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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 DALTON McGUINTY,
PREMIER OF ONTARIO**

**TORONTO, ONTARIO
SEPTEMBER 23, 2004**

RE: THE HONOURABLE DALTON McGUINTY, PREMIER OF ONTARIO

[1] Bob Runciman, the member for Leads – Grenville, has alleged that The Honourable Dalton McGuinty, Premier of Ontario, breached certain provisions of the *Members' Integrity Act, 1994* by disclosing certain provisions of Ontario's May 2004 budget before the budget was tabled in the Legislature.

[2] The factual basis of the complaint can be briefly stated. Mr. Runciman contends that before the May 2004 budget was delivered in the Legislature, the Premier disclosed to Paul Martin, the Prime Minister of Canada, that the budget would include what was referred to in media reports as a health care tax. Mr. Runciman submits that this disclosure constitutes a breach of parliamentary convention as that term is referred to in the *Members' Integrity Act, 1994*.

[3] In his response to this complaint, the Premier acknowledged that shortly before May 18, 2004 when the budget was released he briefly spoke to the Prime Minister about the health care tax provisions of the then soon to be delivered Ontario budget. He added that certain provincial officials had also discussed the health care tax and related budget issues with federal officials generally concerned with tax/revenue matters. Thus, the fact that there was some pre-budget disclosure of the health care tax to the Prime Minister and some federal officials is not in issue.

[4] By way of explanation, the Premier noted that on tax policy staff work closely with the legal staff of the Ministry of Finance in drafting legislation to implement tax measures which are to be announced in an Ontario budget. Where warranted, provincial officials will contact federal officials particularly with respect to initiatives involving the Provincial *Income Tax Act*.

[5] In addition, Ontario Ministry of Finance officials will on occasion engage in pre-budget consultations with finance officials in other provinces if proposed Ontario budget provisions might affect provinces that administer similar taxes.

[6] The Ontario government has had an agreement with the federal government since 1992 for the collection by the federal government of income taxes levied under the Ontario *Income*

Tax Act. The federal government, now through the Canada Revenue Agency (CRA), has collected income tax for the province and has administered the Ontario *Income Tax Act* on behalf of the province. These arrangements permit tax filers to complete one tax return for both the federal and provincial income taxes. These returns are sent to federal officials and dealt with as part of the administration of both federal and provincial income tax systems.

[7] The federal/provincial tax collection agreement to which I referred requires notification in writing by a particular date by the Finance Minister of changes in Ontario's personal income tax. Typically, the required notification has been provided by the Deputy Minister of Finance or Senior Ontario Ministers. The Premier's response suggests that these contacts are "common". No issue has been taken with that characterization. Beyond formal notification requirements, as I have noted, staff of the Ministry of Finance will discuss proposed initiatives concerning tax and revenue matters with CRA officials as part of the general policy development process and the formulation of an Ontario budget.

[8] The Premier's response also noted that discussions as generally outlined above took place before the implementation of tobacco tax increases in 2002. These increases were reflected in that year's budget.

[9] In addition, as is well known, although health care is a provincial responsibility, the federal government provides essential financial assistance to the provinces for health care purposes.

CONCLUSION

[10] I set out my general views on the purpose and scope of the practice of budget secrecy in my Report on the complaint of James Flaherty against The Honourable Gregory Sorbara, released concurrently. As I said in that Report budget secrecy, and the related lock-up practices, are political practices or conventions which are in place for a purpose. That purpose, generally stated, is to prevent financial speculation and loss of government revenues by pre-budget disclosure of budget provisions. Manifestly there is no reason to impose a cloak of secrecy on

budget items, the disclosure of which will not give rise to financial speculation or loss of government revenues.

[11] I do not think that it can reasonably be said that all parliamentary conventions have been brought into the *Members' Integrity Act* by its several references to "parliamentary convention" (see Flaherty report re: Sorbara). However, even if I were to conclude that a breach of the budget secrecy practice could constitute a breach of parliamentary convention, I see nothing inherently wrong in discussions about budget matters such as the Ontario health tax with federal officials. Furthermore, in a federal state such as Canada I do not think that the purpose of budget secrecy was offended by the disclosure of the then contemplated Ontario health tax to the Prime Minister of Canada.

[12] As I said in the Flaherty/Sorbara Report I think there could be cases where a breach of budget secrecy might give rise to a contravention of the insider information provisions of the *Members' Integrity Act*. This would occur if pre-budget information were provided to a third party who was in a position to benefit from the disclosure (see s.3 of the *Members' Integrity Act*). That is not what happened here.

[13] Assuming that the political or parliamentary practice of budget secrecy can be viewed as a parliamentary convention for *Members' Integrity Act* purposes, I do not think that in light of the purpose of budget secrecy, the disclosures constituting the alleged breach of budget secrecy can reasonably be considered to be a breach of parliamentary convention, as referred to in the *Members' Integrity Act*. The complaint is, therefore, dismissed.

DATED at Toronto this 23rd day of September, 2004.

The Honourable Coulter A. Osborne