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émocratie en surveillance

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Integrity Commissioner J. David Wake
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December 4, 2018

**RE: Request for Premier Ford and Cabinet's appointment of Ron Taverner as
Commissioner of the Ontario Provincial Police (OPP)**

Dear Commissioner Wake:

I am writing requesting an investigation into the appointment of Ron Taverner as the Commissioner of the Ontario Provincial Police (OPP) by Premier Doug Ford and his Cabinet ministers, as this raises questions concerning whether Premier Ford violated the *Members Integrity Act* by participating in the decision.

You can see in this Government of Ontario news release:

<https://news.ontario.ca/mcscs/en/2018/11/ronald-taverner-named-new-commissioner-of-the-ontario-provincial-police.html>

that it says "Superintendent Taverner was appointed by Cabinet..."

In this news piece it is reported that Mr. Taverner is a close friend of Premier Ford:

<https://www.680news.com/video/2018/11/30/new-opp-commissioner-has-close-ties-to-premier-ford/>

and in this news piece it is reported that Mr. Taverner acknowledged he is a close friend of Premier Ford:

<https://toronto.citynews.ca/video/2018/12/03/ndp-leader-challenges-ford-over-opp-hiring/>

and their friend relationship is also noted in this news article:

<https://www.thespec.com/news-story/9061724-ndp-questions-appointment-of-premier-s-friend-to-head-opp/>

In this news article:

<https://www.theglobeandmail.com/canada/article-selection-of-ron-taverner-as-opp-chief-was-independent-minister/>

it is reported that the Cabinet has not disclosed the identities of the civil servants who were on the selection committee that, along with an executive search firm, recommended Mr. Taverner's appointment, according to Minister of Community Safety Sylvia Jones.

This situation raises the following factual questions:

1. Did Premier Ford take part in choosing the executive search firm or directing its decisions in any way directly or indirectly?
2. Did Premier Ford take part in choosing the members of the selection committee or directing its decisions in any way directly or indirectly?
3. Did Premier Ford take part in the Cabinet decision to appoint Mr. Taverner?

Key factors in this situation are that the executive search firm would have been serving on a contract with the government that would give the Cabinet the opportunity to direct the firm's search. As well, members of the selection committee could be people serving at the pleasure of Premier Ford – for example, any Deputy Minister on the committee. And, of course, all Cabinet ministers serve at the pleasure of the Premier, which means they share the Premier's appearance of bias given that they have full incentive to please the Premier in order to remain in Cabinet.

As you know, the Preamble to the *Members' Integrity Act* states in subsection (3) that:
“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 in subsection (4) that:

“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.”

Sections 2 and 4 of the *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.

...

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."

If Premier Ford did participate in choosing the selection committee members, choosing the executive search firm, or the Cabinet's approval of Mr. Taverner's appointment, his actions raises the following legal questions:

1. Did Premier Ford violate the Preamble rules by participating in any way in any step of the process of the appointment of his close friend Mr. Taverner?
2. Did Premier Ford violate section 2 and/or 4 of the *Act* by either participating in or trying to influence a decision that furthered his own private interest? (as having his friend as Commissioner of the OPP could protect him from scrutiny by the OPP);
3. Did Premier Ford violate the Preamble rules and/or section 2 and/or 4 of the *Act* by either participating in or trying to influence a decision that improperly furthered another person's private interest? (in this case, the interest of Mr. Taverner who clearly wanted the Commissioner job as he applied for it).

With regard question 1, given the Preamble rules set such a high standard of integrity and impartiality, if Mr. Ford participated in any step of the decision-making process to appoint his close friend, he would clearly be in violation of the Preamble rules.

Secondly, with regard to questions 2 and 3, the huge loophole in the *Act*, namely the definition in section 1 that says a "private interest":

"does not include an interest in a decision,

(a) that is of general application,

(b) that affects a member of the Assembly as one of a broad class of persons..."

would not allow Premier Ford to escape scrutiny if he participated in any step of the appointment process, because the appointment decision was a specific decision, not a decision that applies generally or affects the Premier as one of a broad class of persons.

Thirdly, in this situation it is by definition "improper" for Premier Ford to participate in or try to influence any of the steps in the process that led to Mr. Taverner's appointment. Mr. Taverner is Premier Ford's close friend, and therefore there is a reasonable apprehension of bias on the part of Mr. Ford, and his bias would taint his participation in any step of the decision-making process and, therefore, make it clearly improper.

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>

For all these reasons, Democracy Watch requests that you conduct an inquiry into whether Premier Ford participated in or tried to influence any step of the appointment process that led to Mr. Taverner’s appointment.

I understand that your position is that you cannot conduct an inquiry unless a Member of the Ontario Legislative Assembly or the Executive Council requests it under section 30 of the *Act*.

Democracy Watch’s position is that, given undertaking an inquiry is a discretionary action by you (under subsection 31(1) and (5) of the *Act*), and given your general enforcement power as the administrative tribunal that enforces the *Act*, and specifically under sections 23.1 and 25 of the *Act*, you therefore have discretionary power to undertake an inquiry based on the information in this letter.

Finally, given the seriousness of this situation, as it concerns the appointment of one of the senior law enforcement officers for Ontario who plays a key role in the enforcement of laws that apply to Premier Ford and his Cabinet, and given Premier Ford’s close friendship with Mr. Taverner, Democracy Watch’s position is that if you determine that Premier Ford participated in any way in any step of the appointment process, you should recommend that the penalty be that Premier Ford’s seat be declared vacant.

Premier Ford taking part in any way in any step of Mr. Taverner’s appointment process raises concerns about violations of fundamental principles of democratic good government, including the upholding of the rule of law, and the separation of the executive and law enforcement branches of the government.

You have an opportunity to uphold key measures in a key democratic good government law, the *Members’ Integrity Act*. Please let me know if you need any more information to act on this request as Democracy Watch is happy to provide further details.

We look forward to hearing back from you about this request, and hopefully to seeing your public ruling issued very soon.

Sincerely,



Duff Conacher, Co-founder of Democracy Watch
on behalf of the Board of Directors of Democracy Watch