
The Independence of Parliament and its Officials

by Hon. Chris Stockwell, MPP

In October 1998 the Government of Ontario introduced Bill 69 to enact the Lobbyists Registration Act 1998 and to amend the Members' Integrity Act, 1994. Among other things the Bill, as originally drafted stated that "The commissioner may agree to undertake such other activities as the Management Board of Cabinet may request." In testimony before the Standing Committee of the Legislative Assembly, the Speaker of the Ontario Legislative Assembly argued that Officials named by the Assembly and responsible to the Assembly must not only be independent of the Cabinet but must be perceived to be independent. He suggested this clause violated that principle. When the Committee considered the Bill again on November 25, 1998, the bill was amended to address the issue raised by the Speaker and adopted by the House. It received Royal Assent on December 18, 1998. The following article is based on his remarks to the Standing Committee of the Legislative Assembly on November 4, 1998.

Let me say at the outset my reason for appearing before the committee has nothing to do with the basic principles of the bill. I would decline to comment on the bill because of the nature of my position. I am here to discuss only one section of the bill, that is, section 1 and its potential impact on the Integrity Commissioner, who is very clearly an officer of the Legislative Assembly.

The Integrity Commissioner is appointed on an address of the Assembly. The appointment of the Integrity Commissioner has to date been made by agreement from all sides of the House. I think that is important. If we are going to have somebody as our Integrity Commissioner, it is very important that he or she receive support from all sides of the House.



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To understand fully the non-political intent of this piece of legislation, one has only to review the debate of the conflict-of-interest legislation that was passed in 1988 and when it became the *Members' Integrity Act* in 1994. It was an apolitical debate. Discussion was basically on, how better can we frame this bill for all members on all sides of the House?

Section 1 of Bill 69 allows the Integrity Commissioner to undertake any activities assigned to him by Management Board of Cabinet. This, in my opinion, is very dangerous. In my view, this compromises the non-partisan nature of the position and indeed the trust of the commissioner. By reading this part of the legislation, I think you could argue that the bill has the potential to put the Integrity Commissioner, ultimately the person who measures the integrity of the members, in a conflict of interest, which is ironic at best and dangerous at worst.

Section 1 of the bill would mean that the Integrity Commissioner not only would take direction from the House but would himself also become an employee of the government. Let us think about that. Imagine that the Leader of the Opposition or the leader of the third party is having an interview with the Integrity Commissioner one day at 2 o'clock. They are working through the most private and personal financial dealings and concerns of him, his wife and his children. In the middle of that meeting, the Integrity Commissioner gets a phone call. It is the Chair of Management Board, and he says: "Mr Integrity Commissioner, I need you here right now. There's an emergency." Of course it is completely hypothetical, but the Integrity Commissioner may get up and say, "I will be back in 20 minutes." The Chair of Management Board may say, "I need you to investigate X, Y and Z," and on the way out he may say, "I also want to tell you we have given you a raise." Now you have the Integrity Commissioner, who has the most private and personal information of all members on all sides of the House, put in a situation of responding, reacting and reporting to a partisan member of the executive council who reports to the Premier of the province of Ontario. To me, that reeks of conflict of interest.

Any member of the House, regardless of position should have the right to refuse to disclose private financial information to an employee of the government. I think that is a fundamental principle and right of society. I believe personally that if an employee of the government came to me and demanded personal, private information about me and my spouse and my children, I should have the right to refuse. Under this piece of legislation, I do not. I must provide that information if I am to take my seat in the Legislature, cognizant that the person taking the information is an employee of the government, paid by the government, directed by the govern-

ment. "Inherent conflict" is an understatement, in my opinion.

We could have the Chair of Management Board direct the Integrity Commissioner to carry out an investigation of who knows whom, who knows when, of who knows what, and they never, ever have to make that report public or bring it before the House. I think that is dangerous. Privileged and confidential information about one and all is in that man's head. He may now be directed by a partisan, political person - and there's nothing wrong with being a partisan, political person - to do investigations at will, with no guarantee that those investigations will ever see the public light of day.

I submit to the committee that this will put the commissioner in an untenable position, particularly if he receives conflicting direction. What if the House tells him to do one thing and the Chair of Management Board tells him to do another? Who is his master? They both pay his bills. They both have legislation that says he must do as they say. Who does the Integrity Commissioner respond to and who does the Integrity Commissioner seek out in a case of a conflict of interest?

I ask you to imagine the unease you might feel if the role of the Provincial Auditor were changed in a way that he were to receive an assignment from and report directly to the government of the day? How would this committee feel about that, let alone the government members? We all know that government members may one day be opposition members and vice versa. How would we feel if a piece of legislation drafted by the government, read into the House and brought out to committee and adopted by the Legislature said that the Provincial Auditor will now take direction and be paid a portion of funds by the government? Who would not agree that his impartiality is compromised? I think you would have to be very troubled as an individual not to agree that certainly impartiality is being compromised.

The potential intrusion on this legislative officer's independence should be a concern to every member, and I urge the committee to consider its implications carefully.

There is a reason commissioners report to the Legislative Assembly. There is a reason they have no affiliation to party nor government, because they represent all of us collectively as an Assembly. There is no first among equals in this Assembly. We are all sent here by the good people of Ontario, and we must maintain with certainty that each officer who reports to this Assembly is only be-

holden to the assembly, the collective will of the legislators themselves.

This is my effort to ensure the sanctity of the Legislative Assembly and their commissioners.

I can see a remedy for this situation. I would recommend that the remedy be an amendment to section 1 which would cause the Integrity Commissioner to receive direction from the House on the activities that Management Board Secretariat has in mind. In my opinion, this would eliminate any conflict the commissioner would continue to have, because he would still be directed by a single body. In addition, this would ensure that the process for both conflict-of-interest investigations involving public servants and for lobbyist registration are at arm's length.

Let me say clearly that I think there is a problem here for the government. The government sets up this specific board as arm's-length. This person is arm's-length, this board is arm's-length, this committee is arm's-length, because we as a government do not want to be seen to be influencing this process. But how could you not be influencing a process when you direct and pay the person who administers the process? This is a claim that may be difficult to make in a process where the government gives direction and receives reports from a person who is supposed to be arm's-length.

In closing, this is not partisan at all. It is my effort to say to you members today that it is important that we carry out the business of this Legislature, but more important, that we continue to strive for impartial Legislative Assembly staff. We have impartial Legislative Assembly staff in the Clerk's department and throughout this building. We are taking a huge and dangerous step in compromising one of the most important commissioners of this Legislature if we adopt this bill.