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OFFICE OF THE INTEGRITY COMMISSIONER

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REPORT

OF

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

**RE: THE HONOURABLE JOHN BAIRD, MINISTER
OF ENERGY, MINISTER OF FRANCOPHONE
AFFAIRS AND DEPUTY HOUSE LEADER**

**TORONTO, ONTARIO
FEBRUARY 17, 2003**

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RE: THE HONOURABLE JOHN BAIRD, MINISTER OF ENERGY, MINISTER
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[1] On December 12, 2002 David Caplan, the member for Don Valley East, filed a written allegation (the complaint) that The Honourable John Baird, the Minister of Energy and Francophone Affairs, breached the provisions of the *Members' Integrity Act, 1994* (the *Act*) by violating parliamentary convention. I will refer to the substance of Mr. Caplan's complaint in more detail later. For now it will suffice to note that the crux of the complaint is that Mr. Baird, "by inappropriately intervening both publicly and privately, in the administration of a matter under appeal before the Ontario Municipal Board..." breached parliamentary convention. The intervention central to the complaint is Mr. Baird's alleged role in influencing the Minister of Municipal Affairs and Housing to file a Notice of Deferral, the effect of which was to stay an appeal that was then before the Ontario Municipal Board (the OMB).

[2] The evidence in support of the complaint, apart from background, consists of four Exhibits to Mr. Caplan's complaint affidavit – a newspaper photograph of Mr. Baird and others, a press release issued on behalf of three rural Community Associations, the transcript of an Ottawa radio call-in program in which Mr. Baird participated and a copy of an article in the Ottawa Citizen which referred to Mr. Baird and other Ottawa members of the provincial legislature.

[3] On December 23, 2002 Mr. Baird filed his response to the complaint. In it he rejected the allegation that he had breached parliamentary convention in any way in respect of his dealings with any of the issues raised in Mr. Caplan's complaint.

[4] On January 7, 2003 Mr. Caplan filed his reply to Mr. Baird's response to the allegations of conflict set out in Mr. Caplan's complaint.

[5] For reasons to follow, it is my opinion that the complaint is without merit. No inquiry is warranted and the complaint is dismissed.

THE FACTS

(i) Overview

[6] Effective January 1, 2001 by provincial legislation (the *City of Ottawa Act, 1999*) the Regional Municipality of Ottawa City became a single tier municipal corporate structure. The *City of Ottawa Act* prescribed the composition of Ottawa's new council – 1 Mayor, 21 wards and 21 councillors. Some of the existing wards were in rural as opposed to urban areas of Ottawa. Under applicable legislation the newly defined City of Ottawa was given the right to change its ward boundaries.

[7] In due course the City of Ottawa established a taskforce to review its ward boundaries. The review was not opposed by the Ottawa councillors representing rural wards. The taskforce's mandate was to determine the ward boundaries and to maintain the number of wards at 21.

[8] In its report the taskforce recommended the merger of two rural wards. This recommendation would inevitably reduce the number of councillors who represented rural residents in the newly structured city.

[9] On June 18, 2002, as required by the *Municipal Act*, a City of Ottawa committee held a public meeting to consider the proposed ward boundary changes. The committee made recommendations which were later accepted by the City of Ottawa's council. On July 24, 2002 the council passed by-law 2002-316 (the ward boundaries by-law) which

established the revised ward boundaries to which many rural residents and those representing them objected.

[10] On August 2, 2002 the ward boundaries by-law was appealed to the OMB by three Community Associations representing rural interests in the former townships of Osgoode, Rideau and West Carleton.

[11] The City of Ottawa hoped to have the ward boundary changes in place before January 2, 2003, the first date for filing nominations for the municipal election to be held in November 2003. The attack on the ward boundaries by-law (the appeal to the OMB) therefore had to proceed without any undue delay.

[12] A pre hearing (appeal) conference was scheduled to take place before the OMB on October 17, 2002. On October 16, 2002 counsel representing the Minister of Municipal Affairs and Housing advised a City of Ottawa solicitor that she would be attending the pre hearing conference on October 17, 2002 and would then deliver a Notice of Deferral, authorized by section 25 of the *Municipal Act*, signed by the Minister of Municipal Affairs and Housing. If filed, this Notice would stay the appeal before the OMB. If the appeal were stayed the City of Ottawa's attempt to establish new ward boundaries before January 2, 2003 would be frustrated with the result that the old ward boundaries would live on for another election.

[13] The Notice of Deferral to which I have referred was filed on October 17, 2002 and the OMB (in a decision released on October 30, 2002) adjourned the appeal because of the filing of the Notice. This was, of course, based on the premise that the Notice of Deferral was valid. Later the City of Ottawa concluded that since the matter before the OMB was an appeal, not an application under Part 1 of the *Municipal Act*, the Notice of Deferral was invalid and that its filing would, therefore, not stay the appeal. In light of this changed position the City sought to resurrect the appeal. On November 12, 2002 it applied to the OMB to have its adjournment order set aside so that the appeal could

proceed. The OMB dismissed the City's motion. I see no need to set out or discuss the OMB's reasons for doing so.

[14] The City of Ottawa then applied to the Divisional Court to quash the Notice of Deferral filed by the Minister of Municipal Affairs and Housing. On December 13, 2002, MacDonald J., sitting as a single judge of the Divisional Court, held that the Minister of Municipal Affairs and Housing acted without jurisdiction in filing the Notice of Deferral. She thus quashed the Notice. At that point the appeal to the OMB was back on track. The basis of MacDonald J.'s decision was that the Notice of Deferral had application only to applications as opposed to appeals. Since the matter before the OMB was an appeal it followed that the Notice of Deferral had no force and effect.

(ii) Mr. Baird's involvement in the ward boundary dispute

[15] As I have said, Mr. Caplan's affidavit setting out his central allegation that Mr. Baird acted contrary to parliamentary convention by inappropriately intervening an appeal before the OMB is based on the evidence in four Exhibits to Mr. Caplan's affidavit. That affidavit with its four Exhibits constitutes the complaint. Because of the evidentiary significance of these four Exhibits I feel obliged to refer to them in some detail.

[16] Exhibit A is a photograph of Mr. Baird and others, including a solicitor said to be representing one of the associations that attacked the ward boundary by-law by appealing to the OMB. The caption accompanying the photograph identified those in the photograph as persons who had come together to consider appeals to halt the City of Ottawa's ward boundary changes. In his reply Mr. Caplan submitted that the photograph of Mr. Baird with the solicitor for one of the community association appellants might lead a member of the OMB who saw the photograph to, "rightly or wrongly believe that Mr. Baird was supportive of this group and their views on the matter". According to the complaint, this suggests that Mr. Baird inappropriately sought to indirectly influence the

OMB. This explains Mr. Caplan's acknowledgement that Mr. Baird did not "directly" influence the OMB.

[17] Exhibit B is an October 17, 2002 press release issued by directors of the West Carleton Rural Community Association Inc., Ottawa Rural Communities Association and Rideau Rural Community Association Inc. In it the following statement appears:

Today is an important day in the history of democracy in the new City of Ottawa. The Minister of Municipal Affairs and Housing, Chris Hodgson, indefinitely stayed the Ontario Municipal Board proceedings ending the decision making process. We wish to extend our gratitude and thanks to Mr. Hodgson and our area provincial representatives, Brian Coburn, John Baird, and Norm Sterling for their leadership role in ending the ward boundaries dispute. (Emphasis added in Caplan complaint).

[18] Exhibit C is a transcript of an October 26, 2002 radio phone-in program during which Mr. Baird answered listeners' questions. In the course of the program Mr. Baird said, "Chris Hodgson had the courage with Brian Coburn to step in – this time I strongly urged them to do so – and was pleased they did it." His reference was to the decision of the Minister of Municipal Affairs and Housing to file the Notice of Deferral to which I have referred.

[19] Exhibit D to Mr. Caplan's complaint is a copy of an article by Mohammed Adam in the November 6, 2002 edition of the Ottawa Citizen. The article set out some of the ward boundary history following municipal amalgamation. It noted that as part of the amalgamation process a provincial Act (Bill 62) amended the *City of Ottawa Act* to increase the number of councillors to twenty-one (plus a Mayor). The reference to Mr. Baird in the Ottawa Citizen article was:

For many residents, the new wards confirmed their worst fears about amalgamation. Saying the changes reflected contempt for the rural areas

by urban Ottawa, three powerful Tory MPPs brought their influence to bear on the issue. Associate Municipal Affairs Minister Brian Coburn, Energy Minister John Baird and Transportation Minister Norm Sterling, all fierce opponents of amalgamation and representing ridings with substantial rural voters, persuaded the Minister to block the new wards.
(Emphasis added).

[20] The clear reference was to Mr. Baird's role in Minister Hodgson's decision to file the Notice of Deferral.

[21] In response to Mr. Caplan's complaint, Mr. Baird in his affidavit swore that, "I have had no contact with the OMB in this matter and I certainly have not attempted to intervene in the appeal". Mr. Baird noted that the appropriate ward representation for rural residents in his riding had been a matter of concern for several years. He acknowledged that he knew that community associations had appealed the City of Ottawa ward boundary change by-law and that he had met with members of the appellant community associations. He denied discussing the appeal at those meetings.

[22] With respect to the Notice of Deferral, in his response to the complaint Mr. Baird swore that in October 2002 he learned that the Minister of Municipal Affairs and Housing was considering filing a Notice of Deferral which, if done, would stay the appeal. On October 16, 2002 Mr. Baird met with Mr. Hodgson and other Ottawa area government members. At that meeting Mr. Hodgson explained that as Minister of Municipal Affairs and Housing he had authority to stay the appeal and that he proposed to do so. Mr. Baird stated that he then advised Mr. Hodgson that he supported this decision.

ANALYSIS

[23] Central to Mr. Caplan's allegation that Mr. Baird breached the provisions of the *Members' Integrity Act, 1994* by acting contrary to parliamentary convention is the theme that Mr. Baird, "coerced" Mr. Hodgson to deliver a Notice of Deferral to the OMB with the result that the appeal to the OMB was stayed, until the Divisional Court quashed the

Notice of Deferral. According to Mr. Caplan, this constituted an improper interference with the appeal to the OMB.

[24] The *Act* sets out standards for members by particular reference to conduct that is prohibited by the *Act* and by reference to the broad standard of parliamentary convention. This complaint concerns only the parliamentary convention standard. A convention is a generally accepted rule or practice – established by usage or custom (see Blacks Law Dictionary). Parliamentary convention refers to that 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 in the *Act's* preamble (the reconciliation of private interests and public duties).

[25] Before turning to the merits of the allegation that Mr. Baird breached parliamentary convention, I should say something about the evidentiary value of newspaper and radio reports since both parties have raised this issue. Newspaper comments on a particular person or issue are generally of no evidentiary value because the comments represent the views of the writer, and are either hearsay or of no evidentiary value. My predecessor, Gregory Evans, Q.C., made this clear in his Report with respect to Michael Harris and the Rail Cycle North and Adams Mine Project dated May 16, 2001. However, if a member of the provincial legislature is quoted in a newspaper report, assuming the quotation is accurate and no adjustment for context is required, the quote although hearsay in the technical sense may constitute admissible evidence, given the recent relaxation of the strict application of the rules which exclude hearsay evidence. Radio comments such as those of Mr. Baird in Exhibit C, may be neutral, that is without any probative value, or depending on context, provide evidence for or against the member if the transcript of what was said is accurate.

[26] In this matter the essential facts, as opposed to inferences to be drawn from the facts, are not in material dispute. To summarize Mr. Baird represents constituents who live in a predominantly rural part of the present City of Ottawa. The amalgamated City of

Ottawa appointed a taskforce to examine its ward boundaries and the taskforce made recommendations the effect of which was to reduce the number of rural wards and thus rural representation on municipal council. Manifestly, this would reduce the political influence of rural voters at the municipal level. When the taskforce report was accepted by the City of Ottawa's municipal council, three community associations, generally representing rural voters, were disturbed enough to retain counsel to launch an attack on the City's ward boundary by-law. To do this they appealed to the OMB as they were entitled to do under the *Municipal Act*. To this point it would appear from the evidence that Mr. Baird was not involved at all, although one might expect that his sympathies lay with his rural constituents.

[27] There is no doubt that Mr. Baird met with members of the rural community associations to which I have referred. He also knew that three rural community associations had appealed to the OMB. He stated in his affidavit that he did not discuss the appeal with members of the community associations. I should note here that I see nothing wrong had Mr. Baird discussed the appeal with his constituents. What has to be avoided is a direct or indirect attempt to influence the appeal or otherwise interfere with the OMB's disposition of the appeal. There is not a shred of evidence that Mr. Baird had any direct contact with the OMB. Indeed, Mr. Caplan quite fairly acknowledged this. Thus any consideration of improper influence or interference with the appeal has to consider the issue whether Mr. Baird indirectly sought to, or did, improperly influence the OMB with respect to the issue before it.

[28] This brings me back to the four Exhibits which are an essential part of Mr. Caplan's complaint from an evidentiary standpoint.

[29] Mr. Caplan submits that the photograph of Mr. Baird (Exhibit A) with the solicitor for one of the appellants to the OMB and others, and the caption accompanying the photograph might lead the OMB to conclude that Mr. Baird was supportive of the appellants on the appeal before the OMB. Mr. Caplan takes it further by submitting that Mr. Baird never sought to correct this perception. I have a greater respect for the

institutional independence and integrity of the OMB than to accept Mr. Caplan's submission about the probative value of the photograph. With or without the photograph and its caption a member of the OMB remotely familiar with what was going on in the City of Ottawa at the municipal level would have known that provincial members representing rural ridings were opposed to the ward boundary changes. This is part of representing the interests of constituents. That is what Mr. Baird and 102 others were sent to Queen's Park to do. As I see it, there was no "perception" for Mr. Baird to correct.

[30] The press release (Exhibit B) on which Mr. Caplan relies was issued on October 17, 2002, the day after the Notice of Deferral was delivered. Mr. Caplan submits that because Mr. Baird and others were thanked for their assistance in ending the ward boundary dispute, it follows that Mr. Baird must have had some role in the dispute's resolution. As Mr. Caplan put it in his reply:

This seems to contradict Minister Baird's statement and the view of his counsel that there was uncontradicted evidence that he had been clear with them that he had no views with respect to the proceedings at the OMB.

[31] In my view, the press release takes us nowhere toward a conclusion that Mr. Baird somehow breached parliamentary convention because he was supportive of the rural associations which were challenging the ward boundary by-law. Having views on the subject like the ward boundary changes is no sin, or I should add, a breach of parliamentary convention. As I have said, even if Mr. Baird had made it clear to the appellants and to some Community Association members that he supported the appeal, this does not constitute a breach of parliamentary convention.

[32] Merely because Mr. Baird was given, and accepted some of the credit for steps that were taken, the effect to which was to bring the Ottawa ward boundary changes to a halt, does not come close to establishing that he acted contrary to parliamentary convention. There is simply no substance to this allegation. Whether Mr. Baird was given

more credit or less credit than he deserved under the particular circumstances is of no moment. The issue is what he did and did not do and in that context whether what he did or did not do constituted some kind of improper influence on the matter which was before the OMB.

[33] Mr. Caplan further submits that Mr. Baird's statement on the radio phone-in program (Exhibit C) goes to establish that Mr. Baird, "admitted to coercing..." Mr. Hodgson to deliver the Notice of Deferral and that in doing so he intervened in the appeal before the OMB in such a way as to breach parliamentary convention. I do not agree. Mr. Baird's noted response was to a question:

***Question:** What do you think is going to happen here John in order to give the people of Ottawa the rural representation that they need?*

***Baird:** That's why we stepped in three years ago to ensure there would be an adequate number of rural representatives just as Glen Shortliffe recommended for the first two terms and then Chris Hodgson had the courage with Brian Coburn to step in – this time I strongly urged them to do so – and was pleased they did it. You know sometimes you have to make decisions which are not easy, difficult and controversial. But I think the day that a politician doesn't want to make a difficult decision is the day that they should pack it in.*

[34] Taken at its worst from Mr. Baird's standpoint his answer to the caller's question which I have set out above suggests that he supported the decision to deliver the Notice of Deferral and that he urged Mr. Hodgson to do so. There is no evidence or allegation that the decision to deliver the Notice of Deferral was made for an improper purpose. The Divisional Court judgment which quashed the Notice did not do so on that basis. I cannot conclude from Mr. Baird's answer that he co-opted the process before the OMB that thus interfered with the appeal so as to breach parliamentary convention. The comment on which Mr. Caplan relies

goes no further than to establish that when Mr. Baird met with Mr. Hodgson on October 16, 2002 he indicated that he supported Mr. Hodgson's decision to file a Notice of Deferral and that he urged him to carry forward with it.

[35] The November 6, 2002 article in the Ottawa Citizen has no probative value. It reflects the views of the person who wrote it. Allegations against a member of the Legislative Assembly are too serious to be decided on the basis of this kind of evidence.

[36] Having considered the four Exhibits to Mr. Caplan's complaint separately, I turn to consider their cumulative probative value. In my view there is none; no evidence plus no evidence does not equal some evidence.

[37] Finally, there is the question of the Notice of Deferral itself. Whether to file a Notice of Deferral under section 25 of the *Municipal Act* is a call to be made by the Minister of Municipal Affairs and Housing. Although Mr. Baird supported the decision to file the Notice there is no evidence that would suggest he influenced it in any particular way. Furthermore, as I have said it is not suggested that the filing of the Notice of Deferral was done for an improper purpose. It turned out that MacDonald J. concluded that the Notice of Deferral was of no force in effect because the matter before the OMB was an appeal, not an application. There is no evidence that either Mr. Hodgson or Mr. Baird were aware of this problem when the Notice of Deferral was filed.

[38] In any case, although the decision to file the Notice of Deferral was Mr. Hodgson's, I do not think that it was improper for him to have sought the views of his caucus and Cabinet colleagues before exercising his discretion as to whether to file the Notice. The judgment of the Court of Appeal for Ontario in *Ontario Federation of Anglers and Hunters v. Ontario (Ministry of Natural Resources)*, released April 19, 2002 made this clear. If Mr. Hodgson was free to seek Mr. Baird's input on the issue whether to file the Notice of Deferral, it can hardly be said to have been a breach of parliamentary convention for Mr. Baird to have given Mr. Hodgson the benefit of his views on the subject.

[39] In my opinion there are no grounds for an inquiry. The complaint has not been established. It is, therefore, dismissed.

DATED at Toronto, this 17th day of February, 2003.

The Honourable Coulter A. Osborne