



**OFFICE OF THE ETHICS COMMISSIONER
PROVINCE OF ALBERTA**

**Report to the Speaker
of the Legislative Assembly of Alberta**

of the Investigation

by the Ethics Commissioner

**into allegations involving
Hon. Mike Cardinal, Minister of
Sustainable Resource Development and
Member for Athabasca-Wabasca**

August 19, 2002

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ALLEGATION

On June 12, 2002, a letter was received from Dr. Raj Pannu, Leader of the New Democrat Opposition and Member for Edmonton-Strathcona, requesting an investigation into a possible breach of the *Conflicts of Interest Act* by the Hon. Mike Cardinal, Minister of Sustainable Resource Development (“Mr. Cardinal” or “the Minister”). The matter to be investigated was set out as follows.

The question to be investigated involves a recent decision by the Minister to open a portion of Calling Lake, a collapsed lake, to pike and walleye fishing. The most recent public disclosure statement filed by Mr. Cardinal indicates that he owns a secondary residence and recreational property at Calling Lake.

The question is whether the above policy decision, in which the Minister was apparently personally involved, could in any way further the Minister’s private interest in violation of Section 2 of the Act. It seems apparent that any decision to open a particular lake to fishing, while maintaining a fishing ban on other lakes, would increase the value of recreational properties on the lake open to fishing. Moreover, I also ask that you investigate whether the Minister used his influence or insider information to further his private interest in possible violation of Sections 3 and 4 of the Act.

On June 19, 2002, both the Minister and Dr. Pannu were advised that an investigation would be conducted pursuant to section 24 of the Act.

The sections of the *Conflicts of Interest Act* (2000 Revised Statutes of Alberta, c. C-23) alleged to have been breached are:

Part 2 Obligations of Members

- 2 (1) A Member breaches this Act if the Member takes part in a decision in the course of carrying out the Member's office or powers knowing that the decision might further a private interest of the Member, a person directly associated with the Member or the Member's minor child.
- (2) Where a matter for decision in which a Member has reasonable grounds to believe that the Member, the Member's minor child or a person directly associated with the Member has a private interest is before a meeting of the Executive Council or a committee of the Executive Council or the Legislative Assembly or a committee appointed by resolution of the Legislative Assembly, the Member must, if present at the meeting, declare that interest and must withdraw from the meeting without voting on or participating in the consideration of the matter.
- (3) A Member who fails to comply with subsection (2) breaches this Act.
- (4) If a matter referred to in subsection (1) requires a decision of a Minister, the Minister may request another Minister to act in the Minister's stead in connection with the decision and the Minister to whom it is referred may act in the matter for the period of time necessary.

- (5) In the case of a meeting of the Legislative Assembly or a committee of it, where a Member has complied with subsection (2), the Clerk of the Legislative Assembly or the secretary of the meeting shall file with the Ethics Commissioner, as soon as practicable, a copy of the deliberations and proceedings, as recorded in Alberta Hansard, of the meeting from which the Member withdrew.
 - (6) In the case of a meeting of the Executive Council or a committee of it, where a Member has complied with subsection (2), the secretary of the meeting shall record (a) the declaration, (b) the general nature of the private interest declared, and (c) the withdrawal of the Member from the meeting.
 - (7) The secretary of the meeting shall file the information recorded under subsection (6) with the Ethics Commissioner as soon as practicable after the meeting.
 - (8) Information filed with the Ethics Commissioner under subsection (7) is confidential and may not be disclosed or inspected, but the information may be inspected and used by the Ethics Commissioner if the information is likely to be material in determining whether a Member has breached this Act.
 - (9) If no record was kept of who was present at a meeting at the time a matter for decision arose in which a Member, a Member's minor child or a person directly associated with a Member had a private interest, no inference that the Member was present at the meeting at the time the matter arose can be made for the purposes of determining whether there was a breach under subsection (2). 1991 cC-22.1 s2;1998 c33 s5
- 3** A Member breaches this Act if the Member uses the Member's office or powers to influence or to seek to influence a decision to be made by or on behalf of the Crown to further a private interest of the Member, a person directly associated with the Member or the Member's minor child. 1991 cC-22.1 s3
- 4** A Member breaches this Act if the Member uses or communicates information not available to the general public that was gained by the Member in the course of carrying out the Member's office or powers to further or seek to further a private interest of the Member, a person directly associated with the Member or the Member's minor child. 1991 cC-22.1 s4

PRIVATE INTEREST OF HON. MIKE CARDINAL

The *Conflicts of Interest Act* does not define the term “private interest.” In section 1(1)(g), the Act lists several things that a “private interest” does not include:

- 1(1)(g)** "private interest" does not include the following:
- (i) an interest in a matter
 - (A) that is of general application,
 - (B) that affects a person as one of a broad class of the public, or
 - (C) that concerns the remuneration and benefits of a Member;
 - (ii) an interest that is trivial;
 - (iii) an interest of a Member relating to publicly-traded securities in the Member's blind trust;

In this investigation, the “private interest” alleged to have been furthered relates to properties owned by the Minister at Calling Lake. Mr. Cardinal owns the following properties at Calling Lake:

Residence – Calling Lake	Lot 4, Block 8C, Plan 8321845
Lot – Calling Lake	Lot 5, Block 8C, Plan 8321845
Lot – Calling Lake	Lot 5, Block 3, Plan 3280RS
Lot – Calling Lake	Lot 5, Block 4, Plan 3280RS

There have been public comments relating to the opportunity provided to Mr. Cardinal to fish for walleye and his status under the *Indian Act* of Canada (Treaty 8 Status). I do not consider that matter to be a “private interest” under the Act. Mr. Cardinal’s ability to sportfish for walleye is no different than any other person, whether they have status under the *Indian Act* or not. Under the 2002 Alberta Guide to Sportfishing Regulations:

Sportfishing by Indians

Indians do not need an Alberta Sportfishing Licence or WIN card for general sportfishing; however, they must have a WIN card and Sturgeon Fishing Licence before keeping a sturgeon (see Sturgeon Sportfishing). All sportfishing regulations must be followed. Indians are persons registered as Indians under the *Indian Act* (Canada).

Neither Mr. Cardinal nor his wife is involved in domestic fishing operations nor do they hold a commercial fishing licence. In accordance with the sportfishing regulations, the zero bag limit¹ applied to Mr. Cardinal, and the new regulation allowing one walleye to be in an angler’s possession applies to Mr. Cardinal. That being the case, there is no “private interest” as the *Conflicts of Interest Act* says that a “private interest” does not include an interest in a matter of general application or that affects a person as one of a broad class of the public (i.e. all sportfishing anglers). Mr. Cardinal confirms in his Statutory Declaration that he does abide by the sportfishing regulations.

PERSONS INTERVIEWED

The following individuals were interviewed during the course of the investigation:

- Hon. Mike Cardinal, Minister of Sustainable Resource Development and Member of the Legislative Assembly for Athabasca-Wabasca
- Ken Ambrock, Assistant Deputy Minister, Fish and Wildlife Service, Sustainable Resource Development
- Hugh Norris, Head, Fisheries Resources, Allocation and Use Branch, Sustainable Resource Development
- Betty Kanuga, Century 21 Real Estate, Athabasca
- Bill Cruthers, District Conservation Officer, Sustainable Resource Development, Athabasca
- Todd Ponich, Conservation Officer, Sustainable Resource Development, Athabasca
- François Auger, Calling Lake resident
- Ralph Crawford, Calling Lake resident
- Avard Mann, Calling Lake resident
- Jim McFarland, Calling Lake resident
- Ken Walton, Calling Lake resident
- Ralph and Connie Johnson, Chain Lakes area residents
- Dr. Joseph Nelson, Professor, Department of Biological Sciences, University of Alberta (via phone)
- Roger Patton, Past President and Secretary, Western Walleye Council (via phone)
- Kerry Brewin, Alberta Council Manager and Biologist, Trout Unlimited Canada (Alberta Council)
- Steven Hull, Managing Director, Alberta Conservation Association (“ACA”)
- Bill Patterson, Biologist, Alberta Conservation Association

¹ “The number of fish you are allowed to keep while fishing in one day is equal to the limit listed for each species or group of species at the lake or stream being fished, including any fish eaten or given away that day” (page 20 of the 2002 Alberta Guide to Sportfishing Regulations).

In addition to interviews, Statutory Declarations were requested and received from:

Hon. Mike Cardinal, Minister of Sustainable Resource Development
Dr. Bob Fessenden, Deputy Minister, Sustainable Resource Development
Executive Council (completed by Deborah Oworm, Deputy Secretary to Cabinet)

Executive Council provided me with confidential documents for review. Those documents have been returned to Executive Council. Dr. Fessenden also provided me with numerous documents for my review. Those documents will not be released with this report. The relevant information from those documents is included in Dr. Fessenden's Statutory Declaration.

The residents of the Athabasca/Calling Lake area (including Mrs. Kanuga) who were interviewed during this investigation were recommended by Mr. Cardinal's office. The realtor was also recommended by another realtor in Athabasca who said that Mrs. Kanuga was the realtor with the most knowledge of or familiarity with Calling Lake properties. The Conservation Officers mentioned two of the residents by name during the interview at the Fish and Wildlife office. They commented that those two residents were contact or liaison persons with their communities. Two of the individuals interviewed had personal family relationships with the Minister or his office.

I am satisfied in all cases that the residents interviewed were credible and participated because they had personal knowledge of Calling Lake and the fish populations of the lake. The information they provided was very useful and their cooperation and participation is appreciated.

I wish to also thank departmental officials, conservationists, and all other persons interested in fisheries management who participated in this investigation. Their knowledge and experience were of enormous benefit to us. I am also appreciative of and impressed with their commitment to conservation.

BACKGROUND RELATING TO WALLEYE, FISHERIES MANAGEMENT AND CALLING LAKE PILOT PROJECT

While the Minister's role in the decision to open a portion of Calling Lake for fishing is within my jurisdiction and is the subject of this investigation, the decision itself is not within my jurisdiction. The appropriateness of opening all or part of a "collapsed lake"² to fish harvesting is not within my mandate. However, I believe it is necessary in this report to provide a background on both walleye and the government's activities and decisions relating to the status of Calling Lake and the management of walleye and fisheries generally in Alberta. I will also make a brief comment on ministerial responsibility later in this report.

I. Walleye

A brochure on walleye was created in February 1996 by Alberta Environmental Protection. It is one of a series of brochures produced by Fisheries officials on Alberta's fish species. The following basic information about walleye is contained in that brochure:

The walleye is the largest member of the perch family . . . In Alberta, the common name "pickerel" is often used for walleye, but this is technically incorrect, since "pickerel" is the accepted common name applied to certain types of pike found in eastern Canada . . .

² See chart on page 5 for the classifications given to Alberta lakes with respect to walleye and to pages 1 and 2 of the Statutory Declaration of Dr. Bob Fessenden for an explanation of the classification assigned to Calling Lake.

Walleye populations occur in 64 large river systems and an estimated 177 lakes and reservoirs throughout the province. Even though these statistics would suggest that walleye are abundant in Alberta, in many of these water bodies, the numbers of walleye surviving to spawning age are too few to maintain self-sustaining populations . . .

. . . a male walleye is fully mature at about 43 cm in length and 700 g in weight, by age seven. Females reach maturity at about 50 cm in length and 1590 g in weight, after age nine. Walleye in Alberta are capable of living to ages as old as 30 years.

. . . walleye fry often have a high mortality rate during the time between spawning and first feeding. Biologists have estimated that fewer than 1% of walleye eggs survive to become adult fish . . .

The following information regarding walleye is contained in the “Walleye Management and Recovery Plan” prepared in December 1995 by David K. Berry, Recreational Fisheries Coordinator, Alberta Environmental Protection.

. . . Eight lakes make up about 65 percent of the total area of lakes containing walleye, with the Alberta portion of Lake Athabasca accounting for 29 percent of the total area. Approximately 75 percent of the lakes with walleye, 89 percent by area, are located north of Edmonton.

The following chart showing the classification system used for walleye management is contained at page 6 of the Plan. Walleye populations are assessed according to the biological characteristics listed in the chart and the department then assigns a category to a specific lake (trophy, stable, vulnerable or collapsed).

Biological Characteristic	Management Status Category			
	Trophy*	Stable	Vulnerable	Collapsed
Age-class Distribution	Wide, >8 yr. Classes Mean age, >9 yrs.	Wide, >8 yr. Classes Mean age, 6-9 yrs.	Narrow, 1-3 yr. Classes Mean age, 4-6 yrs.	Wide or narrow Mean age, 6-10 yrs.
Age-class stability	Very stable	Stable	Unstable	Stable or unstable
Growth (length-at-age)	Slow, 50 cm in 12-15 yrs.	Slow, 50 cm in 9-12 yrs.	Moderate, 50 cm in 7-9 yrs.	Fast, 50 cm in 4-7 yrs.
Age-at-maturity (mean age)	Females 10-20 yrs. Males 10-16 yrs.	Females 8-10 yrs. Males 7-9 yrs.	Females 7-8 yrs. Males 5-7 yrs.	Females 4-7 yrs. Males 3-6 yrs.
Catch Rate	>1-2 kept/hr.	0.5 kept/hr.	0.15 kept/hr.	0.05 kept/hr.

Population Decline =====>> =====>> =====>>
 (caused by overharvest)

Population Recovery <<===== <<===== <<=====

(needs restricted harvest)

* Trophy status (old growth) fisheries are sensitive populations that support low densities of better-than-average-size, old walleye

As at the date of the publication of the Plan in 1995, 19 lakes were considered to have old growth walleye populations and the ability to support trophy status. Stable status populations were found at about 26 lakes. Fishing pressure remained low to moderate because of access. About 70 lakes were considered vulnerable and 62 water bodies were placed in the collapsed status.

Walleye mature slowly and, according to departmental records reviewed, it is a slow process to reach healthy numbers of mature walleye. Walleye recruitment can be poor or sporadic and may be linked to climatic factors.

II. Calling Lake Classification

Calling Lake is located north of the Town of Athabasca along secondary highway 813. The pilot project will see part of the north half of the lake closed to angling and commercial fishing. During the open season, in the southern part of the lake, there is a bag limit of two pike (“jackfish”) and one walleye of any size. Anglers are also allocated to keep 15 perch, 10 lake whitefish, and 10 burbot.

The closed area of the lake is defined on the department’s web site as being: the portion northerly of a straight line drawn southwesterly from the point where the line intersects the eastern shore at the northern boundary of SE02-73-22-W4 to the point where the line intersects the western shore at the boundary of NE12-72-23-W4 and tributaries, including Rock Island River downstream of Secondary Road 813.

The open season for 2002-03 runs from May 17, 2002 to March 14, 2003. The lake was closed from April 1 to May 16, 2002 and will be closed on March 15, 2003 to protect spawning fish.

At the time the categories for walleye were created in 1995/96, Calling Lake was classified as “vulnerable.” Based on creel surveys conducted in 1996 (and confirmed by test fisheries in 1998), that status was changed as of April 1, 1998 to “collapsed.” A “collapsed” walleye population results in a zero bag limit for recreational fishing. That means that persons holding sportfishing licences must practice catch and release with respect to walleye.

“Collapsed” status does not mean that there are no walleye in a lake. According to information provided to us during this investigation, there are large walleye in Calling Lake (referred to by departmental staff as the “class of ’91”). Both departmental staff and local residents said that the walleye in Calling Lake are larger than walleye found in other northern lakes in Alberta. The next significant class of walleye in Calling Lake, according to departmental staff, is the class of ’97. Those fish are now five years old but, as noted above, are not considered mature. They may have spawned once and are of a size that would be attractive to an angler. The ACA staff confirmed during the interview that their data shows that the two healthiest populations at Calling Lake are the groups of walleye now 11 years old and 5 years old. They do not believe the other age groups at Calling Lake have strong population numbers.

Local residents and commercial fishermen we interviewed claimed that they have caught walleye of all sizes, and they believe there are sufficient numbers to warrant a change in the classification of Calling Lake. They do not accept that it is a collapsed lake.

Both departmental staff and local residents acknowledge that the spawning grounds for the walleye have been seriously impacted by recent drought conditions. There are other factors affecting the spawning grounds (such as beaver problems) but the weather conditions are considered the most serious factor. The last “average” rainfall year was 1997. There are concerns in the department that sufficient spawning to sustain the population has not been occurring since then.

A spawning study (or “population estimate”) was conducted on the lake this year. There is evidence that walleye have been spawning in the lake in addition to the known spawning grounds on the tributaries feeding into Calling Lake.

Departmental staff and local residents disagree on the health of the walleye population in Calling Lake. Although public meetings are held at least annually, there does not appear to be agreement between the biologists who present data at the meetings and the experience of the local residents. The local residents we met with told us they feel that their experience is not taken into consideration and that they have not been successful in having any draft policy or amendment changed as a result of public meetings. According to departmental records, departmental staff felt there was stronger support for the classification of the lake expressed at various public meetings since 1998. Persons interviewed from fishing or conservation associations said that disputes between anglers and biologists regarding the health of a specific fish population at a particular lake are not uncommon. The ACA staff and departmental records suggest that the catch rate of local anglers may be higher due to the local residents’ knowledge of a lake and the areas where the fish tend to migrate. The experience of local anglers may lead them to believe that there are healthier numbers than the data collected from creel surveys conducted with non-resident anglers.

Since the lake was classified as “collapsed” as of April 1, 1998, some local residents have sought to have the classification changed. One of the local residents we interviewed said that he approached the Minister in June 2001 to suggest that the Minister open half of the lake as was subsequently done for the pilot project. The line was moved further north than “halfway” to include all cabin owners on the east side of the lake within the open portion of the lake.

With respect to the pilot project, there has already been increased activity at Calling Lake. There was increased boat traffic on the lake the first two weekends after this investigation was announced. Lake residents agreed that there had been increased traffic but they expressed no concern that fish populations would be negatively affected. Conservation officers from the Athabasca office used roadblocks at the lake to monitor the fishing activities. In those two weekends, 28 violations were issued, including a violation to three anglers who held 20 walleye in their possession. The possession limit³ for walleye is one fish of any size per person and is not a daily limit (i.e. you cannot fish for three days and keep three walleye – each walleye must be consumed before another walleye – on another day -- is caught and kept). The department also views culling⁴ as a violation of the sportfishing regulations.

The residents commented that since the lake was opened this fishing season, there has been increased monitoring of the lake. Initiatives have included electrofishing⁵ and capture of fish with traps and nets. Conservation officials also stated that they had conducted a spawning survey on the lake this year and had removed beaver dams in an effort to clear tributaries used as spawning grounds by walleye. The increase in enforcement activities is also attributed to the pilot project. Additionally, transmitters have been placed

³ See definition for “Catch Limits” on page 20 in the 2002 Alberta Guide to Sportfishing Regulations for a more complete description of catch limits. The Guide is available on the department’s website at <http://www3.gov.ab.ca/srd/fw/fishing/ordrform.html>.

⁴ “Culling” is staying within the catch limit for a species by releasing fish from a stringer or other holding device when a larger fish is caught. Fish that have been held on a stringer or in a tub usually die if released because of stress and because of damage to their gills, fins and scales.’ (Page 21 of the 2002 Alberta Guide to Sportfishing Regulations)

⁵ “. . . a field of electricity is passed through the water that causes a muscle response reaction from the fish forcing them towards the netsman. . . . The main purposes for electrofishing are stock assessment, sample/health surveys, tagging, catching spawners, anaesthetising or eliminating species.” (<http://www.fisheriesmanagement.co.uk/electrofishing.htm>)

in 12 fish to monitor their migratory habits in the lake. The conservation office will also continue with their test fisheries (largely conducted by volunteers who fish the lake and report to Fish and Wildlife on the success or failure of the volunteer angler's efforts). The ACA staff interviewed said they had been involved with initiatives such as the population estimate, the walleye telemetry (transmitters), creel surveys, test fisheries, and they will be involved in the fall walleye index netting.

At page 7 of the 2002 Guide to Sportfishing Regulations, the following comments are included regarding Calling Lake under "Important Changes for 2002":

Calling Lake (72-22-W4)

A pilot project for Calling Lake began April 1, 2002 to allow harvest of walleye and pike of any size. Success of the project requires that walleye and pike harvests do not exceed levels that the lake can sustain without harming population recovery (see Watershed Unit NB1).

III. Fisheries Management Generally

In March 1998, Alberta Environment published "A Fish Conservation Strategy for Alberta: 2000-2005." On page 3 of that publication is the following:

Fisheries Mandate

Fisheries are a replenishable Crown resource; it is incumbent upon the Government, as the resource steward, to ensure that appropriate use is made of the fisheries resource and that it is passed on to succeeding generations as it was received. The primary consideration of the Government is to ensure that fisheries populations are protected from severe decline and that viable populations are maintained. By virtue of the fact that all fish and wildlife resources and relevant legislation are the responsibility of Alberta Environment, it is to function as the advocate within government in the pursuit of this goal.

Responsibility for fisheries management was moved from Alberta Environment to Alberta Sustainable Resource Development following the last general election in March 2001. Mr. Cardinal became the Minister of Sustainable Resource Development on March 19, 2001 and Minister responsible for fisheries management at that time.

The various non-public servant biology professionals or members of fishing associations that were interviewed expressed the following concerns regarding fisheries management in Alberta.

- In some interviews, the strongest criticism related to comments regarding the public servant biologists. The persons raising these concerns expressed tremendous support for the departmental biologists and praised the work they carry out.

The various fishing groups or conservation associations work with each other and the department in conducting various projects relating to fisheries management, including:

- . creel surveys -- conducted by the Alberta Conservation Association;
- . participation in conducting fish inventories;
- . participation in test fisheries;
- . habitat restoration;
- . public awareness campaigns; and
- . advocacy issues.

- Several comments were made regarding what these various groups or individuals felt was inadequate funding of Sustainable Resource Development. Several persons argued that sufficient resources – financial and human – are needed to properly manage the fisheries resources of this province and, in their view, that has not happened for several years. [This is a longstanding criticism of fisheries management in Alberta and recommendations relating to the need for increased resources are included in the May 1980 Report of the Legislative Assembly’s own Select Committee on Recreational and Commercial Fishing Industries in Alberta.]
- Another general comment that was made by some of these individuals is that it would have been preferable to conduct proper studies on Calling Lake prior to opening the lake under a pilot project.
- A comment was made that the Calling Lake Pilot Project will be an excellent learning opportunity. The data collected as a result of the various monitoring initiatives will assist in future fisheries management decisions.

IV. Role of Hon. Mike Cardinal

According to his Statutory Declaration, Mr. Cardinal, as the Member of the Legislative Assembly for Athabasca-Wabasca, and a resident of the Hamlet of Calling Lake himself, has met with departmental staff and discussed by phone the concerns of the Calling Lake residents for at least 10 years. On behalf of his constituents, he voiced concerns regarding the classification status of Calling Lake for approximately the last five years. The conservation officials in Athabasca confirmed those discussions. Mr. Cardinal became the Minister of Sustainable Resource Development, with responsibilities for fisheries management, on March 19, 2001.

The Calling Lake residents interviewed were complimentary of the efforts of the Minister in opening the lake for walleye fishing. All the lake residents and commercial fishermen interviewed supported the decision. Dr. Fessenden’s Statutory Declaration summarizes comments and information from the Calling Lake area received by the department through public meetings or correspondence and telephone calls. According to that information, not all residents support the pilot project decision.

Mr. Cardinal, in his statutory declaration states:

Approximately one year ago a briefing session was held with departmental officials to review our walleye management strategies and the Management Status Category system. Several discussions occurred between myself and senior management in the department. The status of the lake was not changed but through discussions I made a decision to move forward with a pilot project on Calling Lake. Part of this pilot project included protection and enhancement of the natural spawning grounds by closing one part of the lake and also the clearing of beaver dams in the mouths of the rivers and creeks.

On April 11, 2002, the Minister was asked questions in Oral Question Period in the Legislature regarding Calling Lake. In response to the first question from Debby Carlson, Member for Edmonton-Ellerslie, at page 644 of *Alberta Hansard*, Mr. Cardinal said:

The specific project at Calling Lake is new and innovative. We’re looking at how we can protect and enhance natural spawning grounds instead of depending on the fish hatcheries that are there. Although the fish hatcheries are doing a good job also, we feel that natural spawning grounds are probably the ideal way to enhance the fish stocks in those lakes, and that’s exactly what Calling Lake is about.

At the suggestion of some commercial fishermen that are elders in the area to look at an innovative way of closing a portion of the lake by marking at the shorelines where the closure will take place and where it's going to be open -- Mr. Speaker, it's an innovative way where natural spawning and stocking will take place. It's a good area also for nesting grounds for birds. Ducks Unlimited, in fact, yesterday said that they were fully supportive of that particular plan.

Ms Carlson then asked the Minister why the project was going ahead "when his own technical staff tell him that it can't work." The Minister responded:

Well, Mr. Speaker, we have over 2,000 staff in my department, and they do a heck of a job in managing our resources. Because there's some [sic] much pressure on our natural resources in the area of fisheries now, we have to be more innovative. It's something that hasn't been tried, but I know that the process has been tried in other jurisdictions, probably not in the inland lakes. Therefore, this plan will work.

Ms Carlson then asked how the project would be monitored and the Minister replied:

Mr. Speaker, of course, we are restructuring in our department, and we have over 100 conservation officers that can monitor this process. It's not a problem.

One thing to keep in mind. With these new processes in place, Albertans themselves will monitor the process. In fact, more than 99 percent of Albertans, I believe, are very, very honest. They wouldn't purposely break the law. They will no doubt follow what we've laid out.

In defending his departmental estimates in the Legislature on April 16, 2002, at page 727 of *Alberta Hansard*, the Minister said:

. . . In the other area what we're doing is enhancing fish spawning through lake closures and other methods and introducing pilot projects. We have a pilot project that will be announced either today or tomorrow, and it's in my home community. Calling Lake is where I'm from. What that community has agreed to do is to look at a very innovative project there. That lake at one time had an abundance of fish: whitefish, tullibee, walleye, and pike. Through, of course, various pressures and I guess sometimes not taking the appropriate actions at the appropriate time to look at the natural spawning grounds, that lake had come to a near collapse situation as far as the walleye fisheries, and it was closed, whereas it was catch and release.

What we are doing with that lake now is that we are changing the policies. As of May 15 you'll be able to keep one walleye, any size, and two jackfish, any size, and the fishermen will decide what fish is suitable for their family, but while we're doing that, we're also closing one-third of the north part of that lake, which is a natural spawning grounds, a natural nesting grounds, and that will become a sanctuary where we will not allow any fishing whatsoever. While we're doing that, we also will be opening up the beaver dams that have plugged up the natural spawning grounds, and there are two major natural spawning grounds, one river and one creek, that have been blocked for years now by beaver dams and other activities.

So it's an innovative approach, and I think it's something that Albertans could possibly look at supporting across Alberta. I'm not sure if it's ever been done in Alberta or any other jurisdiction in Canada, but I think it's a unique concept of not depending solely on fish hatcheries and moving fish stocks around but enhancing the natural spawning grounds where they should be. I think it's a process that could work. It's something that's supported by the community, and the public I think will support it. I'll also definitely need the support of the opposition in this process. . . .

As identified in the Statutory Declaration of Deborah Ooram, Deputy Secretary to Cabinet, the Minister raised the issue of fisheries management reinvestment at Agenda and Priorities on November 26, 2001. The matter was referred to the Standing Policy Committee on Energy and Sustainable Resource Development for a recommendation. The Committee reviewed the issue on January 28, 2002, and prepared its recommendations for Cabinet consideration. Mr. Cardinal brought the matter to Cabinet at its February 5, 2002 meeting. The Calling Lake Pilot Project was only one item included in the overall fisheries rationalization and reinvestment discussion, which also included the reduction of commercial fisheries. Cabinet approved the recommendations presented, including the Calling Lake Pilot Project. Mr. Cardinal's signature is on the "Record of Decision" from the February 5, 2002 Cabinet meeting.

Mr. Cardinal's Statutory Declaration confirms that the fisheries reinvestment went through Agenda and Priorities, the Standing Policy Committee, Cabinet, and caucus. He states in his Statutory Declaration that "As we were not bringing forward a change in the status of Calling Lake there were no regulatory changes necessary and no Orders-in-Council prepared." On pages 4 and 5 of his Statutory Declaration, Dr. Fessenden provides further detail relating to the normal process for amending sportfishing regulations generally. He states that no Orders-in-Council are required. The department provides recommendations to the Minister for approval and regulation changes are made by Variation Order under the *Alberta Fishery Regulations*, SOR/98-246, s3). Those Variation Orders are signed by the Director of Fisheries and then printed in the *Alberta Gazette*.

As stated in the Statutory Declarations of both the Minister and Mrs. Ooram, the Minister did not declare a private interest and he did not withdraw from the meetings referred to above. He did participate in discussions on fisheries management reinvestment, including the Calling Lake Pilot Project. Mrs. Ooram states that, to her knowledge, Mr. Cardinal did not vote on any decisions.

Dr. Fessenden states in his Statutory Declaration that he believes Mr. Cardinal mentioned his property around April 2001 and that "it was common knowledge among the executive staff of SRD."

With respect to why Calling Lake was chosen and whether other lakes were considered, the Minister said in his Statutory Declaration:

After agreement was reached on Calling Lake we started to look to see if there were any other lakes that were suitable. It was agreed that we would do this pilot project and evaluate it and if we were successful then we would consider moving to other lakes. Staff has prepared a list of lakes that may be suitable for the project to be expanded to.

. . . Calling Lake was chosen because I live there, and I am able to see first hand the fishing activity. As a result of having a residence on the lake for almost 25 years, I am more knowledgeable about its dynamics . . .

Dr. Fessenden provides further information surrounding other collapsed lakes in Alberta on pages 7 and 8 of his Statutory Declaration. He states that concerns were expressed by departmental staff with respect to expanding pilot projects because of monitoring capability concerns and the lack of pre-test data.

V. Property Values at Calling Lake

Mrs. Kanuga provided us with copies of listings of various properties at Calling Lake – both lakefront and in the community. The properties are listed with a variety of realtors in the area. Several of the properties have been on the market for several years. The following chart contains a brief summary of the information provided.

Legal Address	Details	Listed Price	Date/Years Listed
Lots 16 & 17, Block 3, Plan 782-0282	Direct frontage access to the lake and beach; 4-bedroom bungalow	\$139,900	November 2, 2001
Lot 13, Block 3, Plan 772-0723	Lakefront lot, 3.23 acres	\$59,000	January 17, 2002
Lot 2, Block 4, Plan 3798 KS	3-bedroom bungalow, north of ranger station, 150 feet from water	\$49,000	Approximately 2 ½ years
Lot 3, Block 27, Plan 8021530	1.6 acres of waterfront property	\$14,900	Approximately 10 years
Pt. Of SW 20-72-21-W4	1.03 acres of waterfront property	\$25,000	Approximately 10 years
Pt. Of NW 17-72-21-W4	6-bedroom log home, lakefront, .83 acres	\$52,500	Approximately 10 years
Lot 4, Block 24, Plan 8021530	Lakeback 2-bedroom bungalow	\$30,000	
Lots 3 and 4, Block 1, Plan 782 2862	Back lake lot	\$9,900	
Lot A, Plan 0641NY (Pt. Of NE 30-71-21-W4	2-bedroom bungalow, ½ acre	\$159,000	May 10, 2002 (listed for 4 years)

Lots will vary in price depending on size and accessibility to the lake. The size and types of buildings on the lots will also affect the price (some properties listed above may have storage sheds, work outbuildings, boathouses, etc.).

Mrs. Kanuga said the main reason for the properties remaining on the market for such long periods is due to the theft and vandalism in the area. All the lake residents interviewed had experienced theft or vandalism of their property. All the residents agreed that increased resources to law enforcement would do more to increase property values than amending fishing regulations. The residents also stated that the opening of the lake would **not** increase property values.

MINISTERIAL RESPONSIBILITY

As stated earlier in this report, I have no jurisdiction to look into the question of whether the decision regarding the Pilot Project at Calling Lake was a correct or appropriate decision.

Under our parliamentary system, Ministers receive information and input from departmental officials, but Ministers retain the final responsibility for making a decision. The monitoring that will be undertaken at Calling Lake while the pilot project is being carried out will determine whether there are sustainable populations of fish, particularly walleye, in Calling Lake.

The decision to have a pilot project at a lake in the Minister's own riding, by itself, is not a matter I would look into under the *Conflicts of Interest Act*. Evidence of a "private interest" is required in order for me to conduct an investigation. I have commented in previous investigation reports that I would not normally consider a "political interest" to be a "private interest."

Ministers are also Members of the Legislative Assembly and, as such, must represent their constituents. Decisions that affect or favour their constituents over other constituencies are political choices, and

Ministers and governments are held accountable for those decisions by their colleagues in the Legislature and by the voters at election time.

As the Minister said in his Statutory Declaration:

Department officials said they thought the classification and regulations were right. I disagreed with the classification but the department never said to me that they did not believe we should go ahead with the pilot project. There was a healthy debate and discussion over various aspects of the whole issue . . .

Biologists look at the science while I, as a Minister, have to find a balance and an innovative solution to address the concerns expressed by the biologists and the public.

During this investigation, concerns were raised with me regarding the comments made by the Minister with respect to the biologists in his department. As stated above, Ministers may accept or reject the advice from departmental officials. On this matter, I will only say that I found the departmental officials interviewed for this investigation to be conscientious public servants with a commitment to preserving and conserving the precious resources of this province – in fulfilment of the “fisheries mandate” noted earlier in this report. At no time did any of those public servants criticize the Minister or question his right or authority to make the ultimate decision to open a portion of Calling Lake.

FINDINGS

Private Interest of Hon. Mike Cardinal

As stated earlier in this report, the “private interest” in this case is the real property owned by Mr. Cardinal and his wife.

I. Alleged Breach of Section 2

In his request for an investigation, Dr. Pannu wrote:

The question is whether the above policy decision, in which the Minister was apparently personally involved, could in any way further the Minister’s private interest in violation of Section 2 of the Act. It seems apparent that any decision to open a particular lake to fishing, while maintaining a fishing ban on other lakes, would increase the value of recreational properties on the lake open to fishing . . .

For ease of reference, the relevant portions of section 2 state:

- 2 (1)** A Member breaches this Act if the Member takes part in a decision in the course of carrying out the Member's office or powers knowing that the decision might further a private interest of the Member, a person directly associated with the Member or the Member's minor child.
- (2)** Where a matter for decision in which a Member has reasonable grounds to believe that the Member, the Member's minor child or a person directly associated with the Member has a private interest is before a meeting of the Executive Council or a committee of the Executive Council or the Legislative Assembly or a committee appointed by resolution of the Legislative Assembly, the Member must, if present at the meeting, declare that interest and must withdraw from the meeting without voting on or participating in the consideration of the matter.

- (3) A Member who fails to comply with subsection (2) breaches this Act.
- (4) If a matter referred to in subsection (1) requires a decision of a Minister, the Minister may request another Minister to act in the Minister's stead in connection with the decision and the Minister to whom it is referred may act in the matter for the period of time necessary.

...

There are two subsections of section 2 that must be dealt with in considering whether a breach has occurred.

A. Section 2(1):

In order for a breach of section 2(1) to occur, a Member must take part “in a decision in the course of carrying out the Member's office or powers **knowing** that the decision **might further a private interest** of the Member . . .”

The Minister, in his Statutory Declaration, states “. . . I did not believe it was a conflict as I had nothing to gain financially or personally with the lake being opened.”

Based on the information provided to me by local residents, the realtor, and conservation officials (both department officials and others), I am satisfied that it is unlikely that opening the lake will affect the property values in any significant way. The vandalism and theft at Calling Lake appears to be the most significant factor affecting property values at this time.

The increased traffic – both to and from the lake and on the lake – are also likely to be negative factors to local property owners. If fish populations are in fact not healthy, any short-term gain in property values would diminish if the lake has to be closed again.

I do recognize that an average Albertan might believe that a pilot project that opens up a previously closed lake might have beneficial effects on property values at that lake. It is therefore not surprising that I was asked to conduct this investigation. However, it is clear to me that, in this case, the decision is not likely to result in a financial benefit for the Member.

B. Section 2(2):

Section 2(2) has a different threshold for a breach to occur. Under section 2(1), the Member must know that a private interest might be furthered. Under subsection (2), where a Member **has reasonable grounds to believe** that the Member **has a private interest**, the Minister **must**, if present at the meeting, **declare that interest and must withdraw** from the meeting **without voting on or participating in the consideration of the matter**.

As stated earlier, the private interest in this case is the Minister's real property.

There is no question in my mind that the Minister had more than “reasonable grounds to believe” he had a private interest. In the Legislature itself, the Minister declares that “Calling Lake is where I'm from” and, in his Statutory Declaration, he states: “Calling Lake was chosen because I live there . . .”

The private interest is declared.

Where private interests exist, the Act requires that a Member will remove himself or herself from the decision-making process. Other subsections of section 2 then set out the process that must be followed.

By the Minister's own admission, he did not follow the process outlined in section 2. The Minister, in his Statutory Declaration, states that he did not consider having another Minister make the decision to open Calling Lake "as I did not believe it was a conflict as I had nothing to gain financially or personally with the lake being opened." Mrs. Ogram confirms that the Minister did not absent himself from Cabinet or Agenda and Priorities.

Subsection 2(2) deals only with voting on or participating in the consideration of the matter before a meeting of the Executive Council or a committee of the Executive Council or the Legislative Assembly or a committee appointed by resolution of the Legislative Assembly. It does not deal with the Minister's participation in a discussion within his ministry.

While Dr. Fessenden confirms that the Minister did not raise his private interest during discussions surrounding the pilot project, the Minister's participation within the Ministry is not a breach of section 2(2). The Deputy Minister confirms that staff were aware of the Minister's property at Calling Lake. The department did not caution the Minister about a potential or real conflict of interest. None of the documentation provided by the department to me during this investigation notes the Minister's private interest in relation to the Calling Lake Pilot Project or sets out any concerns about a possible conflict of interest. Even if a potential conflict of interest had been raised in the department, internal department consideration of the Calling Lake Pilot Project would not have been a breach of section 2(2) by the Minister.

II. Alleged Breach of Section 3

In addition to the alleged breach of section 2 of the Act, the request for this investigation asked that I also consider whether sections 3 and 4 may have been breached as well.

- 3 A Member breaches this Act if the Member uses the Member's office or powers to influence or to seek to influence a decision to be made by or on behalf of the Crown to further a private interest of the Member, a person directly associated with the Member or the Member's minor child. 1991 cC-22.1 s3

Based on the information provided to me, I am satisfied that the Minister did not use his office or powers to influence or to seek to influence the decision on Calling Lake to further his private interests. The fact that some local residents have been very vocal in their disagreement regarding the classification of the lake is supportive of the Minister's decision and actions. I accept that the Minister acted in accordance with his statement that "Constituents had indicated to me that the lake was full of walleye, no matter what our biologists said and asked that I try and find a solution."

III. Alleged Breach of Section 4

- 4 A Member breaches this Act if the Member uses or communicates information not available to the general public that was gained by the Member in the course of carrying out the Member's office or powers to further or seek to further a private interest of the Member, a person directly associated with the Member or the Member's minor child. 1991 cC-22.1 s4

I received no evidence from Dr. Pannu with his letter requesting the investigation with respect to this particular alleged breach. During this investigation, I received no evidence from the Department of Sustainable Resource Development or from any conservation association that indicated the Minister used

or communicated any information not available to the general public to further his private interests. On the contrary, the Minister has been very open in pursuing a change to the classification of Calling Lake and openly answered questions in the Legislature regarding the Pilot Project.

CONCLUSIONS

I. Alleged Breach of Section 2

A. Section 2(1):

I accept that the Minister truly believes his private interests would not be furthered by the decision to open Calling Lake under the pilot project. I accept that his belief was reasonable in these circumstances.

I am satisfied that the Minister did not act to further his private interests. I accept that he was acting on requests from constituents to take action. Based on information provided by local residents, I believe that the Minister will not benefit financially.

I therefore find that the Minister did not breach section 2(1) of the Act.

B. Section 2(2):

The preamble to the *Conflicts of Interest Act* states, in part:

WHEREAS Members of the Legislative Assembly are expected to perform their duties of office and arrange their private affairs in a manner that promotes public confidence and trust in the integrity of each Member, that maintains the Assembly's dignity and that justifies the respect in which society holds the Assembly and its Members; . . .

Under the Act, Members have an obligation to separate their public responsibilities from their private interest and the preamble says that should be done in a manner that promotes public confidence and trust in Members.

Over the years, a number of Members have removed themselves from the Legislature, its committees, or from Executive Council or its committees after declaring a private interest. In some cases, the Members or Ministers have done so after consulting my office. In other cases, they identified their private interests and did so without consultation with my office. This is an important process with respect to meeting the obligations set out in section 2 of the Act and, indeed, is required under section 2(2) when a Member has reasonable grounds to believe a private interest exists.

In 1993, I issued a report regarding former Minister Dianne Mirosh with respect to an issue that arose in Cabinet that involved a company for which her brother worked. She removed herself from Cabinet discussions even though she was not legally required to do so. I complimented her for that action and recommended that the Legislature develop a process to advise my office when a person absented themselves from a decision before Cabinet or its committees. The legislation was amended to provide for a reporting to my office, and I do receive those reports whenever a Member absents himself or herself.

In this case, the Minister declared his private interest when he refers to the fact that he comes from Calling Lake in his comments in *Alberta Hansard* during consideration of his estimates. His property at Calling Lake is also identified in his disclosure documents on file with the Clerk of the Legislative Assembly. The Minister therefore is fully aware of his private interests. In his Statutory Declaration he states that he did not believe he had anything "to gain financially or personally with the lake being opened" and therefore believed he did not have a conflict.

The standard set by section 2(2) does not require the furtherance of a private interest. It is a breach to participate when a Member has reasonable grounds to believe the Member has a private interest.

In my view, Mr. Cardinal had three options.

- (a) Mr. Cardinal could have sought the advice of my office and acted accordingly. He would have been protected against any allegations of conflict of interest had he done so.
- (b) Mr. Cardinal was required to declare a conflict of interest at Cabinet, Agenda and Priorities and before the Standing Policy Committee meetings. He could have withdrawn from the meeting and asked another Minister to assume responsibility for the Calling Lake Pilot Project.
- (c) Mr. Cardinal could have chosen another lake, even though he would have been less familiar with its history and would not have been as able to personally monitor the pilot project.

The Minister chose none of those options.

The Minister was required to declare his interest and withdraw from the meetings mentioned. Since he did not do so, I find that he is in breach of section 2(2).

II. Alleged Breach of Section 3

Based on the findings set out above, I find that the Minister did not use his office or powers to further or attempt to further his private interest. I accept that the Minister was acting on constituents' requests to take action.

III. Alleged Breach of Section 4

Based on the findings set out above, I find that the Minister did not use or communication information that was not available to the general public to further his private interests. The Minister was open and above board in his discussions with his departmental officials and with his colleagues in the Legislature.

SANCTIONS

The Minister is in breach of section 2(2).

I do not believe the Minister acted on this matter to personally benefit himself or his family. I do believe he acted in support of his constituents.

I recommend no sanction as I believe the Minister acted in good faith and because no financial benefit to the Minister is likely to occur.

I would, however, stress that the process outlined in section 2 is important to show the public that Members are aware of their obligations and act accordingly. Withdrawing from a meeting demonstrates to Albertans that the Member is aware of both the Member's private interests and the need to ensure that a decision must be seen to have been made in the public interest.

Robert C. Clark
Ethics Commissioner