



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

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

of the Investigation

**by
Donald M. Hamilton,
Ethics Commissioner**

into allegations involving

**Mr. Harvey Cenaiko,
Member of the Legislative Assembly for Calgary-Buffalo**

January 30, 2007

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ALLEGATIONS

By letter dated January 5, 2007, Dr. Bruce Miller, Member of the Legislative Assembly for Edmonton-Glenora, requested that I conduct an investigation under the *Conflicts of Interest Act* (“the Act”) with respect to the actions of the Member for Calgary-Buffalo, Mr. Harvey Cenaiko, as former Solicitor General and Minister of Public Security (“the former Solicitor General”).

It was alleged in media articles that the former Solicitor General had proposed promoting Terry Stelmach within the Sheriffs Branch of the ministry following the second and final leadership vote of the Progressive Conservative Party (“the PC Party”), that resulted in Ed Stelmach (Sheriff Stelmach’s father) becoming the new leader of the party. The second vote took place on December 2, 2006, and the Hon. Ed Stelmach was sworn in as Alberta’s Premier on December 14. The new Cabinet, which did not include Mr. Cenaiko, was sworn in December 15.

In Dr. Miller’s letter requesting the investigation, he said:

Mr. Cenaiko’s apparent attempt to improperly promote the premier’s son occurred *after* the Premier’s victory but *before* the new cabinet was announced. To most fair-minded observers, including what the media reports described as a “highly placed government source with first-hand knowledge of the case” (Edmonton Journal, January 5, 2007), this would appear to be an attempt to use his office to gain favour with the new Premier. It is not unreasonable to infer that the motivation was to maintain a cabinet-level position. As you know, Cabinet Ministers earn approximately \$60,000 more per year than normal MLAs, as well as a number of other benefits such as car allowances.

Dr. Miller asked whether the former Solicitor General’s actions may have breached sections 2 or 3 of the Act or any other section. Dr. Miller further asked that I comment on whether or not the former Solicitor General was in an “apparent conflict of interest” and whether his actions rise to the standards set out in the preamble to the Act. He also asked that I comment on whether there would be a violation of the Act if recommendation 6 of the Select Special Conflicts of Interest Act Review Committee were currently in force.

The relevant portion of section 2 reads as follows.

- 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.

Section 3 reads as follows:

- 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.

I will address Dr. Miller’s request for comments as outlined above in the Conclusions section of this report.

PERSONS INTERVIEWED/EVIDENCE OBTAINED

During the course of this investigation, I met with

Harvey Cenaiko, Member for Calgary-Buffalo, and former Solicitor General and Minister of Public Security

Hon. Ed Stelmach, Premier [the Premier's Chief of Staff, Ron Glen, was also present]

and the following individuals from the Department of the Solicitor General and Public Security:

Eric McGhan, Deputy Solicitor General and Deputy Minister of Public Security

Brian Skeet, Assistant Deputy Minister, Public Security Division

Al Sauve, Executive Director, Sheriffs Branch

Vincent Caleffi, Director, Sheriffs Traffic Operations

Sheriff Terry Stelmach, Sheriffs Branch, Traffic Operations

I also conducted a telephone interview with Peter Davis, who was the former Solicitor General's Executive Assistant, and a telephone interview with Sergeant Claude Coupal, Traffic Operations, Sheriffs Branch.

BACKGROUND

In April 2006, the Hon. Ralph Klein, Premier, announced his intention to resign as Leader of the PC Party some time in September 2006. Former Premier Klein did resign as Leader of the PC Party in September and a leadership vote was scheduled for Saturday, November 25, 2006. If no candidate was successful in achieving 50% + 1 of the votes on that date, a second ballot was scheduled for the following Saturday, December 2. No candidate was successful in obtaining the required number of votes on the first ballot. For the second ballot, only the top three contenders remained on the ballot for the December 2 vote. The three remaining candidates were, in alphabetical order: Jim Dinning, Ted Morton, and Ed Stelmach.

On the second ballot, Mr. Stelmach was chosen as the new Leader of the PC Party.

One of the responsibilities of the Department of the Solicitor General and Public Security is to provide Executive Security. According to the department's website, the Executive Security unit "is responsible for the personal protection of the Premier, his family, cabinet ministers, MLAs and other dignitaries." As of December 2, 2006, the department was responsible for the personal protection of Premier-elect Stelmach and his family.

Mr. Cenaiko was first elected to the Alberta Legislature in 2001 and met the Hon. Ed Stelmach at that time. Terry Stelmach was introduced, by his father, to Mr. Cenaiko prior to Mr. Cenaiko being appointed as Solicitor General and Minister of Public Security.

Terry Stelmach joined the Sheriffs Branch on April 1, 2003. He has been with Traffic Operations since September 2006. Prior to that, he served at the courthouse and has been an instructor in officer safety at the training facility. During his almost four years of service, he has occasionally been in an Acting Sergeant role. Generally, he filled in when a Sergeant was away on vacation or in similar situations. At the training facility, he was an Acting Sergeant when providing instruction.

FINDINGS

Private Interest

The “private interest” alleged in this request for investigation is the salary, benefits and status that attach to the position of “Minister.” Section 1(1)(g) says

- 1(1) In this Act,
- (g) a private interest does not include the following
 - (i) an interest in a matter
 - (C) that concerns the remuneration and benefits of a Member;

“Member” is defined in the Act as

- 1(1)(c) “Member” means a Member of the Legislative Assembly and includes a Minister whether or not the Minister is a Member of the Legislative Assembly.

Section 1(1)(g) clearly states that a private interest does not include the remuneration and benefits of a Member. As such, the remuneration and benefits of a Cabinet position are not, in themselves, a “private interest.” This provision is common in conflicts-of-interest legislation for elected officials across Canada. It allows Members to vote on matters relating to salaries and benefits without being in breach of the Act.

Taking actions to obtain the extra salary and benefits accorded to Cabinet Ministers should, in my view, be considered an attempt to further a private interest. In any event, the status and decision-making responsibilities associated with a Cabinet position do constitute a private interest.

Discussions surrounding Sheriff Terry Stelmach

Prior to the second ballot, departmental staff performed security assessments on the three remaining candidates for the leadership. On December 2, when Mr. Stelmach was chosen as leader, the department assumed responsibility for the security of the Premier-elect and his family.

After the vote on December 2, the former Solicitor General said there were no apparent concerns regarding three of the Premier-elect’s four adult children. Mr. Cenaiko said he personally had some concerns regarding Terry Stelmach who served in the Sheriffs Branch of his ministry. He said he was concerned that Sheriff Stelmach could be put in a compromising position and, by extension, the Premier-elect could be brought into the matter. Mr. Cenaiko gave as an example a situation where Sheriff Stelmach pulled over a driver for a traffic violation and the alleged violator noted the name of the officer. The alleged violator could claim misconduct on the part of Sheriff Stelmach and, even if it could be proven that no such misconduct took place, the allegations alone would likely generate media interest and could harm the reputations of both the Premier-elect and his son.

Mr. Cenaiko discussed his concerns with his Executive Assistant, Peter Davis, on Monday, December 4. Mr. Davis said he was not given any instructions to take any action on the matter. Mr. Davis said the former Solicitor General did not express any other motivation for moving Sheriff Stelmach – only concerns about possible compromising situations.

Mr. Cenaiko said that he phoned Sheriff Stelmach on December 4 or 5 and discussed these concerns with him. Mr. Cenaiko suggested there were three options available to address the concerns: Sheriff Stelmach

could remain in Traffic Operations, he could return to the courthouse detail, or he could go back to an Acting Sergeant position at the training college. Sheriff Stelmach said he appreciated the concerns and would consider them and his options.

Mr. Cenaiko said he did not promise Sheriff Stelmach a promotion and that he did not view the options discussed as a “promotion.” He viewed the options discussed as a lateral transfer to positions previously held and responsibilities previously carried out by Sheriff Stelmach. Mr. Cenaiko said that the Minister has no authority to promote any employee and that proper processes must be followed.

Sheriff Stelmach also received a phone call from Vince Caleffi, his immediate supervisor within the Sheriffs Branch. Mr. Caleffi discussed the same concerns that Mr. Cenaiko had raised. Prior to the December 2 leadership vote, Mr. Caleffi had discussed with Sheriff Stelmach the possibility of an Acting Sergeant position becoming available in Traffic Operations. At that time, it was noted that if Sheriff Stelmach were interested in the position and it eventually was available, Sheriff Stelmach would have to go through the proper process and apply for it. During the December phone call, Sheriff Stelmach was asked if he were still interested in moving into an Acting Sergeant position.

Mr. Cenaiko said he was unaware of the earlier discussions between Mr. Caleffi and Sheriff Stelmach regarding an Acting Sergeant position in Traffic Operations. Mr. Caleffi told me that the discussion occurred in late October following an incident involving the Sheriffs. Mr. Caleffi said he discussed with Sergeant Claude Coupal the possibility of moving Sheriff Stelmach into an Acting capacity. Sergeant Coupal confirms that this discussion took place in late October. The matter was then discussed with Sheriff Stelmach. No action was taken in October or November as certain staffing positions had not yet been created and Human Resources staff advised that no transfers could occur until the positions were approved and position numbers were assigned. No further discussions involving Sheriff Stelmach and a possible transfer occurred until after the December 2 vote.

Sheriff Stelmach talked with his father after discussing the concerns raised by Mr. Cenaiko and Mr. Caleffi. Sheriff Stelmach wished to obtain his father’s opinion and advice. According to Sheriff Stelmach, Premier-elect Stelmach acknowledged the concerns but advised his son against accepting an Acting Sergeant position at that time. Sheriff Stelmach advised Mr. Cenaiko that he would prefer to remain as a Sheriff in Traffic Operations. Premier Stelmach confirmed that he did advise his son to stay where he was.

Mr. McGhan, Deputy Minister, learned about the discussions that had occurred between Mr. Cenaiko and Sheriff Stelmach on December 5. While discussing other matters with the Minister, Sheriff Stelmach phoned the Minister to advise that he would prefer to remain in Traffic Operations. Mr. Cenaiko then explained to Mr. McGhan the concerns he had raised with Sheriff Stelmach. Mr. McGhan talked with Brian Skeet, Assistant Deputy Minister, on December 5 to ask whether he or Mr. Sauve were aware of the discussions. Mr. McGhan said Mr. Skeet said he would talk with Mr. Sauve and have him talk to Sheriff Stelmach.

Mr. Skeet said his involvement in this matter was very limited. He said he was asked by Deputy Minister McGhan to call Mr. Sauve and ask him to call Sheriff Stelmach. Mr. Skeet did that. He said Mr. Sauve phoned him a day or two later and advised that Sheriff Stelmach had asked to remain where he was in Traffic Operations. Mr. Skeet said he was unaware of any of the previous discussions regarding a possible move for Sheriff Stelmach or of the concerns raised by the former Solicitor General.

Mr. Sauve said Mr. Caleffi phoned him on December 4. Mr. Caleffi told Mr. Sauve about the conversation with the former Solicitor General and his concerns about possible compromising situations. Mr. Sauve met with Sheriff Stelmach and discussed the concerns that had been raised. Mr. Sauve said Sheriff Stelmach understood the concerns that had been expressed and responded that he would do

whatever was best for the organization. He further said he did not want to do anything that might embarrass his father. Possible options were discussed but no decisions were made. Mr. Sauve said he learned from Mr. Caleffi that Premier Stelmach had advised his son not to accept any offer to transfer at the time.

Mr. Sauve said there were no discussions of any promotion for Sheriff Stelmach and that any position Sheriff Stelmach would have been moved into would have been on an Acting basis. Mr. Sauve said he felt there was some risk of Sheriff Stelmach being put in a compromising position but he did not think the risk level was high.

No one interviewed noted their discussions on this matter in writing. The October discussions relating to a possible move were corroborated by Mr. Caleffi, Sergeant Coupal and Sheriff Stelmach and referenced by Mr. Skeet and Mr. Cenaiko, who learned of those discussions after the media article appeared in December.

Sheriff Stelmach's immediate supervisors (Mr. Caleffi and Mr. Sauve) said that Sheriff Stelmach is a good officer and has demonstrated leadership skills. Both men claimed that Sheriff Stelmach fits well in the organization. Mr. Caleffi said he would not hesitate to put Sheriff Stelmach in an Acting Sergeant role when one becomes available.

“Acting Sergeant”

There appears to be some confusion over the designation of “Acting Sergeant.” The former Solicitor General, Mr. Caleffi, Mr. Sauve and Mr. Skeet all have law enforcement backgrounds. According to Mr. Caleffi, in a paramilitary organization such as the Sheriffs Branch, there is always a person designated in a command position. That is, if the person who holds the position is absent for any reason, another person is designated as “Acting.” I was also told by Mr. McGhan, that instructors at the training college are given the title “Acting Sergeant” so that trainees recognize that command position status.

An Acting position is not permanent. Generally, the Acting designation is used for a short period of time to cover off vacation or other absences. Human resources procedures relating to acting incumbency pay would apply.

Ministry officials assured me that no person is moved into a permanent position without a competition. An Acting Sergeant would have to apply for a vacant position when it was posted and would have to be the successful candidate in order to become a Sergeant on a permanent basis.

CONCLUSIONS

Section 2 (Taking part in a decision)

The former Solicitor General did discuss the possibility of moving Sheriff Stelmach into a different position. The former Solicitor General said he did not have the authority to promote Mr. Stelmach, and Mr. McGhan confirms that it is neither departmental policy nor practice for appointments or promotions to occur outside of an advertised competition. Nevertheless, I find that the discussion itself may be viewed as taking part in a decision.

At issue is whether he did so in an attempt to further his private interests. Mr. Cenaiko said he discussed options with Sheriff Stelmach as a result of concerns the former Solicitor General had about potential compromising situations. Sheriff Stelmach, Mr. Caleffi and Mr. Davis all confirm that the former Solicitor General expressed those concerns and no other motivation. Mr. Cenaiko said he was not

offering Sheriff Stelmach a promotion and, based on the testimony of the officials within the ministry who have direct responsibility for Sheriff operations (Mr. Skeet, Mr. Sauve and Mr. Caleffi), moving an officer into an Acting Sergeant role is not a promotion. No one interviewed appeared to have given any real consideration as to how long Sheriff Stelmach might remain in an Acting role. Since the discussions took place over the course of a couple of days, with the end result being that the offer was declined, I accept that the discussion had not reached that stage.

Premier Stelmach said he did not believe that Mr. Cenaiko proposed a move for Sheriff Stelmach in order for Mr. Cenaiko to remain in Cabinet.

It is my finding that there was no private interest furthered by the discussions commenced by the former Solicitor General. I therefore find that Mr. Cenaiko did not breach section 2 of the Act.

Section 3 (Use of influence)

The former Solicitor General made direct contact with Sheriff Stelmach. Mr. Cenaiko discussed options with Sheriff Stelmach and then with Mr. Caleffi. I find that the discussions were undertaken to assess options available to address the concerns expressed by Mr. Cenaiko. I find no evidence of any motivation that would support a finding of an attempt to influence a decision of the Crown to further Mr. Cenaiko's private interests. I therefore find that Mr. Cenaiko did not breach section 3 of the Act.

“Apparent Conflict of Interest”

Dr. Miller asked that I comment on the following:

. . . as you know, “apparent conflicts of interest” are not currently covered by Alberta’s Act. Despite the urging of the Alberta Liberal caucus, earlier independent reviews, and the urging of your office (Ethics Bulletin, April 1996, no. 2), the May 2006 report of the Select Special Conflicts of Interest Act Review Committee elected not to recommend their inclusion (Recommendation #51). In your view, do the actions of Mr. Cenaiko constitute an “apparent conflict of interest” as conventionally understood and applied in other jurisdictions? Additionally, do you agree that the Act should be amended to more clearly prohibit actions that create “apparent conflicts of interest”?

Dr. Miller did serve on the Select Special *Conflicts of Interest Act* Review Committee (“the COI Act Review Committee” or “the Committee”). The issue of “apparent conflicts of interest” was discussed (*Alberta Hansards* for the Committee’s deliberations are available on the Legislative Assembly website). In my submission to the Committee, I recommended against its inclusion in the Act. For reference, recommendation 51 in the Committee’s report states:

51. The Act should not be amended to prohibit activities which give rise to apparent conflicts of interest.

In response to Dr. Miller’s first question, since the Act does not contain a provision for the finding of an apparent conflict of interest, I am not prepared to comment on whether or not the former Solicitor General’s actions in this case constitute an apparent conflict of interest.

The Preamble

Dr. Miller further asked:

. . . in your view, do Mr. Cenaiko's actions rise to the ethical standards of integrity and impartiality required to promote public confidence and trust as outlined in the preamble of the Act?

The Preamble reads as follows:

WHEREAS the ethical conduct of elected officials is expected in democracies;

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; and

WHEREAS Members of the Legislative Assembly, in reconciling their duties of office and their private interests, are expected to act with integrity and impartiality:

According to Alberta's *Interpretation Act*, the preamble is "a part of the enactment intended to assist in explaining the enactment." In the *Conflicts of Interest Act*, the preamble sets out a standard of conduct expected of Members in fulfilling their responsibilities.

The offer to move Sheriff Stelmach was a judgment call on the part of the former Solicitor General. His department officials all said the concerns were valid, although there were differing views on the level of the risk identified.

The timing of the discussions, the lack of documentation about what was actually offered and the direct communication between the former Solicitor General and Sheriff Stelmach are a concern. In hindsight, the former Solicitor General acknowledges that potential concerns might have been identified earlier (before the second leadership vote) and that documentation that would support the options as "lateral transfers" only might have answered some of the questions that arose when this issue became public.

Nevertheless, I find that the former Solicitor General was acting in his capacity to protect the Premier-elect and his family. I do not find that his actions offend the standards of conduct set out in the preamble.

Recommendation 6 of the COI Act Review Committee

Dr. Miller's final question to me was:

Finally, in your view, would the actions of Mr. Cenaiko be a violation of the Act if the amendments envisioned by recommendation #6 of the Select Special Conflicts of Interest Act Review Committee (May 2006) were currently in force?

Recommendation 6 of the Committee was:

The Act should be amended to provide that no Member should improperly use his or her influence in a manner that would advance his or her own private interest or that would improperly or inappropriately further the private interests of any other person.

Dr. Miller does not specify what "other person's" interests would be furthered in this situation but I would assume he is referring to Sheriff Stelmach. In any event, this recommendation has not been accepted by the Legislative Assembly and no amendment to the Act has been proposed or adopted. I am

therefore not prepared to comment on whether or not Mr. Cenaiko would be in breach of the Act if this wording existed at the time the matters under investigation occurred.

SANCTIONS

I recommend no sanction as I find Mr. Cenaiko has not breached any section of the *Conflicts of Interest Act*.

Donald M. Hamilton
Ethics Commissioner

Dated: January 30, 2007