



democracy Watch
émocratie en surveillance

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

Via Email to: integrity.mail@oico.on.ca

May 9, 2019

RE: Request for investigation and public ruling on LCBO Chair Carmine Nigro selling tickets for Minister's fundraising event

Dear Commissioner Wake:

I am writing requesting an investigation and public ruling on the actions of Carmine Nigro, Chair of the Liquor Control Board of Ontario (LCBO) to determine if he has violated public servant ethics regulations by inviting people to a fundraising event for Minister of Finance Vic Fedeli, who is the minister responsible for the *Liquor Control Act* which establishes and regulates the LCBO, as you can see on this Ministry of Finance webpage:

<https://www.ontario.ca/page/ministry-finance>.

You can see the recent *Globe and Mail* article concerning Mr. Nigro inviting people to Minister Fedeli's fundraising event, in effect selling tickets and fundraising for Minister Fedeli, at:

<https://www.theglobeandmail.com/canada/article-lcbo-chairman-carmine-nigro-inviting-donors-to-cash-for-access/>.

1. The proper interpretation and application of the law prohibiting the chair of a public body fundraising for a Cabinet minister

Public servants in public bodies such as the LCBO are subject to various ethics measures under the *Public Service of Ontario Act* (2006, S.O. 2006, c. 35, Sched. A – the “Act” in sections 2, and 56 to 65) and regulations under that Act (*O.Reg. 146/10, O.Reg. 381/07*).

Under the Act and related regulations, you are the Ethics Executive for the Chair of the LCBO, Mr. Nigro, as summarized on this webpage of your website:

<http://www.oico.on.ca/home/public-sector-ethics/conflict-of-interest>

and this webpage:

<http://www.oico.on.ca/home/public-sector-ethics/ethics-executives>.

Section 6 of *O.Reg. 381/07*, which can be seen at:

<https://www.ontario.ca/laws/regulation/070381#BK3>

prohibits in subsection (1) giving “preferential treatment to any person or entity” and in subsection (2) requires public servants such as Mr. Nigro to “endeavour to avoid creating the appearance that preferential treatment is being given to a person or entity that could benefit from it” when performing duties to the Crown.

Section 6 of these regulations sets out a very important rule -- it means that ministers’ staff, the Secretary of the Cabinet, all deputy ministers, and all government employees, can't meet or communicate with, or help or give access to themselves, to anyone or any entity more (or more responsively) than to anyone else or any other entity.

This rule, and the requirement to endeavour to avoid even the appearance of preferential treatment, set a very high standard and broad duty of fairness.

Sections 74 to 84 of the Act set out the conditions under which “political activity” may be undertaken by a public servant. Political activity is permitted, and for the purposes of the situation addressed in this letter, the only permitted political activity as defined in section 72 that may apply is under subsection 72(a) when: “the public servant does anything in support of or in opposition to a federal or provincial political party” or (b) “the public servant does anything in support of or in opposition to a candidate in a federal, provincial or municipal election.”

Democracy Watch’s position is that sending out invitations for a fundraising event for a Cabinet minister’s riding association is neither support for a political party (because the riding association is not a provincial political party) nor is it support for a candidate (because Minister Fedeli is not currently a candidate in an election). As a result, Democracy Watch’s position is that Mr. Nigro cannot claim that his sending of the invitations was a permitted political activity.

Even if you decide that Mr. Nigro sending the invitations is a political activity, there are restrictions in the *Act* on permitted political activities relevant to this situation, as follows:

- under subsection 77(d), public servants shall not “associate his or her position with political activity”;
- under subsection 79(d), unless they have been granted unpaid leave, public servants shall not “engage in political activity if doing so could interfere with the performance of his or her duties as a public servant” and;
- under subsection 79(e), unless they have been granted unpaid leave, public servants shall not “engage in political activity if doing so could conflict with (i) the interests of the Crown (if they work at a ministry) or (ii) “the interests of the public body” (if they work at a public body as Mr. Nigro does).

2. Evidence of appearance of preferential treatment that may violate rules

The questions raised by Mr. Nigro sending out the invitation to Mr. Fedeli’s fundraising event are as follows:

- (i) Can Mr. Nigro take off his LCBO Chair “hat” when sending out the invitation as a “political activity”?
- (ii) Was the invitation apparent preferential treatment? and;
- (iii) Was anyone invited who could benefit from preferential treatment?
- (iv) Can Mr. Nigro continue to be involved in fundraising for the Progressive Conservative Party and riding associations?

(i) Can Mr. Nigro take off his LCBO Chair “hat” when sending out the invitation as a “political activity”?

With regard to the first question, Democracy Watch’s opinion is that Mr. Nigro is LCBO Chair all the time. He cannot take his LCBO Chair “hat” off and pretend that he is sending the invitation as a private citizen. Everyone invited would know, or easily be able to find out as his appointment was widely covered in the media, that Mr. Nigro is the Chair of the LCBO. You can see the Canadian Press article that was published by more than 50 media outlets across Canada at: <https://toronto.ctvnews.ca/toronto-developer-named-new-lcbo-chair-by-ontario-government-1.4389797>.

As set out above in section 1, Democracy Watch’s position is that sending out invitations for a fundraising event for a Cabinet minister’s riding association is neither support for a political party (because the riding association is not a provincial political party) nor is it support for a candidate (because Minister Fedeli is not currently a candidate in an election). As a result, Democracy Watch’s position is that Mr. Nigro cannot claim that his sending of the invitations was a permitted political activity under sections 72 to 74 of the *Act*.

Even if you decide that Mr. Nigro sending the invitations is a political activity, by being in such a high-level, public position as Chair of the LCBO, Mr. Nigro sending of the invitations is, by definition, associated with his position. Therefore, sending the invitations violates subsection 77(d) of the *Act*.

As well, sending out the invitations may conflict with the interests of the LCBO, in violation of subsection 79(e) of the *Act*, depending on whether anyone Mr. Nigro invited has direct or indirect connections to anyone doing business with the LCBO, and also whether anyone he invited is involved personally or with any entity that is covered by any of the dozens of laws that the Minister of Finance is responsible, which are listed on the Ministry of Finance's website: <https://www.ontario.ca/page/ministry-finance>. Your investigation is needed to determine exactly whom Mr. Nigro invited to the event.

Finally, if Mr. Nigro sending the invitation violates subsection 77(d) or 79(e), by definition it interferes with the performance of his or her duties as a public servant in violation of subsection 79(d) of the *Act*.

(ii) Was the invitation apparent preferential treatment? and

(iii) Was anyone invited who could benefit from preferential treatment?

With regard to the second and third questions, sending the invitation was apparent preferential treatment because it is an invitation sent to only certain people. Mr. Nigro did not issue an invitation to anyone and everyone – his invitation list was presumably hand-picked by him and consisted of people he preferred to invite. Therefore, by definition it was preferential treatment.

Given that Minister Fideli is responsible for the budget, as well as dozens of laws that apply to millions of Ontarians and thousands of Ontario businesses and entities, many, many people could benefit from being invited to the event as it would give them access the Minister Fideli.

Again, your investigation is needed to determine whom Mr. Nigro invited so you can assess if they could benefit from the preferential treatment he appeared to offer them (which, again, would violate subsection 6(2) of *O.Reg. 381/07*).

(iv) Can Mr. Nigro continue to be involved in fundraising for the Progressive Conservative Party and riding associations?

Given the above, Democracy Watch also requests that you review and rule on whether Mr. Nigro can continue any of his activities as a fundraiser for the Progressive Conservative Party and riding associations, which, according to the *Globe and Mail* article linked above, he participates in regularly.

3. The requirement for a public ruling on this complaint

Under subsections 65(9) and (10) of the *Public Service of Ontario Act*, the Integrity Commissioner shall notify the minister responsible (in this case Minister Fedeli) of any determination made concerning a violation of the ethics rules set out in *O.Reg. 381/07* after inquiries under subsections 65(4) and (5).

If you decide that Mr. Nigro's activity was a "political activity" then, under subsection 84(8) of the *Public Service of Ontario Act*, the Integrity Commissioner shall notify the minister responsible (in this case Minister Fedeli) of any determination made concerning a violation of the "political activity" rules set out in sections 74 to 83, after inquiries under subsections 84(3) and (4).

There is no provision in the *Act* prohibiting you as Integrity Commissioner from making your ruling under these sections public. As a result, the provincial parliament expressed no intent that your rulings be kept secret.

The public has a right to see your ruling on this complaint under the quasi-constitutional right to access to government information, as articulated by the Supreme Court of Canada in *Dagg v. Canada (Minister of Finance)*, [1997] 2 SCR 403, paragraphs 59 to 63.

As well, as the public interest complainant concerning the actions of Mr. Nigro, Democracy Watch's opinion is that it has a right under the rules of natural justice to receive your rulings on this complaint.

As a result, Democracy Watch expects that you will issue a public ruling in response to this complaint.

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