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émocratie en surveillance

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April 2, 2019

RE: Request for ruling on Premier Ford offering his friend Ron Taverner an executive position at the Ontario Cannabis Store

Dear Commissioner Wake:

I am writing to request an investigation and public ruling on the offer by Premier Doug Ford to his friend Ron Taverner of an executive position at the Ontario Cannabis Store, as this raises questions concerning whether Premier Ford violated the *Members Integrity Act* (the “Act”) by making the offer.

As detailed in your ruling issued on March 20th concerning the OPP Commissioner appointment process, which can be seen at:
<http://www.oico.on.ca/docs/default-source/commissioner's-reports/re-the-honourable-doug-ford-premier-of-ontario-march-20-2019.pdf?sfvrsn=4>

Premier Ford and Ron Taverner are long-time friends.

On pp. 21-24 of your ruling (paras. 78-90), you detail how Premier Ford offered his friend Ron Taverner a job on the executive of the government’s new Ontario Cannabis Store. Those pages also detail how Premier Ford’s Chief of Staff Dean French also made the offer to Mr. Taverner, and how Mr. French and Secretary of the Cabinet Steve Orsini (Premier Ford’s deputy minister) made the offer

process happen officially, at a salary of \$270,000 annually for four years, through the Deputy Minister for the Ministry of Finance.

This situation raises the following factual questions:

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

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

As well, under the constitutional convention of ministerial responsibility, Premier Ford is responsible for the actions of his staff.

A. Violation of the Preamble and parliamentary conventions under the *Members' Integrity 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.”

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 relate 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, Premier Ford’s offer to his friend of an executive position at an Ontario government institution 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 offered the job to his friend Ron Taverner.

B. Violation of sections 2 and 4 of the *Members' Integrity Act*

Even if you disagree with the above conclusion in section A, Democracy Watch's position is that Premier Ford's offer to Mr. Taverner 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 offering Mr. Taverner the executive job 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 offer Mr. Taverner the job. Mr. Taverner is Premier Ford friend, and therefore there is a reasonable apprehension of bias on the part of Mr. Ford that taints his job offer to Mr. Taverner and, therefore, makes it clearly improper.

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

<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.”

According to the Recruitment Philosophy of the Ontario Public Service at: <https://www.gojobs.gov.on.ca/Pages/OurRecruitment.aspx> “All our recruitment decisions are based on valid, practical and measurable approaches that ensure hiring on the basis of merit. This means hiring the candidate whose qualifications best meet the requirements to do the job.” Also, the commitment made in the recruitment process is to ensure the “workforce represents the diverse communities” the government serves and that the process reflects the government’s “mission to serve the public interest and uphold the public’s trust.”

Democracy Watch questions very much whether the offer to Mr. Taverner of the executive position at the Ontario Cannabis Store was based on merit and reflects the diversity of the people of Ontario. Democracy Watch also questions very much whether hiring Mr. Taverner will ensure ethical decision-making at the Store, given that Mr. Ford’s unethical bias is the basis for the job offer to Mr. Taverner.

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.

As you will see, key elements of a good process include an open, transparent, merit-based appointment process.

According to the Hiring Steps for the Ontario Public Service at: <https://www.gojobs.gov.on.ca/Pages/HiringSteps.aspx> the six-step process involves: 1. advertising the position; 2. application screening; 3. evaluation of candidates (including written tests and interviews); 4. assessment and rating of candidates to select the best-qualified candidate; 5. offer to the successful candidate, and; 6. position filled.

From the evidence on record, the process that led to Mr. Taverner being offered the executive position job at the Ontario Cannabis Store lacked all of these key elements. In fact, the process started at step five, with Premier Ford’s direct offer of the job to Mr. Taverner and only Mr. Taverner.

As well, the Government of Ontario’s Agencies and Appointments Directive at: <https://www.ontario.ca/page/agencies-and-appointments-directive#section-5> also states in subsection 3.1 that:

“Remuneration that may be paid, if any, is intended to balance the importance of public service within a remuneration framework that demonstrates value for money.”

According to the evidence on record in your ruling on the OPP Commissioner appointment process, the offer of \$270,000 annual salary to Mr. Taverner for the Ontario Cannabis Store job had no basis in any assessment of value for money.

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 offer of the executive position job to his friend Mr. Taverner improperly furthered Mr. Taverner’s private interests – the appointment is objectionable, unsuitable and, as detailed above, wrong.

C. Conclusion

Democracy Watch therefore requests that you issue a ruling on Premier Ford’s offer to Mr. Taverner finding Mr. Ford in violation of the Preamble principles and parliamentary convention that prevents a Premier from offering government jobs to their friends, and also 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 friend to an executive 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 job offer to Mr. Taverner 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 in a cursive style.

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