



democracy Watch  
émocratie en surveillance

P.O. Box 821, Str. B, Ottawa K1P 5P9  
Tel: 613-241-5179 Fax: 613-241-4758  
Email: [info@democracywatch.ca](mailto:info@democracywatch.ca) Internet: <http://democracywatch.ca>

---

Integrity Commissioner J. David Wake  
Office of the Integrity Commissioner  
2 Bloor Street West, Suite 2100  
Toronto, Ontario  
M4W 3E2

Telephone: (416) 314-8983  
Fax: (416) 314-8987  
General Email: [integrity.mail@oico.on.ca](mailto:integrity.mail@oico.on.ca)

March 11, 2019

**RE: Request for ruling on Premier Ford and Cabinet's appointment of Gavin Tighe to the Public Accountants Council**

Dear Commissioner Wake:

I am writing requesting an investigation and ruling on the appointment of Gavin Tighe to the Public Accountants Council (the "Council"), and his appointment as Chair of the Council, by Premier Doug Ford and his Cabinet ministers, as this raises questions concerning whether Premier Ford violated the *Members Integrity Act* (the "Act") by making the appointment.

The Ford Cabinet made the appointment of Mr. Tighe initially to the Council under subsection 25(1) of the *Public Accounting Act*, 2004, S.O. 2004, c. 8, and by this Order in Council:

<https://www.ontario.ca/orders-in-council/oc-10602018>

and then made Mr. Tighe the Chair of the Council under subsection 26(2) of that Act, and by this Order in Council:

<https://www.ontario.ca/orders-in-council/oc-10612018>

Before his appointment to the Council, Mr. Tighe has acted as legal counsel for Premier Ford, and for his late brother Rob Ford. Mr. Tighe is listed as their counsel in this 2015 court case ruling:

*MacDonald v Ford*, 2015 ONSC 5773 (CanLII), <<http://canlii.ca/t/gl6vv>>

and in this media article about that case:

<http://www.vivalanka.com/worldnews/canada/9452-rob-doug-ford-facing-conflict-interest-allegations-court>

and as counsel for Rob Ford for this 2014 court case ruling:

*Foulidis v. Ford*, 2014 ONCA 530 (CanLII), <<http://canlii.ca/t/g7x2d>>

Although it is unclear, this article claims that Mr. Tighe also represented Doug Ford when he was being investigated from 2014 to 2016 by Toronto's Integrity Commissioner for violating the city council's code:

[https://www.vice.com/en\\_ca/article/zmdwn4/surprise-doug-ford-is-running-ontario-like-its-entourage](https://www.vice.com/en_ca/article/zmdwn4/surprise-doug-ford-is-running-ontario-like-its-entourage)

On page 6 of the Toronto Integrity Commissioner's report of December 6, 2016, it states that Mr. Ford was initially represented by counsel during that investigation, but does not identify who Mr. Ford's counsel was. You can see that report at:

<https://www.toronto.ca/legdocs/mmis/2016/cc/bgrd/backgroundfile-99042.pdf>

And this media article identifies Mr. Tighe as the "Ford family lawyer":

<https://montrealgazette.com/pmn/news-pmn/canada-news-pmn/top-doug-ford-staffer-to-get-high-paid-energy-board-appointment/wcm/da46e866-dfa3-426c-bc9f-b3fcfb4eb4b6>

This situation raises the following factual questions:

1. Did Premier Ford and his Cabinet conduct a public, merit-based search for candidates this position?
2. Was there any consideration by someone or some entity that is independent of Premier Ford and his Cabinet of other candidates for this position?

In answering these questions, it is important to note that all Cabinet ministers and Cabinet staff 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 a result, a Cabinet minister or Cabinet staff person is not independent of Premier Ford.

It is also important to note that the Council is a quasi-judicial administrative tribunal constituted under the *Public Accounting Act* that makes rulings that affect the rights of Ontarians and Ontario businesses. As it says on the homepage of the Council's website at:

"One of the objects of the Council is to oversee the regulation of public accounting in the public interest by maintaining public confidence in public accounting through the appropriate prosecution of offences under the Act."

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.”

I have recently become aware of historical interpretations and applications of 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*. 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>

On page 2 of your July 14, 2016 report on Patrick Brown, you repeated the point made in paragraph 25 of Commissioner Osborne's report cited above, and also listed six parliamentary conventions that have been upheld in rulings by past commissioners. That report is at:

<http://www.oico.on.ca/docs/default-source/commissioner's-reports/re-patrick-brown-mpp-for-simcoe-north-july-14-2016.pdf?sfvrsn=4>

Given the Preamble rules set such a high standard of integrity and impartiality, Mr. Ford's participation in the appointment of his own lawyer seems clearly to be a violation of the Preamble rules. The appointment was in no way an impartial decision.

Democracy Watch's position is also that there is an Ontario parliamentary convention that Cabinet ministers shall not appoint personal friends or friends of their political party to government jobs. The only exception to this convention is, in Democracy Watch's opinion, that the Premier and Cabinet ministers are allowed to hire anyone they want as their staff (other than family members). This exception exists as it is considered acceptable that, despite the fact Cabinet staff are paid for with the public's money, Cabinet ministers would want their staff all to be loyal supporters of the ruling party and themselves, and therefore should have the discretion to hire whomever they want (again, other than family members).

As a result of the above, Democracy Watch's position is that you should find that Premier Ford violated the Preamble rules, and this Ontario parliamentary convention, when he appointed Mr. Tighe to the Council.

Even if you disagree with the above conclusion, Democracy Watch's position is that Mr. Ford's appointment of Mr. Tighe also violates sections 2 and 4 of the *Act*. Those sections 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.”

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 for participating in Mr. Tighe's appointment decision because it was a specific decision, not a decision that applies generally or affects the Premier as one of a broad class of persons.

In this situation it is by definition "improper" for Premier Ford to participate in or try to influence the process that led to Mr. Tighe's appointment. Mr. Tighe has been Premier Ford's personal lawyer, and therefore there is a reasonable apprehension of bias on the part of Mr. Ford that taints his participation in the appointment process and, therefore, makes it clearly improper.

According to section 3 of the Government of Ontario's Agencies and Appointments Directive:

<https://www.ontario.ca/page/agencies-and-appointments-directive#section-5> it states in subsection 3.1 that government appointments will "reflect the diversity of the people of Ontario and the need to deliver services and decisions in a professional, ethical and competent manner."

Democracy Watch questions very much whether Mr. Tighe's appointment reflects the diversity of the people of Ontario. Democracy Watch also questions very much whether Mr. Tighe's appointment will ensure ethical decision-making by the Council, given that Mr. Ford's unethical bias is the basis for his appointment.

You can see a fairly detailed framework of what a good government appointments process entails in section 4.02 of the Auditor General's 2016 Annual Report at:

[http://www.auditor.on.ca/en/content/annualreports/arreports/en16/v1\\_402en16.pdf](http://www.auditor.on.ca/en/content/annualreports/arreports/en16/v1_402en16.pdf).

As you will see, key elements of a good process include an open, transparent, merit-based appointment process. From the evidence on record, Mr. Tighe's appointment process lacked all of these key elements.

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 of the above reasons, Democracy Watch's position is that Premier Ford's appointment of Mr. Tighe improperly furthered Mr. Tighe's private interests – the appointment is objectionable, unsuitable and, as detailed above, wrong.

Democracy Watch therefore requests that you issue a ruling on Premier Ford's participation in the process of Mr. Tighe's appointment finding Mr. Ford in violation of section 2 (and possibly also section 4) of the *Members' Integrity Act*.

I understand that your position is that you cannot conduct an inquiry unless a Member of the 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 power as the administrative tribunal that enforces the *Act*, specifically under sections 23.1 and 25 of the *Act*, you therefore have the discretion to undertake an inquiry based on the information in this letter.

Finally, given the seriousness of this situation, as it concerns the appointment of Premier Ford's personal lawyer to a quasi-judicial position which, as detailed above, is improper in several ways, Democracy Watch's position is that you should recommend that the penalty for Premier Ford's violation be that his seat be declared vacant.

Premier Ford's participation in Mr. Tighe's appointment raises concerns about violations of fundamental principles of democratic good government, including: avoiding conflicts of interest; ensuring appointments are merit-based, and; ensuring the independence of the public service.

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,

A handwritten signature in blue ink, appearing to read 'Duff Conacher', written over a light blue horizontal line.

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