, or as far as I know, commented on by me or my predecessor Integrity Commissioners.

[22] As I have noted in previous reports, parliamentary convention generally reflects the boundaries of acceptable and unacceptable conduct by parliamentarians. It is no

accident that the drafters of the *Members' Integrity Act, 1994* (an undertaking in which all three political parties participated) incorporated parliamentary convention as a relevant standard for measuring Members' conduct.

[23] On the basis of anecdotal evidence I know that the line between an appropriate ministerial activity and a partisan political activity has been blurred for a number of years, if not decades, particularly as elections loom on the horizon.

[24] I do not think that Section 5 of the *Members' Integrity Act, 1994* is relevant. I refer to Section 5 only because Mr. Giorno submitted that:

"Section 5 of the Act and Ontario Parliamentary convention clearly recognize the right of Members and Ministers to engage in partisan conduct."

[25] Section 5 states:

This Act does not prohibit the activities in which members of the Assembly normally engage on behalf of constituents in accordance with Ontario parliamentary convention. 1994, c. 38, s. 5.

[26] Section 5 addresses activities in which Members and Ministers normally engage in on behalf of constituents. Mr. Flaherty's activities in Sarnia had nothing to do with his constituents in Whitby-Ajax and Section 5 has nothing to do with this complaint.

[27] I take into account the evidence that Mr. Flaherty's comment was in response to a media question. Nonetheless, I think that Mr. Flaherty could and should have avoided what was clearly a partisan response, however tempting it may have been at the time to resort to some relatively mild political rhetoric.

[28] In my view, Ms. Di Cocco's complaint was entirely justified. The issue she raises is important, and it seems to me to be an issue that deserves comment. However, in the final analysis I am satisfied that although Mr. Flaherty's comments crossed the line, albeit not by much, in the exercise of my discretion, I do not think it would be

appropriate in this matter of first instance to find that he breached the *Members' Integrity Act, 1994*. I am mindful of the circumstances under which the single utterance having a clear partisan political character was made. I think, however, that Ministers and staff should be alert to the restrictions placed on them by parliamentary convention and statute. Just as constituency offices are not to be the source of partisan political activity, neither should Ministers, engaged in ministerial business, mix ministerial business with political activity.

DATED at Toronto this 28th day of November, 2003.

The Honourable Coulter A. Osborne