

Legislative
Assembly
of Ontario



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de l'Ontario

OFFICE OF THE INTEGRITY COMMISSIONER

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REPORT

OF

**LYNN MORRISON
INTEGRITY COMMISSIONER**

**RE: RANDY HILLIER,
MEMBER FOR LANARK – FRONTENAC – LENNOX
AND ADDINGTON**

TORONTO, ONTARIO

July 6, 2011

**RE: RANDY HILLIER, MEMBER FOR LANARK – FRONTENAC – LENNOX
AND ADDINGTON**

[1] In a complaint made on February 23, 2011 under section 30 of the *Members' Integrity Act, 1994* (the "*Act*"), Rick Johnson, the member for Haliburton – Kawartha Lakes – Brock, alleged that Randy Hillier, the member for Lanark – Frontenac – Lennox and Addington, breached Ontario parliamentary convention and thus contravened the *Act* by certain uses of his constituency office website (www.randyhilliermpp.com).

[2] Mr. Johnson filed the complaint with this Office in accordance with the Procedure for Complaints under Section 30 of the *Members' Integrity Act* (the "*Procedure*"), and Mr. Hillier filed responding submissions on February 28, 2011 and March 3, 2011. Mr. Johnson filed reply submissions on March 14, 2011.

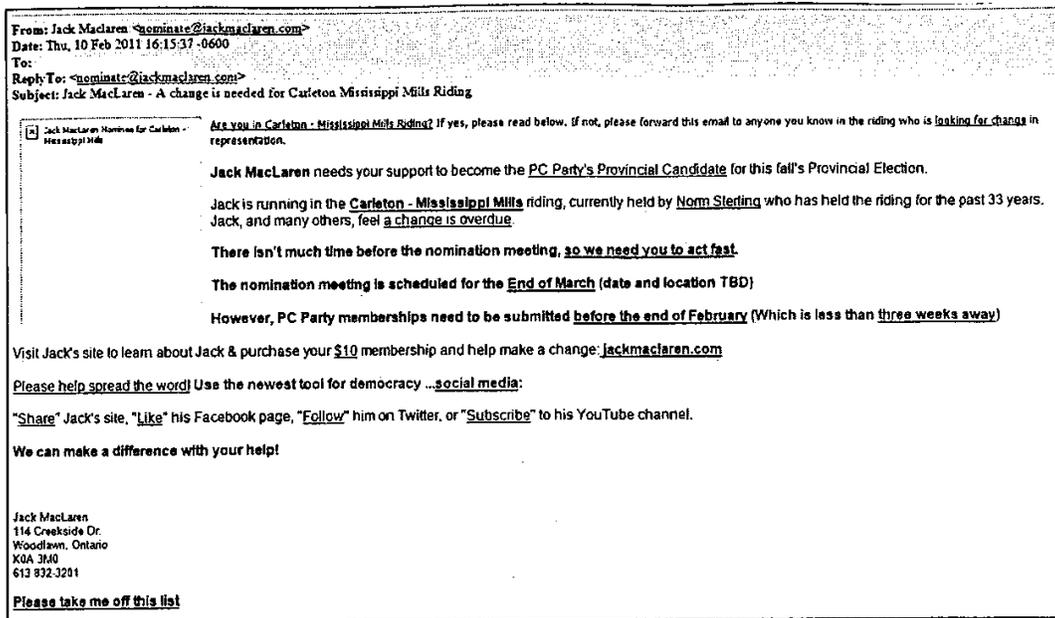
[3] Mr. Hillier requested that I refuse to deal with the matter because it was "frivolous, vexatious or not made in good faith" (section 31(5) of the *Act*). In my view, the allegations are about the important issue of the use of public resources and I determined that it was necessary to conduct an informal inquiry.

[4] Mr. Hillier was concerned that the complaint became public before he received notification of it from my Office. Mr. Johnson was fully within his rights to inform any person that he had filed a complaint with this Office. Such notification occurs almost every time a complaint is filed pursuant to section 30 of the *Act*.

[5] I do, however, believe that Mr. Hillier made a valid point that it would assist all involved if the member who is the subject of the complaint be notified of the fact of the complaint prior to receiving a notice from this Office. As a result, I will be reviewing the Procedure to determine whether any amendments can be made to include a notification mechanism.

The Complaint by Mr. Johnson

[6] Mr. Johnson asserts that Mr. Hillier had a role in, and allowed his constituency resources to be used for, the distribution of the following February 10, 2011 email:



[7] The February 10, 2011 email was sent from the email address nominate@jackmaclaren.com to a number of individuals in an effort to encourage participation in the campaign to nominate Mr. MacLaren as the Progressive Conservative Party candidate for Carleton – Mississippi Mills. It contained a number of links to other sites, such as social media sites and Mr. MacLaren’s web page (referred to herein as “the links”).

[8] When a recipient of the February 10, 2011 email placed his or her mouse over the links, a browser with pop-up box capacity showed the destination URL contained “www.randyhilliermpp.com” or it appeared in the bottom frame of the browser. For example, if a user “moused over” the Facebook-related link, the pop-up box (or bottom frame of the browser) said “<http://www.randyhilliermpp.com/emailer/link.php?M=8058&N=32&L=14&F=H>”.

[9] However, if a user clicked on one of the links, the user would be taken to the website and not to www.randyhilliermpp.com. For example, if a person clicked on the link “‘Like’ his Facebook page,” the user was taken to Mr. MacLaren’s Facebook page.

[10] Mr. Johnson alleges that the appearance of the URL www.randyhilliermpp.com at the bottom of the browser (or in the pop-up box) indicates that the links were “routed through” Mr. Hillier’s website. Mr. Johnson does not allege that the links within the email actually went to the website www.randyhilliermpp.com.

[11] Mr. Johnson states that the expenses for the website www.randyhilliermpp.com are paid through the MPP Global Budget, and that it was improper to allow it to be used to “route through” information in relation to Mr. MacLaren’s campaign. He also states that “a casual observer clicking the links would assume that Mr. Hillier, as MPP and with Legislative resources, was actively endorsing Mr. MacLaren’s campaign to unseat [the incumbent Progressive Conservative Party candidate for Carleton – Mississippi Mills].”

The Response by Mr. Hillier

[12] Mr. Hillier acknowledges that the website at URL www.randyhilliermpp.com is paid for using his MPP Global Budget; however, he says that he did not use his “taxpayer-funded website for political purposes.”

[13] Mr. Hillier further acknowledges that an email was sent on behalf of the Jack MacLaren campaign on February 10, 2011 and that a “mouse over” of the links in the email contained references to the URL www.randyhilliermpp.com. He explained that the references to his URL were because of an error made by his web provider, William Ross Solutions (WRS), which is also the web provider for Mr. MacLaren in relation to Mr. MacLaren’s nomination campaign. Mr. Hillier provided a copy of an email dated February 11, 2011 containing an apology and explanation from the president of WRS, as well as notice that steps had been taken to rectify the situation.

The Reply by Mr. Johnson

[14] Mr. Johnson rejected Mr. Hillier’s explanation because he did not believe that WRS provided services to both Messrs. Hillier and MacLaren. He also stated that he did not believe that the steps taken to rectify the situation were completed because when he “moused over” the links in his copy of the February 10, 2011 email, a pop-up box or

browser still showed the www.randyhilliermpp.com URL on the date of his complaint, February 23, 2011.

Facts

[15] My staff and I gathered evidence from the principal of WRS, Jack MacLaren and the Financial Services within the Legislative Assembly. The following facts have been established.

[16] Mr. Hillier has a website at URL www.randyhilliermpp.com, which forms part of his virtual constituency office. It is paid for using a component of his Global Budget provided by the Legislative Assembly. Since November 2010, Mr. Hillier has engaged the services of WRS to provide IT development (website, emails, contact manager, audio/video). WRS invoices Mr. Hillier's office for services and the invoices are submitted to the Legislative Assembly for payment.

[17] Mr. MacLaren was a candidate for the PC Party nomination in Carleton – Mississippi Mills. As part of his campaign for the nomination, Mr. MacLaren engaged the services of WRS in early 2011. WRS has continued to provide Mr. MacLaren with website development, social media integration, video production, email campaign management and signage design services.

[18] One of the services WRS provided to its clients was email campaign management. This service is of value to clients of WRS because it enables clients to send emails to large numbers of individuals without having to worry about bandwidth restrictions. WRS uses a custom-built software program for email campaigns. It works as one would expect, allowing the operator to input content for an email, include links and connect to contact databases to facilitate bulk emails.

[19] On February 10, 2011 WRS used its custom-built program to send out an email campaign on behalf of Mr. MacLaren. (See email copied above in paragraph 6.) WRS made two errors. The first error was that the program was set to send the email to all the contact lists of all of WRS' clients. This error occurred by accidentally selecting "all" contact lists instead of Mr. MacLaren's alone. This error is not the subject of the

complaint. It is important to note that WRS has clients other than Messrs. MacLaren and Hillier, and that these clients are mainly commercial operations.

[20] The second error was much more technical and it is the reason why a “mouse over” of the links in the February 10, 2011 email showed a reference to www.randyhilliermpp.com at the bottom of the browser (or in a pop up). I will describe the technical issue as I have come to understand it; however, the important point is that I am satisfied that this was an honest mistake on the part of WRS, one that the principal of WRS regrets and for which he has taken full responsibility.

[21] With respect to the technical details, each time WRS sends out an email campaign the operator must manually select a URL through which to “route” the user traffic. In the original design of the program, email campaigns would route through the URL of WRS. However, clients were dissatisfied because it led to the impression that the user was going through a website that was not related to them. To resolve this issue, the program was changed to require the WRS operator to manually set a “config file” to the client’s URL.

[22] In the case of the February 10, 2011 email, the config file was set for www.randyhilliermpp.com because that was the URL for the last email campaign sent by the WRS system (on February 3, 2011). The WRS operator failed to change the URL to www.jackmaclaren.com, which was a mistake.

[23] Other facts satisfy me that the conduct was an honest mistake. The next day, more than a week prior to the section 30 complaint being filed, WRS sent a written apology to Mr. Hillier. The explanation provided in the written apology aligns with the explanation I received directly from the principal of WRS. However, I was also provided with more detail and with a demonstration of the system itself from WRS.

[24] In addition, WRS took steps to stop the transmission of the email campaign part way through and to interrupt the link pathway within the email. When a user clicked on those links in late February 2011, the user was automatically redirected to a webpage on

the WRS website that states, “Sorry! Due to technical difficulties you received an email by accident. All links have been nullified.”

[25] Mr. Johnson disputed that the link pathways had been interrupted immediately because when one “moused over” the links, the browser frame or pop-up box still revealed www.randyhilliermpp.com on the date the complaint was filed. The fact that the “mouse over” still revealed www.randyhilliermpp.com in Mr. Johnson’s copy of the email does not demonstrate that the link pathway was still routing through www.randyhilliermpp.com. When an ordinary email is received, it becomes a static record. The sender cannot reach into the mailbox of the recipient and modify the coding. However, WRS made changes external to the email which rectified the problem.

[26] Mr. Hillier did not have any role in relation to the February 10, 2011 email. WRS was instructed in its work for Mr. MacLaren solely by Mr. MacLaren.

[27] Mr. Hillier is not aware of any benefit that accrued to him as a result of the error. Mr. Hillier said that he wishes that the error had not been made. Although Mr. Hillier proffered WRS’ apology in support of his response in this case, he has also taken responsibility for the actions of WRS.

Constituency Offices and Ontario Parliamentary Convention

[28] There is nothing in the *Members’ Integrity Act, 1994* that prevents a member from supporting any person he or she chooses in a nomination race.

[29] However, there are clear rules regarding appropriate use of public funds. Both Mr. Johnson and Mr. Hillier agree with the principle that public funds should not be used to support partisan activities (or any activities not related to constituency work). This principle was affirmed in my 2008 decision in *Report re: Ted Chudleigh, Member for Halton, with respect to the content of his website and whether he breached Parliamentary Convention contrary to the Members’ Integrity Act, 1994*. I stated,

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*. (para 23)

...

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. (para 29)

[30] In order to comply with the *Act*, and other finance rules that are applicable to members' constituency offices, it is incumbent on all members to vigorously guard against constituency resources being used for such purposes. In my opinion, members are also responsible for minimizing the risk of a perception of an inappropriate use.

Findings Regarding Alleged Contravention

[31] I find that the temporary routing of the February 10, 2011 email from Mr. MacLaren through Mr. Hillier's constituency-funded website was a regrettable error caused by WRS. The error did not result in any benefit to Mr. MacLaren, nor to Mr. Hillier.

[32] In this case, WRS was providing services to Mr. MacLaren when it made the error. After considering all the facts in this matter, I do not believe it was possible for Mr. Hillier to foresee or avoid the error that was made by his IT services provider.

[33] Mr. Hillier did not contravene the Ontario parliamentary convention that constituency resources should not be used for partisan purposes.

[34] The error, however, led to a perception that Mr. Hillier's constituency resources were inappropriately used. Ultimately, Mr. Hillier is responsible for this perception as any member is responsible for their own reputation, their public statements or the acts of their staff and other agents.

[35] Mr. Hillier has taken this event as an opportunity to place more rigour around the management of vendors such as the IT service provider. I encourage all members to use this experience as a reminder that the actions of others acting on their behalf can have significant repercussions, equal to direct conduct.

Changes to the Procedure

[36] As noted at the outset, I believe that Mr. Hillier has made a valid point that a member who is subject to a section 30 complaint should be notified of the complaint in a timely fashion. I will be considering whether the Procedure referred to above requires amendment to allow for such a mechanism.

DATED at Toronto this 6th day of July, 2011.

A handwritten signature in black ink that reads "Lynn Morrison". The signature is written in a cursive, flowing style.

Lynn Morrison
Integrity Commissioner