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Premier Ford Vindicated

By Stephen Thiele

Today, politics has become a battle of perceptions over ethics and integrity rather than a battle over issues.

Ethics and integrity are, of course, important concepts. However, opposition parties, political activists and the media are sometimes more interested in trying to expose salacious scandal instead of concentrating on developing a comprehensive and fair economic or social vision that will have positive results on the daily lives of the electorate.

The effort expended in stoking the fires of alleged scandals and spinning narratives based on speculation comes at a tremendous cost for those who are required to defend themselves against these kinds of allegations and those who are innocently caught in the web of controversy.

Recently¹, Ontario Premier Ford was accused of “political interference” and conflict of interest in the government’s

decision to hire 50-year police veteran Ron Taverner as Commissioner of the Ontario Provincial Police.

As a result of the fact that Premier Ford and Mr. Taverner were friends, provincial politicians, Kevin Yarde and John Fraser, filed separate complaints with Ontario’s Integrity Commissioner under the *Members’ Integrity Act, 1994* (the “**Act**”) alleging, among other things, that Premier Ford had improperly furthered Mr. Taverner’s personal interest. The complaints were based on information published in various media reports.

In general, Canadian courts exercise extreme caution in connection with the admissibility of media reports because although informative, they are hearsay and lack evidentiary value. In the complaints made against Premier Ford, the Integrity Commissioner found the media reports to be speculative and unsupported by the evidence.

Nevertheless, the Integrity Commissioner

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A number of our lawyers have enjoyed in-house corporate positions and been appointed as board members of tribunals or as judges.

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was compelled to conduct a fulsome investigation into Premier Ford and the hiring of Mr. Taverner based on the allegations made by Mr. Yarde and Mr. Fraser.

The Integrity Commissioner's investigation into Mr. Yarde's and Mr. Fraser's complaint lasted three months and has cost those involved much time and money.

Documentary evidence had to be gathered by witnesses and lawyers were engaged to represent a number of those witnesses.

Witnesses were also required to endure the stress of the daily media coverage (regularly containing misinformation) into the allegations, and the stresses involved in preparing for and being examined.

In the case of Mr. Taverner, the entire affair, which overlooked his stellar career as a police officer and whether he was qualified for the job, resulted in his eventual withdrawal as OPP Commissioner a few days before the release of the Integrity Commissioner's report into the allegations.

The Integrity Commissioner, however, commented that Mr. Taverner was "...a credible witness, thoughtful, soft-spoken with a gentle sense of humour, who cares deeply about his work in policing and his community. I had the opportunity of reviewing a sample of the testimonials sent to him on the announcement of his appointment from current and retired OPP officers, fellow police officers and members of the community. They are glowing in their assessment of him as a man and as one who has

dedicated himself to his profession and his community."

Notwithstanding all of the public allegations made against Premier Ford and all of the costs incurred, the Integrity Commissioner's report completely vindicated the Premier.

The Facts

On September 5, 2018, then OPP Commissioner Vince Hawkes announced his retirement. The news came as a surprise to the government and it was required to react.

Two days later, the Secretary of the Cabinet, a person who serves as the Premier's Deputy Minister and is appointed by the Premier², had a discussion with the Conflict of Interest Commissioner, Sidney Linden, about a recruitment process and who could be involved in it. Commissioner Linden, among other things, recommended that as much third-party independent validation as possible should be built into the process.

A draft recruitment plan was subsequently outlined and ultimately finalized with comment from Premier Ford during the development of the plan that it have a shorter time frame than was originally proposed. The Secretary of the Cabinet agreed with the Premier's view.

The government then recruited the services of a third-party executive search firm through a request for proposal process and had the search firm prepare a draft advertisement for the OPP Commissioner position. The draft advertisement, like the job posting used in 2010, did not contain any rank requirements for the position.



However, a government employee, acting under no direction, prepared a job description and advertisement that included a rank requirement, like the job description and advertisement used in 2014. The government employee's draft description and advertisement was finalized, even though it was not carefully reviewed, and was ultimately posted to the public.

The error in the inclusion of a rank requirement was noticed shortly thereafter, and within 48 hours the job description and advertisement was amended to remove the rank requirement. The removal of the rank requirement made Mr. Taverner eligible to apply for the OPP Commissioner job.

Mr. Taverner was one of eight candidates to be interviewed by a first round panel of interviewers, and was selected as one of three candidates for a second round interview with another panel.

Prior to the second round interview, Mr. Taverner and the other approved second round candidates were given a psychometric assessment. As determined by the Integrity Commissioner, no candidate's results were significantly better or worse than the results of the other candidates.

The second round interview panel consisted of the Secretary of the Cabinet, the Deputy Minister, Community Safety, Ministry of Community Safety and Correctional Services, and a partner of the executive search firm.

Initially, Premier Ford's Chief of Staff, Dean French, was proposed to be on the second round interview panel. However, before second round

interviews took place, Mr. French advised that he would not be participating in the interviews. Mr. French described his reasons for not wanting to participate as an interviewer to the Secretary of the Cabinet as follows:

To be consistent with the approach I have used throughout this entire process to date, I do not wish to be part of any candidate interviews as the selection committee undertakes its work.

I have always believed in the integrity of having a separate committee of talented individuals meet with candidates, and to provide Cabinet with their professional opinion on who best should be the new commissioner of the OPP.

The second round interviews took place as scheduled, with the panel unanimously recommending Mr. Taverner as the new OPP Commissioner.

Mr. Taverner's appointment was approved by the Public Service Commission and subsequently the Solicitor General or Minister of Community Safety and Correctional Services brought an Order-in-Council to Cabinet to approve the appointment. The Solicitor General only brought Mr. Taverner's name forward for the appointment.

At the Cabinet meeting, Premier Ford announced that he was friends with Mr. Taverner, and then, as found by the Integrity Commissioner, withdrew from participation on the matter. "... [N]o discussions...[took place] about Premier Ford recusing himself from the meeting; no

concerns were raised by any Cabinet members about Mr. Taverner's appointment; and no vote [was] taken."

On November 29, 2018, Mr. Taverner was announced as the new OPP Commissioner. Within a week, Mr. Yarde filed his initial complaint. Premier Ford responded to the complaint, and Mr. Fraser filed a second, but related, complaint.

The Complaints

The complaints essentially accused Premier Ford of having been in a conflict of interest, that Mr. Taverner's appointment had been improperly influenced by the Premier and that the Premier had failed to recuse himself from the decision to appoint Mr. Taverner.

Combined, Mr. Yarde and Mr. Fraser alleged that Premier Ford had breached sections 2, 4, 8 and 16 of the Act.

The Relevant Statutory Provisions

Section 2 of the Act provides that "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."

Section 4 of the Act provides that "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."

Section 8 of the Act provides that "A member of the Assembly who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the Assembly or the Executive Council, or a committee of either of them, shall, if present at a meeting considering the matter, (a) disclose the general nature of the conflict of interest; and (b) withdraw from the meeting without voting or participating in consideration of the matter."

Section 16 provides that "A member of the Executive Committee who has reasonable grounds to believe that he or she has a conflict of interest in a matter requiring the member's decision shall ask the Premier or Deputy Premier to appoint another member of the Executive Council to perform the member's duties in the matter for the purpose of making the decision, and the member who is appointed may act in the matter for the period of time necessary for the purpose."

The Premier's Argument

The Premier argued that he did not contravene the Act in any manner whatsoever. He contended that he was never in a conflict of interest in connection with the appointment because he did not receive a personal gain from it and that he did not improperly further Mr. Taverner's personal interest.

In addition, the Premier contended that he did not in any manner whatsoever influence the hiring decision to further his own personal private interest or to improperly further Mr. Taverner's private interests.

Accordingly, section 8 of the Act did not apply

to the appointment, and even if it did, Premier Ford had effectively withdrawn as required.

Section 16 was also inapplicable.

Premier Ford noted that the decision to appoint a Commissioner under the *Police Services Act* was a Cabinet decision.

Integrity Commissioner's Decision

The Integrity Commissioner agreed with Premier Ford.

After determining that the term “private interest” as used in the Act applied only to pecuniary interests and purely personal interests, the Integrity Commissioner found that there was no evidence that the appointment of Mr. Taverner furthered Premier Ford’s pecuniary or personal interest.

As well, the Integrity Commissioner concluded that there was no evidence that Premier Ford improperly furthered the pecuniary or personal interests of Mr. Taverner.

The Integrity Commissioner examined five factors, which included the relationship between Premier Ford and Mr. Taverner, to assess whether Premier Ford’s conduct improperly furthered Mr. Taverner’s pecuniary or personal private interest.

With respect to the relationship between Premier Ford and Mr. Taverner, the Integrity Commissioner explained that a close friendship – in and of itself – was insufficient to establish impropriety.

The Integrity Commissioner also found that while Premier Ford was involved in discussions

related to the timeline for choosing a new OPP Commissioner, the Premier was at arm’s length with the hiring process that had been developed by the Secretary of the Cabinet, members of the public service and the executive search firm.

Premier Ford had no communications whatsoever with the panellists who conducted the interviews, with the exception of the Secretary of the Cabinet. However, the communications with the Secretary of the Cabinet were unrelated to the recruitment process.

Similarly, there was no evidence that Premier Ford had any involvement in the design of the recruitment process, its application or the resulting recommendation from the second round interview panel even though the Secretary of the Cabinet and the Premier’s Chief of Staff had some contact with one another during the entire process.

As well, the Integrity Commissioner did not find that the process was unfair or not open or that there was no objective basis for selecting Mr. Taverner as the new OPP Commissioner. Indeed, the Integrity Commissioner expressly found that when viewed objectively, there were many positive indicators to suggest that Mr. Taverner was qualified to be the Commissioner of the OPP.

Given that Premier Ford neither breached section 2 nor section 4 of the Act, section 8 of the Act did not apply.

Even if it did apply, the Integrity Commissioner found that at the Cabinet meeting where Mr. Taverner’s appointment was finalized Premier

Ford openly and notoriously fully disclosed his friendship with Mr. Taverner and then effectively withdrew from the meeting.

With respect to s. 16, the appointment of the OPP Commissioner did not require Premier Ford's decision. His signature was not required on the Order-in-Council and he did not, in fact, sign it.

Based on procedures in place since 1917, the Order-in-Council could have been accomplished by a "walk around", in which only four ministers other than the Premier could have approved the appointment.

The Appointment Process In General

The Integrity Commissioner noted that the appointment process in the statute was flawed. What has been widely misreported in the media, however, is that the "flaw" is the fact that the statute has no process whatsoever.

It is to be noted that this issue long precedes the Ford Government as this section of the *Police Services Act* has been the law of Ontario for almost 30 years.

The Integrity Commissioner pointed out that, contrary to media reports made at the time of Mr. Taverner's appointment, which purported to criticize the Premier because the process used to appoint Mr. Taverner went against long-standing practice, there was, in fact, no long-standing practice at all.

The practice of appointing a Commissioner of the OPP had been inconsistent from one Premier to the next and from one appointment to the

next. The Integrity Commissioner specifically noted the 2006 appointment of Julian Fantino as Commissioner of the OPP occurred after Mr. Fantino received a phone call from Premier Dalton McGuinty's Chief of Staff and after being interviewed by the Premier. That was the extent of the process for his appointment.

The 2010 job description and advertisement had no rank requirements, while the 2014 job description and advertisement included rank requirements.

All of these various 'processes' were in full compliance with the *Police Services Act* because this statute prescribes no process whatsoever.

The Integrity Commissioner suggested that this 'flaw' in the *Police Services Act* should be remedied so that future appointments of future OPP Commissioners do not fall prey to such criticism.

Representation of the Premier

Premier Ford was represented throughout the Inquiry by Gavin Tighe, partner at Gardiner Roberts LLP and a certified specialist in civil litigation.

Mr. Tighe was assisted throughout by Stephen Thiele, partner and Director of Legal Research at Gardiner Roberts LLP and Rojin Jazayeri, student-at-law.

- 1 Report Re: The Honourable Doug Ford, Premier of Ontario, Office of the Integrity Commissioner, March 20, 2019
- 2 The Secretary of the Cabinet for Premier Ford was the same individual who was the Secretary of the Cabinet for former Premier Kathleen Wynne.



About the Author

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