

Legislative  
Assembly  
of Ontario



Assemblée  
législative  
de l'Ontario

# OFFICE OF THE INTEGRITY COMMISSIONER



**REPORT**

**OF**

**THE HONOURABLE J. DAVID WAKE  
INTEGRITY COMMISSIONER**

**RE: THE HONOURABLE DAVID ORAZIETTI**

**TORONTO, ONTARIO**

**October 21, 2016**

# RE: THE HONOURABLE DAVID ORAZIETTI

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## I. EXECUTIVE SUMMARY

This report relates to a request made by Jim McDonell, the Member of Provincial Parliament (MPP) for Stormont-Dundas-South Glengarry under section 30 of the *Members' Integrity Act*, 1994 (the “**Act**”) against David Orazietti, Member of Provincial Parliament for Sault Ste. Marie, then Minister of Government and Consumer Services and currently the Minister for Community Safety and Correctional Services (“the **Minister**”). I considered whether the Minister contravened the conflict of interest provisions set out in section 2 of the Act as it was alleged he sought to appoint five individuals, who were either his constituents or affiliated with the Liberal Party of Ontario, to various organizations affiliated with the Ministry of Government and Consumer Services (“the **Ministry**”).

The basis for Mr. McDonell’s request was a Ministry Briefing Note that was inadvertently released to his office. The Briefing Note identified five candidates that were purportedly appointed by the Minister. In fact, only three of these individuals were actually appointed by the Minister. I found no evidence that the Minister advanced his private interest or improperly furthered the interest of any other person while making these three appointments. With respect to the remaining two individuals, one of them was not appointed as they chose to withdraw. The other individual was not selected by the Minister, but it appears that there was a misunderstanding within the Ministry as to the Minister’s intention about this application. Accordingly, it is my opinion that the Minister did not breach the Act.

## II. LEGISLATIVE FRAMEWORK

[1] Under section 30(1) of the Act, a member of the Legislative Assembly of Ontario who has reasonable and probable grounds to believe that another member has contravened the Act or Ontario parliamentary convention may request that I give an opinion on the matter. When a matter is referred to me by a member, I may then conduct an inquiry after giving the member whose conduct is concerned reasonable notice.

[2] The conflict of interest provision in the Act is set out in section 2 and reads:

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.

### **III. THE REQUEST AND RESPONSE**

[3] My Office first became aware of this request on April 18, 2016 when an affidavit was received from Mr. McDonell dated April 15, 2016 with proof that it had been served on the Speaker of the Legislative Assembly (the "**Affidavit**"). The Affidavit alleged that the Minister contravened the conflict of interest provisions in the Act by making appointments of five individuals to four agencies within his portfolio contrary to Ministry practices and against the advice of public servants within the Ministry.

[4] On the same day, I sent the Minister a copy of the Affidavit and invited him to comment on the substance of the request, which he did on May 3, 2016.

[5] On May 6, 2016, I invited Mr. McDonell to comment on the Minister's response, which he did on May 16, 2016.

### **IV. THE INQUIRY PROCESS**

[6] My Office sought information from Angela Coke, Deputy Minister of Government and Consumer Services about the Ministry's appointment practices.

[7] My Office also sought information from the Public Appointments Secretariat (PAS), which was provided by Rose Langhout, Acting Director at the Public Appointments Secretariat.

- [8] My staff interviewed Frank Denton, Assistant Deputy Minister, Policy, Planning and Oversight Division with the Ministry. Don Fawcett, Senior Counsel with the Ministry also attended the interview.
- [9] My staff and I also interviewed Damien O'Brien, a former policy advisor for Minister Oraziatti, and Matthew Rosenfeld, a policy advisor at the Ministry.

## V. THE FACTS

- [10] The basis for Mr. McDonnell's request is an email that was inadvertently sent to his office on April 14, 2016 which incorrectly indicated that Minister Oraziatti had made a number of appointments to Designated Administrative Authorities (DAAs), including the appointment of an individual I will refer to as Candidate A<sup>1</sup> to the board of the Real Estate Council of Ontario (RECO).

### **Ministerial Appointments to Designated Administrative Authorities (DAA)**

- [11] DAAs are independent, not-for-profit corporations responsible for delivering delegated government programs and services. Currently, the Ministry oversees nine administrative authorities including four organizations that are relevant to this inquiry, namely RECO, the Ontario Film Authority (OFA) formerly known as the Ontario Film Review Board,<sup>2</sup> Tarion Warranty Corporation (Tarion) and the Travel Industry Council of Ontario (TICO).<sup>3</sup>
- [12] The Minister is responsible for appointing at least one member to the board of the OFA, RECO, Tarion and TICO.<sup>4</sup> Other members may be selected through a variety of

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<sup>1</sup> The names of the candidates have intentionally not been included in the report as disclosure of these names is not necessary in order to provide an opinion about whether there has been a contravention of the Act.

<sup>2</sup> The Ontario Film Authority replaced the public body formerly known as the Ontario Film Review Board as of October 1, 2015.

<sup>3</sup> The other five DAAs overseen by the Ministry are: Bereavement Authority of Ontario; Electrical Safety Authority; Ontario One Call; Ontario Motor Vehicle Industry Council; Technical Standards and Safety Authority; and Vintners Quality Alliance Ontario.

<sup>4</sup> When the OFRB was a public body, the Minister was responsible for recommending all appointments, including the Chair, Vice-Chair and members.

processes. For example, at RECO the other members are elected by registrants. An administrative agreement between the Ministry and each DAA sets out the composition of the board as well as the skills the Minister must consider when making a ministerial appointment.<sup>5</sup>

- [13] Frank Denton, Assistant Deputy Minister, advised that a minister's appointments to the DAAs are typically drawn from outside the associated sector to ensure a balance of skills is reflected on each board.
- [14] Ministerial appointments to the DAAs are made following a recruitment and review process led by the Ministry and supported by the PAS. The process requires that a vacancy be identified after which it may be posted on the PAS website. The PAS indicates that individuals who wish to be appointed to a DAA must complete a hardcopy application or apply online through the PAS website. Applicants must identify the DAA to which they are applying.
- [15] Angela Coke, Deputy Minister, advised that the PAS uploads all applications that relate to the DAAs into a database. The Ministry uses this database to identify potential candidates for appointments. The Ministry may also identify candidates based on recommendations from the Institute of Corporate Directors, board chairs or professional networks, however candidates must still submit an application to the PAS in order to be considered.
- [16] Once a list of potential candidates is gathered, the Ministry prepares an appointment package for the minister's consideration. The appointment package contains the rationale as to why a candidate would be appropriate. The appointment package is sent to the Deputy Minister's office, and then to the minister's office for consideration.
- [17] The minister is ultimately responsible for selecting the candidate who will be the ministerial appointee to the board of a DAA. The Minister indicated that he considers the

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<sup>5</sup> As set out in section 4(2), of the *Safety and Consumer Statute Administration Act* the administrative agreement also includes other matters that the Minister considers necessary for delegating part of the administration of the designated legislation to the DAA.

information provided by the Ministry when selecting a candidate. The Minister's decision about which candidate will be appointed is communicated to the Ministry during a regularly scheduled meeting. A second package of appointment documents is then prepared by the Ministry for the Minister.

[18] Mr. Denton confirmed that there have been no changes to the process since the Minister was appointed. However, in February 2016 Mr. Denton's office sought confirmation about the process. He indicated that he sought this confirmation because there had been staffing changes within his office and the PAS.

### **Appointment to RECO**

[19] The Minister advised that he attended a meeting on July 23, 2015 with the Sault Ste. Marie Real Estate Association for the purposes of discussing local issues. It was at this meeting that Candidate A first expressed interest in applying to join the board of RECO. The Minister encouraged Candidate A to apply for a position on the board and provided him with the contact information of a member of his staff.

[20] The Minister confirmed that Candidate A was not a constituent.

[21] A vacancy on the RECO board became available on August 28, 2015.

[22] In early November, Candidate A contacted Damien O'Brien, a member of the Minister's staff. Mr. O'Brien sent Candidate A an email on November 4, 2015 at 12:54 p.m. outlining the appointment process and he included a PAS application form. Mr. O'Brien also invited Candidate A to obtain and send a criminal background check "to speed up the process." Mr. O'Brien explained that by "speeding up the process" he meant that he was recommending Candidate A obtain his own criminal record check rather than wait for the PAS to obtain one, as that process can be lengthy.

[23] Despite the instructions given in the email to send the application directly to the PAS, Candidate A sent a completed PAS application back to Mr. O'Brien on November 5, 2015 at 3:44 p.m.

- [24] Mr. O'Brien indicated that he had no previous relationship with Candidate A and did not have any further communications with the candidate.
- [25] Mr. O'Brien stated that shortly after he received Candidate A's application he attended a routine meeting with officials in the Deputy Minister's office to discuss appointments. Mr. O'Brien recalled that at the meeting he provided Ministry officials with Candidate A's application and asked whether Candidate A had applied appropriately through the PAS. He believed that he gave the application to Matthew Rosenfeld, who served as policy advisor in the Ministry's Corporate Coordination Unit, and who was a regular attendee at these meetings. Mr. O'Brien indicated that he was given assurances that Ministry officials would check on the application.
- [26] Mr. O'Brien recalled that he followed up with Ministry officials in December at which time he was again advised that they would look into the matter.
- [27] In the meantime, the Ministry was reviewing candidates to identify potential appointees to the board of RECO. A briefing note dated December 18, 2015, identified six potential candidates to fill the one vacant position on the board of RECO. The briefing note was approved by the Acting Assistant Deputy Minister while Mr. Denton was on vacation. Mr. Denton indicated that his staff reviewed all of the applications and eliminated candidates who were clearly lacking appropriate work and/or board experience. This review left a short list of six candidates. The six candidates included an individual who is a real estate agent and two lawyers practising in the area of real estate law. He advised that staff decided to put forward all six names after completing the review process.
- [28] The application of Candidate A was not included in this appointment package. Mr. Denton advised that the appointment package included all applicants in the PAS database who demonstrated a history of community involvement and board experience. This appointment package was provided to the Minister's office sometime between December 30, 2015 and January 15, 2016.

- [29] Mr. O'Brien recalled a further follow-up discussion with Ministry officials about Candidate A's application in February or March 2016. He received information at that time that a note was being prepared, which he took to be a good sign that the application process was proceeding.
- [30] Mr. Rosenfeld provided information that he did not recall receiving a copy of Candidate A's application until March 8, 2016 when he received it from Mr. O'Brien via e-mail. On the following day, March 9, 2016, there was another routine meeting to discuss appointments. Mr. Rosenfeld does not recall Mr. O'Brien saying at that meeting that the Minister had selected a candidate.
- [31] Mr. O'Brien's recollection of the March 9 meeting (although he could not recall the actual date) was that he merely was inquiring again as to the status of Candidate A's application to ensure that the appropriate procedures were being followed, namely that the candidate had been vetted by the PAS and that the Ministry would provide advice to the Minister in due course. Mr. O'Brien did not recall ever saying, at any time, that the Minister had selected Candidate A. He maintained that he never would have suggested that the Minister had selected Candidate A without first reviewing a package setting out the Ministry's advice about the appropriateness of Candidate A. He asserted that while the Minister was likely aware that Candidate A had applied, the Minister never indicated to him that Candidate A should be appointed nor did the Minister consult with him about that particular appointment.
- [32] Similarly, in the material provided by the Minister, he also denied that he had ever selected Candidate A to be appointed to the board of RECO.
- [33] Nevertheless it was the information of Mr. Denton that at the March 9 meeting his staff formed the impression that the Minister had selected a person to be appointed to the board of RECO. Mr. Denton was not at the meeting and could not recall who had communicated this information to his staff or who had relayed it to him or in what form it may have come to him. The only written record of the meeting which my Office received is a follow-up note sent by the policy and issues coordinator in Mr. Denton's office to

other public servants in his office. With respect to the RECO appointment the note is cryptic and indicates that an individual had been selected to fill the vacancy.

- [34] On March 29, 2016, Stephanie Constantino, a public servant in Mr. Denton's office provided Aliona Munteanu, a program consultant at the PAS, with Candidate A's appointment package. Ms. Munteanu confirmed that the package sent to her, containing an application form, conflict of interest form and the police check, was complete. Ms. Munteanu requested that Ms. Constantino send a draft appointment letter to the PAS once the Ministry's internal approval process was finalized.
- [35] The Ministry subsequently prepared an appointment package for Candidate A on which Mr. Denton signed off after ensuring that all the required information was present. The PAS never received a copy of the requested draft appointment letter.
- [36] On April 8, 2016, at 9:10 a.m., Mr. Denton sent his staff an email expressing concern that the proposed appointee was affiliated with the real estate sector and the board of RECO already had sufficient members who represented the interests of that sector.<sup>6</sup> The email indicated that Mr. Denton intended to raise these concerns with the Deputy Minister and he would be asking his staff to pull together historical advice that the Ministry had provided to the Minister about appointments.
- [37] Mr. Denton confirmed that the reason he wrote the email was that he was concerned the Minister had not been given clear advice by the Ministry about the composition of the board of RECO and the impact of the Minister appointing an individual affiliated with the real estate sector.<sup>7</sup> He stated that he had no concerns about the Minister providing the

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<sup>6</sup> RECO is governed by a 12-member Board of Directors. Nine members of the board are elected by Ontario's real estate profession and three members are appointed by the Minister.

<sup>7</sup> When asked why the same concerns were not raised in the briefing note dated December 18, 2015, Mr. Denton indicated that he was on vacation at that time and had not approved the Briefing Note. His staff advised that they had reviewed all of the applications and eliminated candidates who were clearly lacking appropriate work and/or board experience. As this review left a short list of candidates, staff decided to put forward all the names after the exercise.

name of a potential appointee because any individual proposed by the Minister would be vetted through the PAS process.

- [38] Mr. Denton indicated that he did not specify to his staff how the information he requested in the email of April 8 was to be provided to him. He anticipated receiving some background information to assist in preparing for his meeting with the deputy. Ministry staff prepared the Briefing Note as a means to provide Mr. Denton with information about the historical advice provided to the Minister.
- [39] On April 14, 2016 at 10:41a.m., a public servant in the Ministry inadvertently sent a copy of a draft Briefing Note, along with a chain of emails including the April 8, 2016 email from Mr. Denton, to a staff member in the Queen's Park office of Mr. McDonell. Mr. Denton advised that the intended recipient had a name similar to the name of the staff member in Mr. McDonell's office.
- [40] The public servant in the Ministry attempted to recall the email and sent two emails to Mr. McDonell's office at 12:42 p.m. and 12:46 p.m. on the same day indicating that the email was sent in error. The public servant also left a voicemail on the next day and sent a third email requesting that the original email be deleted. No response was received.
- [41] Mr. Denton indicated that at the time of the inadvertent release, he had been provided with a copy of the Briefing Note but had not reviewed it fully or approved it. Mr. Denton explained that the last page of the Briefing Note indicated he approved the note because the standard template used to create the note is pre-populated with the names of the individuals who would ultimately approve the Briefing Note. Mr. Denton did not meet with the Deputy Minister or the Minister to discuss his concerns prior to the release of the Briefing Note.
- [42] On Monday, April 19, 2016 and Wednesday, April 20, 2016, Mr. Denton had conversations with the Minister about the composition of the board of RECO and the

impact of the Minister appointing an individual affiliated with the real estate sector. Candidate A was never appointed.

[43] The vacancy on the RECO board remains unfilled.

### **Other appointments**

[44] In his Affidavit, Mr. McDonnell highlights the names of four individuals whom I will refer to as Candidates B, C, D and E. The Affidavit indicates that Candidates B, C and D were constituents of the Minister and that Candidate E was a recent candidate for the Ontario Liberal Party. The Affidavit suggests that this was the basis for their appointments.

[45] The Minister indicated that he had made 30 appointments or reappointments as Minister of Government and Consumer Services.

[46] The Minister confirmed that Candidates B, C and D were constituents and Candidate E was not.

[47] The PAS confirmed that Candidates B, C, D and E all applied through the PAS website and that the PAS supplied all four applications to the Ministry for consideration.

[48] Candidate B was never appointed, contrary to the information set out in the Affidavit, because the candidate withdrew from the appointment process.

[49] The Minister indicated that Candidate C was appointed upon the recommendation of the chair of the board and in consideration of the need for more representation from Northern Ontario.

[50] The Minister indicated that Candidate D was appointed because the candidate had experience about a relevant industry in Northern Ontario and the Minister was satisfied that the candidate could make a positive contribution.

[51] The Minister advised that Candidates B, C and D did not contribute to the Ontario Liberal Party either through the Minister's riding association or centrally. He also advised that candidates C and D donated to the Ontario Progressive Conservative Party in the past.

[52] The Minister confirmed that while candidate E was previously affiliated with the Ontario Liberal Party, the Minister did not have any interaction with the candidate in that capacity. The Minister indicated that Candidate E had an extensive background of leadership, advocacy and community involvement and the DAA required consumer representation.

## **VI. THE ISSUE**

[53] I considered whether the Minister contravened the conflict of interest provisions set out in section 2 of the Act because it was alleged he sought to appoint five individuals, who were either his constituents or affiliated with the Liberal Party of Ontario, to various organizations affiliated with the Ministry.

## **VII. OPINION**

[54] The Affidavit of Candidate A to the board of RECO followed an unusual path which ultimately led to the Briefing Note of the Assistant Deputy Minister Frank Denton, and following the Note's inadvertent disclosure, to the request for this opinion.

[55] Had Candidate A simply filed his application with the PAS as he was directed to do by Damien O'Brien, it is unlikely that Mr. Denton would have been prompted to initiate the process for producing the Briefing Note.

[56] Instead, the application was sent directly to Mr. O'Brien, who brought it to a regularly scheduled meeting with Ministry officials to discuss appointments. I was present and listened to the explanation provided by Mr. O'Brien during his interview with my staff. Mr. O'Brien is no longer employed by the government of Ontario so he did not have access to his notes or emails from when he was a member of the Minister's staff, but I

believe that he was attempting to be truthful in the information he provided. His explanation makes sense as to why he brought the application to Ministry officials and followed up as to its status. He was not attempting to advance this particular application without Ministry advice; he merely wanted to ensure that the application was being processed appropriately. I believe him when he confirmed that he was not acting under any instructions from the Minister to see that Candidate A was appointed without going through the PAS or without receiving the Ministry's advice.

[57] Unfortunately, the application Mr. O'Brien brought to the November meeting with Ministry officials seems to have gone astray. In fact, it would seem that no application from Candidate A was forwarded to the PAS until March 29, 2016, when it was sent by Mr. Denton's office for confirmation as to its completeness.

[58] Mr. Rosenfeld could not recall ever having received the application from Mr. O'Brien until immediately before the March 9, 2016 meeting, which was evident from the email sent to him. He did not disagree that it may have been left with him earlier.

[59] It is difficult to determine the source of Mr. Denton's belief that at the March 9 meeting, which he did not attend, his staff was given the impression that the Minister had selected a candidate. This flies in the face of the explanation of both Mr. O'Brien and the Minister. Mr. Rosenfeld does not recall Mr. O'Brien having said anything to that effect at the meeting. I think it would be something that would have registered with him, had it been said.

[60] There is a cryptic follow-up note to the meeting distributed among Mr. Denton's staff, which stated that a candidate for the board of RECO had been selected. This note may have contributed to what I find to have been a misunderstanding of what Mr. O'Brien had attempted to communicate at the meeting. I find that it was Mr. O'Brien's intent to ensure that the application, which had been sent to him incorrectly and which he had passed on to the Ministry, was being processed appropriately. Other persons in attendance at that meeting may not have been aware of that background. Without the benefit of that context, it might have appeared to others that the production of Candidate

A's application at the March 9 meeting was being put forward by the Minister. This led to the misunderstanding, prompting Mr. Denton to generate the Briefing Note. I find that the Briefing Note was based on incorrect information.

[61] The misunderstanding surrounding the March 9 meeting led to a series of events which culminated in the inadvertent disclosure of the Briefing Note that formed the basis of Mr. McDonnell's request for this opinion. I note that both the Minister's office and the Ministry were aware that there was confusion about the appointment process in general and had been attempting to clarify roles and processes.

[62] In assessing whether the Minister contravened the Act, I considered the role of the Minister in making the appointments referred to in the Affidavit. As the appointments in question could all be made "at pleasure," ultimately the Minister alone was responsible for deciding which individual would be appointed. While it is appropriate for a minister to receive advice from a professional, non-partisan public service when exercising his or her powers to appoint, it is not necessary for a minister to accept such advice. As the Minister pointed out in his submissions, there may be occasions when the views of the minister do not align with those of the public service. In my view, this type of disagreement can be healthy. However, in exercising his powers to appoint, the Minister must be mindful of his obligations under the Act and ensure that he is not furthering his own private interest or improperly furthering the interests of another person.

[63] I found no evidence that the Minister, in exercising his powers to appoint, advanced his private interest or improperly furthered the interests of any other person. Indeed some of the five individuals identified in the Affidavit were not the Minister's constituents and at least two had previously supported other political parties. Similarly the Minister's appointment of individuals residing in Northern Ontario is not necessarily indicative of a conflict of interest as one of the principles governing the appointment process is to ensure that persons selected to serve reflect the "true face of Ontario in terms of diversity and

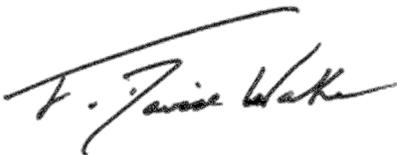
regional representation.”<sup>8</sup> Accordingly, it is my opinion that the Minister did not breach the Act as alleged by Mr. McDonell.

[64] Finally, I will comment briefly on the concerns raised by the Minister about the conduct of Mr. McDonell and his staff upon receiving the Briefing Note, which had been forwarded to them in error. The Minister indicated that while the Ministry made repeated attempts to contact Mr. McDonell’s Legislative Assistant by phone and email following the inadvertent disclosure of the Briefing Note, no response was provided. Furthermore, the Minister was concerned that Mr. McDonell did not consider the privacy interests of the five individuals mentioned in the Briefing Note. While the Minister raises some legitimate concerns about the privacy interests of the five individuals, it would be inappropriate, in terms of process, for me to comment further on the conduct of Mr. McDonell, as the focus of this inquiry is on the conduct of the Minister. However, as set out in the preamble of the Act, all members have an obligation to maintain the Assembly’s dignity and justify the respect in which society holds the Assembly. Respecting the privacy interests of the public promotes the dignity of the Assembly and as such I remind all members to be conscientious about those interests when making requests for inquiries into the conduct of another member.

## VIII. CONCLUSION

It is my opinion that the Minister did not breach the Act.

DATED at Toronto this 21st day of October, 2016.



The Honourable J. David Wake  
Integrity Commissioner

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<sup>8</sup> See: <https://www.pas.gov.on.ca/scripts/en/generalInfo.asp?#4>