



COMMISSION ON CONFLICT OF INTEREST

REPORT

of

THE HONOURABLE GREGORY T. EVANS
COMMISSIONER

RE: THE HONOURABLE FRANCES LANKIN
CHAIR OF MANAGEMENT BOARD OF CABINET
AND
MINISTER OF HEALTH

TORONTO, ONTARIO
MAY 2, 1991

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RE: THE HONOURABLE FRANCES LANKIN
CHAIR OF MANAGEMENT BOARD OF CABINET
AND
MINISTER OF HEALTH

INTRODUCTION

On October 1, 1990, Ms. Lankin was appointed Chair of Management Board of Cabinet and Minister of Government Services. On April 22, 1991, she was replaced as Minister of Government Services and appointed Minister of Health.

Section 15(1) of the *Members' Conflict of Interest Act, 1988* (hereinafter referred to as the "Act") states:

"A member who has reasonable and probable grounds to believe that another member is in contravention of this Act may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the Commissioner give an opinion respecting the compliance of the other member with the provisions of this Act."

On April 19, 1991, I received a letter from Robert W. Runciman, M.P.P. for Leeds-Grenville, requesting my opinion whether The Honourable Frances Lankin, Chair of Management Board of Cabinet, was in a conflict of interest position because she had been selected to negotiate on behalf of the government with the Ontario Public Service Employees Union (hereinafter referred to as "OPSEU") by which she was employed as a negotiator in labour relations prior to her election as a member of the Legislature on September 7, 1991. A copy of this letter is attached as Appendix "A".

I have elected to conduct an informal inquiry under s.16 rather than to exercise the powers of a commission under Parts I and II of the *Public Inquiries Act*.

As required under s.16(1) of the Act, Ms. Lankin was served with Notice, attached as Appendix "B", together with a copy of Mr. Runciman's letter.

On April 26, 1991 at 3:30 p.m., Ms. Lankin was interviewed by me with my Executive Assistant, Lynn Harris, also in attendance.

On April 29th, I wrote to Mr. Runciman inquiring whether he had anything further to add to the information provided in his letter. No further information was provided by Mr. Runciman.

FINDINGS OF FACT

Ms. Lankin advised that her employment history since 1980 was as follows:

1980 to 1984 - employed by OPSEU as an Equal Opportunity Co-Ordinator. This position involved policy development in the areas of pay equity, employment equity, and harassment.

1984 to 1986 - employed by OPSEU as an Economic Researcher

1986 to 1987 - leave of absence from OPSEU to work as a Member Representative of Workers at the Workers' Compensation Appeals Tribunal

1988 to 1990 - employed by OPSEU as a negotiator

On February 11, 1991, in conformity with the Premier's Guidelines, Ms. Lankin withdrew her pension contributions and invested them in non-self-administered registered retirement savings plans.

Ms. Lankin notes that the Memorandum, dated March 28, 1991, and attached to Mr. Runciman's letter is a Briefing Note for the Chair of the Cabinet Committee on Economic and Labour Policy with respect to consultations

between the Minister of Government Services and OPSEU on reform of the Crown Employees Collective Bargaining Act (hereinafter referred to as "CECBA"), and points out that negotiations are conducted under the auspices of the Human Resources Secretariat, Management Board of Cabinet.

Carriage of CECBA legislation through the Legislative Assembly is usually with the Ministry of Labour. The Cabinet requested Ms. Lankin as Chair of Management Board to undertake consultations with OPSEU and other bargaining agents representing Crown employees, including GO Transit, Ontario Liquor Board, CUPE, Workers' Compensation Board and others.

Ms. Lankin proposes that the Human Resources Secretariat would consult with other ministries and employer groups to produce a report for the Minister of Labour.

ISSUE

The question for my opinion may be simply put as follows -- does the involvement of Frances Lankin, Chair of Management Board of Cabinet and Minister of Health, in negotiations with OPSEU on behalf of the Government of Ontario, create a conflict of interest in view of her past employment as a negotiator on behalf of OPSEU.

OPINION

Section 2 of the Act defines a conflict of interest as follows:

"For the purposes of this Act, a member has a conflict of interest when the member makes a decision or participates in making a decision in the execution of his or her office and at the same time knows that in the making of the decision there is the opportunity to further his or her private interest."

Section 1 defines a "private interest" as follows:

- "private interest" does not include an interest in a decision,*
- (a) that is of general public application,*
 - (b) that affects a member as one of a broad class of electors, or*
 - (c) that concerns the remuneration and benefits of a member or an officer or employee of the Legislative Assembly;"*

The question which immediately arises is how does the Minister further her private interest by making a decision or participating in making a decision with respect to OPSEU? Whatever impact her negotiating skills may have in amending legislation or concluding labour contracts can have no personal benefit and if any such benefit should result, it would be a benefit of general public application and thus exempt under s.1(a).

In my opinion, there is no actual conflict of interest. The Act does not concern itself with a perceived conflict of interest as opposed to an actual conflict. Many professional organizations such as Law Societies and Chartered Accountant Associations have developed Canons of Ethics which spell out the manner in which previous business relationships prohibit a relationship with another client who may have an adverse interest. These regulations of self-interest are enacted to hopefully improve, or at least maintain, the public image of lawyers and accountants. They are concerned with the perception held by the public of their professions.

I believe that the present legislation wisely restricted 'conflict of interest' to a real or actual conflict. A 'perceived conflict' is that which an individual believes on the information available to him or her.

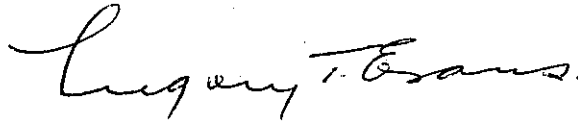
'Perception' of a conflict of interest is an individual, subjective appreciation of a situation or set of circumstances which may not in fact be true. It is an intuitive recognition which is subject to distortion by false rumours, media manipulation or public relations hyperbole.

What standard is to be applied? The frequently suggested standard is that a legislator should not engage in conduct which would appear to be improper

to a reasonable, non-partisan, fully informed person. The problem with such an 'appearance standard' is that there are few, if any, 'reasonable, non-partisan, fully informed persons', and I doubt many would accept such a definition as a proper criteria for measuring the behaviour of legislators.

I am not satisfied on the evidence presented and my interpretation of the Act that the involvement of Ms. Lankin in negotiating with OPSEU and other unions is a violation of the provisions of the Act.

DATED at the City of Toronto in the Province of Ontario, this 2nd day of May, 1991.



The Honourable Gregory T. Evans
Commissioner

APPENDICES

APPENDIX "A"

Letter dated April 15, 1991 from Mr. Robert W. Runciman,
M.P.P. to the Hon. Gregory Evans, Q.C.

APPENDIX "B"

Notice under s.16 of the Members' Conflict of Interest Act, 1988



Ontario

LEGISLATIVE ASSEMBLY

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ROBERT W. RUNCIMAN, M.P.P.
LEEDS-GRENVILLE

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32 Wall St.
Brockville, Ontario
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April 15, 1991

APR 19 1991

Hon. Gregory Evans, Q.C.
Commissioner
Commission on Conflict of Interest
4th Floor
101 Bloor Street West
Toronto, Ontario
M5S 2Z7

Dear Commissioner Evans:

Enclosed is a copy of a Cabinet memo I made public today which indicates the Chair of Management Board, Hon. Frances Lankin, has been selected to negotiate on behalf of the government with the Ontario Public Service Employees Union.

Specifically, under 'BACKGROUND', the second paragraph shows that Cabinet agreed that the Chair of Management Board would undertake consultations with OPSEU despite the fact that this responsibility is with the Minister of Labour. My concern is this; should a former contract negotiator for OPSEU, Ms. Lankin, be negotiating on behalf of Ontario taxpayers? I believe this represents a conflict of interest. It would appear that Ms. Lankin should not be representing the concerns of government at the negotiating table given her recent negotiating experience on behalf of OPSEU with the government.

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The second page of the memo shows that Cabinet is considering negotiating the issue of 'the right to strike' with OPSEU. While this is certainly a prerogative of Cabinet, I perceive this to be a blatant conflict of interest for the union's former contract negotiator, Ms. Lankin, to be representing the interests of taxpayers on an issue which she represented so strongly on behalf of the union.

I welcome your opinions on this matter and I look forward to your reply.

I remain,

Yours sincerely,

A handwritten signature in black ink, appearing to read "Robert Runciman". The signature is written in a cursive style with a large, sweeping initial "R".

Robert W. Runciman, M.P.P.
Leeds-Grenville

Briefing Note for the Chair

Cabinet Committee on Economic and Labour Policy
March 28 1991

HUMAN RESOURCES SECRETARIAT/MINISTRY OF LABOUR CONSULTATIONS ON THE REFORM OF THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT (CECBA)

ISSUE:

- The Minister of Government Services is seeking approval from Cabinet to begin consultations with the Ontario Public Service Employees Union (OPSEU) on reform of the CECBA.

BACKGROUND:

- CECBA is the Act which provides the collective bargaining framework for negotiations between the Government (as employer) and bargaining agents representing crown employees.



Although CECBA is the responsibility of the Minister of Labour, it was agreed¹¹ by Cabinet that the Chair of Management Board would undertake consultations with OPSEU and make the results of those consultations available to the Minister of Labour. This submission seeks approval for the parameters of those consultations.

- Both the employer and the union are dissatisfied with the Act. Its scope is restrictive, and vastly out of sync with the Ontario Labour Relations Act (OLRA) which governs collective bargaining in the private sector.
- Cabinet recently agreed that the Human Resources Secretariat, in consultation with the Ministry of Labour, would undertake discussions with the union, and convey the results of these discussions to the Minister of Labour. The Minister of Labour will take into account the results of these consultations, as well as consultations with ministries and external parties, and return to Cabinet with proposed legislative change in the Spring of 1992.

MAJOR ISSUES FOR DISCUSSION RELATING TO CECBA REFORM

SCOPE OF CECBA

- While not identified as a distinct issue, a common thread running through all the options for consultation is the extent to which these issues should be legislated and the extent to which they should be open for negotiation.

RIGHT TO STRIKE



A decision to grant public servants the right to strike would have implications and require policy decisions on such matters as the provision of essential and emergency services, exclusions from the bargaining unit, the organization of collective bargaining, the settlement of grievances and pension reform.

CABINET OFFICE COMMENTS

- **Although the cabinet submission discusses a variety of options in each area of discussion, Cabinet is not being asked to adopt any options. The options are provided solely to alert Cabinet to some of the implications of opening up discussions with the union on CECBA reform. Approval is being sought only to open up discussions with the union on identified areas.**
- **The Crown Employees Collective Bargaining Act (CECBA) is outdated and overdue for reform. In its present state, it is far more restrictive than its private sector counterpart (OLRA) which is scheduled for reform this Spring; it exacerbates relations between the Government and its employees; it results in costly litigation; and it possibly undermines community-based service delivery.**
- **In view of the government's desire to work towards a "social contract" with organized labour, it is advisable to get as much on the table as possible.**
- **Although the discussions with OPSEU are called "consultations" it should be recognized that whenever an employer undertakes discussions with representatives of its organized employees with regard to matters affecting the collective agreement, these discussions are, in effect, informal negotiations. Agreements which result from these discussions, however informal, could limit flexibility for the Minister of Labour at a later date in reform of the Act.**

Margot Trevelyan
Cabinet Office
March 28 1991

COMMISSION ON CONFLICT OF INTEREST

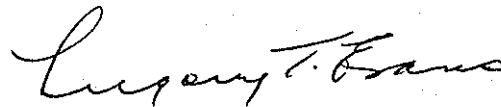
NOTICE
(Pursuant to s.16)

TO: THE HONOURABLE FRANCES LANKIN

Having received a request under s.15 of the Members' Conflict of Interest Act, 1988, for an opinion respecting your compliance with the provisions of the Act, in accordance with s.16, I hereby formally notify you of my intention to conduct an inquiry into this matter.

The documents filed with the Commission are attached hereto.

DATED at Toronto, Ontario, this 22nd day of April, 1991.



The Honourable Gregory T. Evans,
Commissioner.