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Backgrounder on the Conflict of Interest Rule in Ontario's Lobbying Law

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A. Summary

Ontario Integrity Commissioner J. David Wake issued a guidance document on the rule added in July 2016 to the *LR Act* (section 3.4) that prohibits lobbying any politician or other public office holder if it will create a real or potential conflict of interest. Commissioner Wake waited almost two years to issue the 2018 *Guidance for Lobbyists on Political Activity* document, which was negligent enough, but then even worse the *Guidance* document was very vague, especially concerning the key issue of the time period lobbyists must stop lobbying after assisting an election candidate or politician.

Then in June 2020, Commissioner Wake issued an equally negligently bad *Interpretation Bulletin*. The *Bulletin* says that when a lobbyist assists a politician with fundraising or campaigning or gives them a gift, the conflict of interest created by the assistance or gift magically disappears after one year, so the lobbyist can lobby the politician and their staff after that year. This *Bulletin* essentially ignores all commissioner and court rulings across Canada that all say that the conflict of interest created by the lobbyist's assistance or gift lasts at least until the next election.

Commissioner Wake's *Bulletin* is ridiculous. Doug Ford and all his Cabinet ministers and their staff, and all Progressive Conservative MPPs, owe all of the people who helped them win power (or have fundraised for them) at least until the next election, and arguably for the rest of their political careers. No other commissioner in Canada has set such a short "cooling-off" time period for lobbyists – all have said the conflict of interest created by assisting a politician lasts for several years. See, for example, the federal Commissioner of Lobbying's ruling that the conflict of interest lasts at least four years.

Based on what the *LR Act* (section 3.4) and the *Members' Integrity Act* (sections 2, 3, 4 and 6(1)) say, and the unanimous Federal Court of Appeal ruling Democracy Watch won in 2009 (paras. 52-53), and a similar federal lobbying

rule, and past rulings concerning what are improper actions are by politicians, Democracy Watch's position is that the conflict of interest created by playing a senior role in a politician's or party's election campaign or serving as an advisor afterwards does not magically disappear after one year – it lasts at least four years after the lobbyist has helped the politician or party, past the next election if the politician remains in power.

Democracy Watch's position is that any lobbyist organizing, helping to organize, or selling tickets to a fundraising event or fundraising initiative involving a politician violates section 3.4 of the *Lobbyists Registration Act* ("*LR Act*"), which can be viewed at:
https://www.ontario.ca/laws/statute/98l27#BK9
because it puts the politician (in this case Premier Ford) into either a real or potential conflict of interest as defined by subsection 3.4(3) of the *LR Act*, depending on what the lobbyist is lobbying for at the time of the event or initiative or may lobby for in the future.

The real or potential conflict of interest, as defined by subsection 3.4(3) of the *LR Act*, which cites the standards set out to sections 2, 3 or 4 or subsection 6 (1) of the *Members' Integrity Act* ("*MI Act*")
https://www.ontario.ca/laws/statute/94m38#BK3
is created when the lobbyist providing the fundraising assistance is lobbying for a decision that applies specifically (i.e. not a decision that applies generally). The fundraising assistance creates a sense of obligation on the part of the politician that makes it improper for the politician (or their staff) to participate in making the decision because the decision furthers the private interest of the lobbyist (either as an in-house lobbyist representing the interest of any type of organization (for profit or non-profit), or as a consultant lobbyist representing a client's interest).

Given that section 3.4 prohibits putting a politician in even a potential conflict of interest, the lobbyist violates section 3.4 even if the politician does not actually participate in making the decision for which the lobbyist is registered to lobby at the time the fundraising assistance is provided.

If the politician is the Premier, Democracy Watch's position is that the conflict of interest lasts even longer because it is a very significant favour to help someone become Premier with all the power, pay and perks that position entails.

Democracy Watch's position is also that assisting a party leader with their election campaign, or providing ongoing assistance after the election, creates a conflict of interest that applies to the entire Cabinet, as the Premier chooses each Cabinet minister and they all serve at the pleasure of the Premier, so they all share the Premier's conflict of interest.

As a result, Democracy Watch's position is that anyone who worked on Doug Ford's leadership campaign (which ended just before the 2018 election campaign began), or the PC Party's 2018 election campaign, or is serving in a senior position or advising the Premier or the PC Party now, is prohibited by the rule in

the *LR Act* from lobbying the Premier and any of his Cabinet ministers at least until the next election, and likely for the rest of their political career.

B. Details concerning Democracy Watch's position

Democracy Watch's position is that the legal lines that section 3.4 of the *LR Act* and related sections in the *MI Act* draw clearly prohibit a lobbyist from doing anything that creates a sense of obligation that makes it improper for a politician or other public office holder to even potentially take part in or influence a decision that could affect the interests of the lobbyist or his/her client.

Section 3.4 of the *LR Act* states:

> "Lobbyists placing public office holders in conflict of interest
> Consultant lobbyists
> 3.4 (1) No consultant lobbyist shall, in the course of lobbying a public office holder, knowingly place the public office holder in a position of real or potential conflict of interest as described in subsections (3) and (4). 2014, c. 13, Sched. 8, s. 5.
>
> In-house lobbyists
> (2) No in-house lobbyist (within the meaning of subsection 5(7) or 6(5)) shall, in the course of lobbying a public office holder, knowingly place the public office holder in a position of real or potential conflict of interest as described in subsections (3) and (4). 2014, c. 13, Sched. 8, s. 5.
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> Definition — conflict of interest, member of the Assembly
> (3) A public office holder who is a member of the Legislative Assembly is in a position of conflict of interest if he or she engages in an activity that is prohibited by section 2, 3 or 4 or subsection 6(1) of the Members' Integrity Act, 1994. 2014, c. 13, Sched. 8, s. 5.
>
> Definition — conflict of interest, other persons
> (4) A public office holder who is not a member of the Legislative Assembly is in a position of conflict of interest if he or she engages in an activity that would be prohibited by section 2, 3 or 4 or subsection 6(1) of the Members' Integrity Act, 1994 if he or she were a member of the Legislative Assembly. 2014, c. 13, Sched. 8, s. 5."

Sections 2, 3 and 4 of the *MI Act* state:

> "Conflict of interest
> 2. 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. 1994, c. 38, s. 2.

Insider information
3. (1) A member of the Assembly shall not use information that is obtained in his or her capacity as a member and that is not available to the general public to further or seek to further the member's private interest or improperly to further or seek to further another person's private interest. 1994, c. 38, s. 3 (1).

Same
(2) A member shall not communicate information described in subsection (1) to another person if the member knows or reasonably should know that the information may be used for a purpose described in that subsection. 1994, c. 38, s. 3 (2).

Influence
4. A member of the Assembly shall not use his or her office to seek to influence a decision made or to be made by another person so as to further the member's private interest or improperly to further another person's private interest. 1994, c. 38, s. 4."

Section 3.4 of the *LR Act* is a complicated section because it refers internally (to subsections 3.4(3) and 3.4(4)) and also externally to four sections in the *MI Act*: https://www.ontario.ca/laws/statute/94m38#BK3
of which sections 2, 3 and 4 are all qualified by the definition of "private interest" in section 1 of that Act:
https://www.ontario.ca/laws/statute/94m38#BK1

This section 1 definition of "private interest" seems to create a huge loophole that allows all MPPs, including Ford and all Cabinet ministers, to make decisions that apply generally (for example, changing any law as essentially all laws apply generally) even if they are in a conflict of interest.

However, despite this loophole, if a lobbyist is lobbying for a specific change that would help his/her client or a small group of clients, or will lobby for such a change in the future, then section 3.4 of the *LR Act* prohibits the lobbyist from selling fundraising tickets or fundraising or campaigning in other ways for any politician they are lobbying or will lobby in the future because the assistance they provide to the politician creates a real or potential conflict of interest for the politician.

For years after the assistance is provided, if the politician then participates in a decision-making process (section 2 of the *MI Act)*, tries to influence (section 4) a decision-making process, or shares inside information with someone involved in a decision-making process of the legislature or government that concerns a specific change the lobbyist is seeking (section 3), Democracy Watch's opinion is that the politician would then violate those sections because the politician would be "improperly furthering another person's private interest." (which is prohibited in sections 2,3 and 4). Participating in or influencing the decision would be improper because the politician had been assisted by the lobbyist.

In addition, the lobbyist's assistance with the fundraising for a politician is a violation of section 3.4 of the *LR Act* even if the politician never participates in or tries to influence a decision-making process, or shares inside information with others involved in a decision-making process. This violation occurs because the fundraising creates a potential conflict of interest for the politician, and creating a potential conflict of interest is expressly prohibited by subsection 3.4(3) of the *LR Act*.

Democracy Watch's position is that, taken together, these sections mean that a registered lobbyist violates section 3.4 of the *LR Act* when the lobbyist does anything for an Ontario provincial politician or other public office holder (as defined in section 1 of the *LR Act*) that creates even the potential that the politician or other public office holder will have a sense of obligation to the lobbyist while participating in or influencing a decision (including by sharing inside information) that would further the private interest of any client or future client of the lobbyist (or, in the case of an in-house lobbyist, the private interest of the organization the lobbyist represents).

If the lobbyist is registered to lobby the politician, the lobbyist admits that the politician has the potential to participate in or influence a decision that would affect the private interest of the client of the lobbyist (or, in the case of an in-house lobbyist, the private interest of the organization the lobbyist represents).

If the lobbyist tries to excuse the sense of obligation that the lobbyist has created for the politician by claiming that the lobbyist did not actually lobby the politician, then the lobbyist admits that s/he has violated subsection 18(4) of the *LR Act* by making a false or misleading statement in their registration return.

C. Canadian legal precedents support Democracy Watch's position

(i) Democracy Watch's position is well established in Canadian law

Democracy Watch's position concerning the legal lines that section 3.4 of the *LR Act* and related sections draw is well established in Canadian law.

The Federal Court of Appeal unanimously ruled on March 12, 2009 in the case *Democracy Watch v. Barry Campbell, the Attorney General of Canada and the Office of the Registrar of Lobbyists* [2010] 2 F.C.R. 139, 2009 FCA 79:

> "Where the lobbyist's effectiveness depends upon the decision maker's personal sense of obligation to the lobbyist, or on some other private interest created or facilitated by the lobbyist, the line between legitimate lobbying and illegitimate lobbying has been crossed. The conduct proscribed by Rule 8 is the cultivation of such a sense of personal obligation, or the creation of such private interests." (para. 53)

That case concerned a federal consultant lobbyist, Barry Campbell, who organized a fundraising event for the riding association of a minister whom he was registered to lobby, and was actively lobbying, around the same time as the event. The Federal Court of Appeal ruling made it clear that lobbying and fundraising around the same time violates Rule 8 (now Rule 6) of the federal *Lobbyists' Code of Conduct*. Rule 8 stated:

> "8. Improper influence
> Lobbyists shall not place public office holders in a conflict of interest by proposing or undertaking any action that would constitute an improper influence on a public office holder."

While the wording is obviously different in section 3.4 of the *LR Act*, the common elements are an action that causes an "improper" relationship between the lobbyist and public office holder and that creates a "conflict interest" for the office holder that makes it "improper" for the office holder to take part in a decision (actually or potentially) that affects the private interests of the lobbyist (as an in-house lobbyist) or of the clients of consultant lobbyist.

As the Federal Court of Appeal unanimously ruled in the 2009 *Democracy Watch* case (at para. 52):

> "Improper influence has to be assessed in the context of conflict of interest, where the issue is divided loyalties. Since a public office holder has, by definition, a public duty, one can only place a public office holder in a conflict of interest by creating a competing private interest. That private interest, which claims or could claim the public office holder's loyalty, is the improper influence to which the Rule [8] refers."

It is true that the event that was at issue in the 2009 Federal Court of Appeal's ruling was a fundraising event for a Cabinet minister's riding association, not for the Premier's party. However, it would be unreasonable and legally incorrect to distinguish a fundraising event for the political party from a riding association event given that money raised for political party can as directly assist the Premier as money raised for a riding association. Parties and their riding associations often transfer funds between each other; the events and promotional activities that each party undertakes in between elections assists with the profile of each minister and candidate; some of the funds raised by the party pays for some of the Premier's expenses, and; the national election campaign run by each party assists every candidate with their re-election campaign.

Subsequent to the Federal Court of Appeal's 2009 ruling in the Democracy Watch case, the federal Commissioner of Lobbying ruled in the cases of lobbyist Will Stewart
https://lobbycanada.gc.ca/eic/site/012.nsf/eng/h_00265.html
and lobbyist Michael McSweeney
https://lobbycanada.gc.ca/eic/site/012.nsf/eng/h_00292.html

that their lobbying of a Cabinet minister while helping to organize and sell tickets for a fundraising event for the minister's riding created a sense of obligation that amounted to improper influence.

Federal Conflict of Interest and Ethics Commissioner Mary Dawson subsequently required the Cabinet minister involved, The Hon. Lisa Raitt, to recuse herself from any decisions concerning the association Mr. McSweeney represented, to avoid the conflict of interest his fundraising assistance to her riding association had created. You can see this decision of Ethics Commissioner Dawson on p. 25 and in Schedule B of her report on the fundraising at: http://ciec-ccie.parl.gc.ca/Documents/English/Public%20Reports/Examination%20Reports/The%20Raitt%20Report%20-%20Act.pdf

Rule 8 of the federal *Lobbyists' Code* was replaced on December 1, 2015 in part and by Rule 9 (and also Rule 6, and Rules 7, 8 and 10). New Rule 9 states:

> "Political activities
> 9. When a lobbyist undertakes political activities on behalf of a person which could reasonably be seen to create a sense of obligation, they may not lobby that person for a specified period if that person is or becomes a public office holder. If that person is an elected official, the lobbyist shall also not lobby staff in their office(s)."

You can see a guidance document concerning Rule 9 by the federal Commissioner of Lobbying at: https://lobbycanada.gc.ca/eic/site/012.nsf/eng/01479.html. In that document, the Commissioner lists "Organizing and political fundraising event" as a "higher risk" political activity that very likely will violate Rule 9.

Section 3.4 of Ontario's *LR Act* is much broader than old Rule 8 or new Rule 9 of the federal *Lobbyists' Code*, because the lobbyist violates it not only by doing anything for a politician that creates a conflict of interest (or a potential conflict of interest) involving the politician's private interest, but also doing anything that creates any sense of impropriety (or potential impropriety) by the politician taking part in or influencing decisions that affect any interest of the lobbyist or the lobbyist's clients or organization.

(ii) Improperly furthering another person's private interests is a very broad standard

As noted above, the parts of the rules set out in sections 2, 3 and 4 of the *MI Act* that prohibit a member from participating in a decision, influencing a decision or using or sharing inside information "improperly to further another person's private interests" set a very broad standard.

On page 8 of his February 8, 2002 ruling on the actions of then-Deputy Premier and Minister of Finance Jim Flaherty, then-Integrity Commissioner Coulter A. Osborne stated concerning the word "improperly":

> "that the qualification "improperly" is intended to convey a sense that the decision made (section 2) or influence exercised (section 4) was objectionable, unsuitable or otherwise wrong (see Black's Law Dictionary definition of "improper")."

You can see that ruling at:
https://www.oico.on.ca/docs/default-source/commissioner%27s-reports/re-flaherty-minister-of-finance-feb-8-2002.pdf?sfvrsn=8

As federal Conflict of Interest and Ethics Commissioner Mary Dawson stated in a June 2015 speech:

> "The concept of "improper" by its very nature allows more latitude and discretion in interpreting it."

That speech can be viewed at:
http://ciec-ccie.parl.gc.ca/Documents/English/About%20the%20Commissioner/Presentations/Speaking%20Notes%20Annual%20General%20Meeting%204%20juin%202015%20EN.pdf
with the above statement at the top of page 4.

As a result, in addition to the common law standard of the meaning of "improper" set out by the Federal Court of Appeal in its 2009 unanimous ruling in the Democracy Watch case (summarized above in subsection (a)(iii)), and the subsequent rulings by the federal Lobbying Commissioner and Ethics Commissioner that confirm that fundraising by lobbyists creates conflicts of interest for politicians, the other legal standards concerning propriety in the *MI Act* that apply to the Premier and other Ontario provincial politicians must be taken into account in determining whether a lobbyist fundraising for a politician's riding association or for the Premier's or minister's party creates a situation in which it would then be "improper" for the Premier or minister to further the lobbyist's interest by participating in or influencing a government decision or sharing inside information (or potentially doing so).

Subsection (3) of the Preamble to the *MI Act* is one of those standards, as it states:

> "Members are expected to perform their duties of office and arrange their private affairs in a manner that promotes public confidence in the integrity of each member, maintains the Assembly's dignity and justifies the respect in which society holds the Assembly and its members."

and subsection (4) is another standard as it states:

> "Members are expected to act with integrity and impartiality that will bear the closest scrutiny."

You suggest, by quoting them under the heading "Standards of Behaviour" on the webpage:
http://www.oico.on.ca/home/mpp-integrity/resources-for-new-mpps

that you consider the expectations set out in the Preamble to be as enforceable as all the other rules in the *Act*, as you state at the end of that section on that webpage that:

> "The Act contains further rules and statements of values that must be adhered to by all MPPs."

The rule set out in section 30 of the *Act* that allows you to rule on a violation of "Ontario parliamentary convention" by a member of the legislature, and that relates to the enforceability of the provisions in the Preamble of the *Act*, has been interpreted and applied in previous rulings. As you know, on pages 8 (paragraph 24) and 9 (paragraphs 25-26) of his December 12, 2002 ruling on the actions of Member Sandra Pupatello, then-Integrity Commissioner Coulter A. Osborne stated:

> "[24]… The Act clearly incorporates the standards imposed by parliamentary convention within its necessarily general terms…
>
> "[25] Parliamentary convention is not defined in the *Act*. A convention is a generally accepted rule or practice – established by usage or custom (see *Blacks Law Dictionary*). Parliamentary convention refers 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 out in the *Act*'s preamble (the reconciliation of private interests and public duties).
>
> "[26] I think it is accepted that there are limits on what members can do in their personal affairs and what they can do for friends, relatives, constituents etc. Some of those limits are established by parliamentary convention."

You can see that report at:
http://www.oico.on.ca/docs/default-source/commissioner's-reports/re-pupatello-purolator-courier-service-dec-12-2002-.pdf?sfvrsn=12

Democracy Watch's position is that "etc." in para. 26 above must include what members can do for lobbyists, especially lobbyists who have assisted members with fundraising or other campaign activities.

The only decision issued by the Integrity Commissioner concerning a fundraising event organized in part by stakeholders of a Minister is Integrity Commissioner Wake's August 2016 ruling concerning Cabinet ministers the Hon. Bob Chiarelli and the Hon. Charles Sousa, which can be seen at:
http://www.oico.on.ca/docs/default-source/commissioner's-reports/re-the-honourable-bob-chiarelli-and-the-honourable-charles-sousa-august-9-2016.pdf?sfvrsn=4

However, in that ruling Commissioner Wake only considered whether donations made at the event were a gift or personal benefit for the ministers who attended

the event, in violation of subsection 6(1) of the *MI Act*. You did not address at all in that ruling section 3.4 of the *LR Act* that applies to lobbyists assisting politicians they are lobbying.

Democracy Watch complaint concerning the fundraising activities of a lobbyist for a politician is focused on the prohibition in subsection 3.4 on the lobbyist fundraising for a politician or assisting them in another way, and the connected prohibitions in sections 2, 3 and 4 in the *MI Act* on the politician subsequently participating in or influencing a decision that helps the lobbyist or the lobbyist's client(s). This prohibition is not based on whether the politician has a private interest of their own in conflict with their public duties. It is based instead on whether the politician potentially could participate in or influence a decision, or influence the decision of another person, or share inside information, that would further the private interest of the lobbyist or any client of the lobbyist or the lobbyist's organization (for in-house lobbyists).

Again, the lobbyist assisting the politician in any way creates the potential conflict between the private interest of the lobbyist (his/her clients or organization) and the public interest that the politician is required to uphold, and makes it improper for the politician to participate in or influence a decision that could affect the lobbyist's private interest.

On page 13 of Commissioner Wake's ruling on the Chiarelli/Sousa situation, you cited the 1993 *Blencoe* ruling by former B.C. Conflict of Interest Commissioner Ted Hughes concerning donations and campaign assistance given by a Mr. Tait and Mr. Milne to election candidate Robin Blencoe, who subsequently became a Cabinet minister who, two years later, had some decision-making power concerning a proposal made by Mr. Tait and Mr. Milne's company. Commissioner Hughes' ruling can be seen at: https://coibc.ca/wp-content/uploads/2018/05/opinion_blencoe_1993.pdf.

In that ruling, similar to the conclusion federal Ethics Commissioner Dawson reached concerning the Lisa Raitt situation, Commissioner Hughes stated that:

> "I am of the view that Blencoe's private interest was advanced by virtue of the cumulative effect of both Milne's and Tait's financial and other support and particularly during the most recent provincial election campaign." (page 31)

As a result, Commissioner Hughes, as Commissioner Dawson did with Minister Raitt, concluded that Milne's and Tait's assistance caused a conflict of interest for Blencoe and, therefore, Minister Blencoe was prohibited from taking part in decisions affecting Milne's and Tait's interests (pages 34-39).

In other words, Commissioner Hughes found that if Minister Blencoe took part in decisions affecting Milne and Tait, he would be improperly furthering their interests (and, given that Minister Blencoe did take part in some decisions that affecting Milne and Tait, Commissioner Hughes found that Minister Blencoe did violate the B.C. conflict of interest law).

D. Lobbyist fundraising for a politician violates section 3.4 of the *LR Act* also by violating subsection 6(1) of the *MI Act*

Democracy Watch's opinion is also that the fundraising assistance a lobbyist for a politician or their political party violates subsection 6(1) of the *MI Act*. Subsection 6(1) states:

> "Gifts
> 6 (1) A member of the Assembly shall not accept a fee, gift or personal benefit that is connected directly or indirectly with the performance of his or her duties of office."

In Commissioner Wake's August 2016 ruling (Chiarelli-Sousa report), which again can be seen at:
http://www.oico.on.ca/docs/default-source/commissioner's-reports/re-the-honourable-bob-chiarelli-and-the-honourable-charles-sousa-august-9-2016.pdf?sfvrsn=4
the Commissioner ruled that making a donation to a political party does not constitute a gift or personal benefit that is prohibited by subsection 6(1) because donations are legal under the *Elections Finances Act* (R.S.O. 1990, c. E-7) and, while some of the money raised could flow back from the party to a minister, the connection between the donation and the minister receiving the money is not direct enough to be a personal benefit.

However, in the situation of a lobbyist fundraising, the lobbyist is not only making a donation, they are helping to fundraise for the politician.

Selling tickets, or assisting with fundraising in any way, is not expressly legal under the *Elections Finances Act* or any other provincial law. As a result, Commissioner Wake's interpretation and application of the provisions in the *LR Act* and *MI Act* cannot automatically excuse fundraising as a personal benefit.

As mentioned above in subsection (a)(iv), B.C. Commissioner Hughes ruled in the *Blencoe* case that fundraising assistance is a personal benefit for the politician. In fact, although Commissioner Waked ignore it in his ruling on the Chiarelli/Sousa situation by only quoting part of his statement, Commissioner Hughes ruled that donations alone can be a personal benefit that can cause a conflict of interest. As he stated on page 29 of his ruling:

> "Campaign contributions and assistance, whether financial or otherwise, can, in my opinion, in some circumstances, be a "private interest". I am conscious of the very real purpose and difference between these kinds of contributions and other kinds of pecuniary or non-pecuniary benefits that could pass to a Member. Indeed in our system of parliamentary democracy, campaign contributions and assistance are to be encouraged and fostered and must be seen in a positive light as an interest accruing not only to a political party but also to the public generally; it is thus an interest clothed with the public interest. Nevertheless, it would be wrong to

> deny that in some circumstances it is also an interest that accrues to individual candidates and is thus also a private interest. This is particularly the case where the financial contribution is specifically directed to the candidate even though it is payable to the party. It is also the case where the non-financial contribution or assistance is of particular benefit to the candidate. The non-financial contribution on behalf of a specific candidate (notwithstanding that it is also on behalf of the party that the candidate represents) can include an array of activities from distributing leaflets, knocking on doors, developing campaign strategies, public endorsements and fundraising."

Commissioner Hughes continues on page 30:

> "I want to emphasize that I do not intend that anything that I have said or will say hereafter to be interpreted as in any way discouraging or disapproving of campaign contributions or assistance. Indeed, I wish to express my complete support for those who choose to participate in the democratic process in this way. Political parties are essential to properly functioning parliamentary democracies. To be effective they require membership and resources. I start from the premise that those who contribute to political party viability through contributions of time or resources or both, to either the party or one of its candidates, should not be prejudiced in subsequent dealings with government as private citizens, regardless of whether the political party they support does or does not form the government of the day. Similarly, those who choose not to participate in the political process should not be, nor be seen to be, prejudiced in their dealings with government as a result of their non-participation in the political process. It is to be emphasized, however, that a Member who has received a campaign contribution, financial or otherwise, must not, at least in some circumstances, discussed in more detail below, thereafter put him or herself in a position to confer an advantage or a benefit on the person who made that contribution."

Subsequent rulings by former B.C. Conflict of Interest Commissioner Paul Fraser, and Alberta Ethics Commissioner Marguerite Trussler that Commissioner Wake cites on pages 11-12 of your ruling on the Chiarelli/Sousa situation found that donations alone from lobbyists to a political are not a gift or personal benefit.

However, again, a situation involving fundraising for a politician or his/her party is different from simply making a donation.

A politician's fundraising event for their own riding association or campaign, or for their party, is usually advertised with their name attached to the event and, as a result, anyone helping to organize the event and sell tickets for it provided a personal benefit to the politician. The politician would not have the opportunity to speak to attendees at the event unless someone organized the event for the politician and sold tickets to it. It would cost the politician personal time and energy to organize the event and sell tickets for it. As a result, the politician clearly personally benefits from not having to spend that time and energy.

A politician's fundraising appeal for their own riding association or campaign, or party, sent by mail or email or otherwise publicized, usually identifies the politician and, as a result, anyone helping with the fundraising appeal provided a personal benefit to the politician. The politician would not have the opportunity to reach out to the people who receive the fundraising appeal unless someone sends out the appeal for the politician. It would cost the politician personal time and energy to send out the appeal. As a result, the politician clearly personally benefits from not having to spend that time and energy.

If a lobbyist is registered to lobby the politician shortly before or at the time of the fundraising activity, or registers after the activity, the benefit they provide to politician by doing the fundraising is clearly connected, at least indirectly if not directly, with the performance of the politician's duties of office.

As well, it is very likely that part of politician's expenses for his/her activities for their party are paid for by the party. As a result, the politician likely personally benefits from funds donated to their party. As a result, even those who assist with fundraising only for the politician's party provide a personal benefit to the politician.