

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

**REPORT OF INVESTIGATION  
INVOLVING THE MEMBER FOR PINCHER CREEK-MACLEOD**

**NOVEMBER 21, 1996**

**BACKGROUND**

Mr. Coutts, Member of the Legislative Assembly for Pincher Creek-Macleod, advised me that a direct associate of his had exceeded its operating credit with the Alberta Treasury Branches. He sought advice on how to deal with the matter and it was agreed that the matter ought to be reviewed by way of investigation under section 23 of the *Conflicts of Interest Act*. Mr. Coutts formally requested the investigation by letter dated November 5, 1996, pursuant to section 22(3) of the Act.

**FACTS**

Mr. Coutts is one of the owners of a private corporation called the Scarlet & Gold Inn Ltd., a freestanding restaurant with dining and banquet rooms. The business is family-owned and operated. Since his election in June 1993, Mr. Coutts has reduced his involvement in the business and is not now actively involved in the day-to-day operations of the restaurant.

Under section 1(5) of the Act, a private corporation is a direct associate if the Member owns or is the beneficial owner of shares of the corporation. During the time period in question, Mr. Coutts held 50% of the shares of Scarlet & Gold Inn Ltd. and the company is, therefore, a direct associate.

Scarlet & Gold Inn Ltd. obtained operating credit with the Alberta Treasury Branch (ATB) in Fort Macleod in April 1993. The agreement with ATB indicates a set amount for the operating credit but notes that it "may be changed at the discretion of the lender." Scarlet & Gold exceeded its operating credit during 1996. When that happened, ATB decided, after discussions with the individual running Scarlet & Gold (not the MLA), to increase the amount of the operating credit.

**FINDINGS**

Under section 8(1)(c) of the *Conflicts of Interest Act*,

- 8(1)** A Member breaches this Act if, while being a Member, the Member or a person directly associated with the Member becomes a party to a contract within any of the following classes:
- (a) a contract under which the Member or the person directly associated with the Member borrows money from a treasury branch.

The issue for my consideration was whether the extension of the operating credit constituted a new loan; that is, whether it constitutes a contract for the borrowing of money.

In this case, the Member advised me that he had not requested an extension of the operating credit, nor had he been aware of the fact that Scarlet & Gold had exceeded the existing operating credit. I spoke with the Vice-Superintendent of Credit at the Head Office of ATB and he confirmed that monies were advanced to Scarlet & Gold by way of an extension of the operating credit (an “overdraft”). The individual who approved the extension in Fort Macleod has since left that branch but he has confirmed, in writing, that the Member did not request the extension nor did the Member call upon ATB to influence the branch’s decision to allow the extension. The branch manager confirmed that the decision was his own, based on conversations with the individual (not the MLA) who was responsible for the day-to-day operations of the Inn. The decision was not communicated to the Member.

In order for a breach of the *Conflicts of Interest Act* to occur the “contract” must be entered into after the Member became a Member and it must involve the borrowing of money. It is clear from the information provided to me that the extension of operating credit occurred after the Member became a Member.

On the question of whether the ATB’s unilateral decision to extend the operating credit is a “loan,” legal counsel referred me to *A.B.C. Colour & Sound Ltd. v. Royal Bank of Canada* (1992) 117 A.R. 271 (C.A.), which decision states that an overdraft is in substance a loan by the bank to the depositor.

Based on the above findings, I conclude that although the Member was unaware of the transaction, his direct associate Scarlet & Gold did receive a loan with ATB in the form of an increase in the operating credit or overdraft. A breach of section 8(1)(a) of the *Conflicts of Interest Act* did therefore occur.

I have been advised by the Member that the overdraft has been repaid and that the line of credit has been returned to its April 1993 amount.

## **RECOMMENDATIONS**

The Member was placed in breach of section 8 of the *Conflicts of Interest Act* by his direct associate; however, I find that since Mr. Coutts did not seek the extension of operating credit and in fact was not aware that it was being given so that he could have stopped it, the breach was inadvertent. For that reason and because the Member brought the matter forward and has repaid the overdraft on the operating credit, I recommend no sanction against the Member.

I am very much aware of the fact that in a case like this one where a Member initiates the investigation, a possibility exists that other Members may not wish to confide matters to me for fear that I will have to report to the Assembly. I have previously stated that Members who do bring these matters forward are doing the right and honourable thing. I believe that such actions should be taken into account in considering what action to recommend as a result of the breach.

I have also indicated in past reports that I believe section 8 of the *Conflicts of Interest Act* Review Panel needs revision due to its current complexity and confusing language. I wish to thank Mr. Coutts for his conscientious concern with respect to his obligations under the Act and his honesty in bringing the matter forward.

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Robert C. Clark  
Ethics Commissioner

November 21, 1996