



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

**REPORT TO THE
SPEAKER OF THE LEGISLATIVE ASSEMBLY
OF THE INVESTIGATION**

BY THE ETHICS COMMISSIONER

**INTO ALLEGATIONS INVOLVING
BRIAN EVANS, Q.C.,
FORMER MINISTER OF JUSTICE
AND ATTORNEY GENERAL**

November 18, 1997

PART I: THE ALLEGATIONS

By letter dated August 7, 1997, Sue Olsen, Member of the Legislative Assembly for Edmonton-Norwood, raised the following matter with me:

... I have been made aware that the former Minister of Justice, Brian Evans, has as of July 3, 1997 accepted employment with the law firm of Cook, Duke, Cox in Calgary. In past years this company has received significant contracts from the Department of Justice. This appointment also appears to contravene the “cooling-off” provisions of Section 29(1). Could you please inform me if Mr. Evans also received an exemption, subject to Section 29(3) and what advice you gave Mr. Evans to ensure that his new position does not bring him in breach of the *Conflicts of Interest Act*.

Ms Olsen was advised that if advice had been given to Mr. Evans, that advice was confidential under section 41(3) of the *Conflicts of Interest Act* and could not be released by my office without the consent of Mr. Evans. However, if an investigation were requested under section 22 of the Act, I could conduct an investigation to determine if a breach had occurred. If advice had been given to the former Minister, I could investigate whether that advice had been followed.

A further letter was received from Ms Olsen dated August 20, 1997, in which an investigation under section 22 of the *Conflicts of Interest Act* was requested. A copy of her letter is attached as Appendix I to this report. The allegation contained in that letter is as follows:

I am concerned that since a period of six months has not yet elapsed from the time that Mr. Evans ceased to be Justice Minister, he may be in breach of section 29(1) of the Act, particularly subsection (b) which prohibits former Ministers from accepting employment with entities with which they had significant official dealings during their last year of service as Minister, until after a 6 month “cooling-off” period. It is my strong belief that, as Minister of Justice, Mr. Evans would have had significant dealings with the firm of Cook Duke Cox, evidenced in part by the \$429,254 in government contracts that this particular firm received from the Department of Justice during the fiscal years, 1994/95 and 1995/96.

By letter dated August 27, 1997, notice was given to Brian Evans, Q.C., and to Ms Olsen that an investigation would be conducted by my office.

PART II: LEGISLATIVE CONTEXT

Legislative Authority for Conducting an Investigation

Section 22(1) of the *Conflicts of Interest Act* provides that any person may request that I investigate an alleged breach of the Act:

- 22(1)** Any person may request in writing that the Ethics Commissioner investigate any matter respecting an alleged breach of this Act by a Member.

Section 23 of the Act provides that I may conduct an investigation:

- 23(1)** On receiving a request under section 22 or where the Ethics Commissioner has reason to believe that a Member has acted or is acting in contravention of advice, recommendations or directions or any conditions of any approval or exemption given by the Ethics Commissioner to the Member under this Act, and on giving the Member concerned reasonable notice, the Ethics Commissioner may conduct an investigation with or without conducting an inquiry.

Terms of Reference for the Investigation

Ms Olsen raised the possible breach of section 29 of the Act which deals with post-employment restrictions on former Ministers. The relevant subsections of section 29 are as follows:

- 29(1)** Except in accordance with subsection (3), a former Minister shall not, for a period of 6 months after ceasing to be a member of the Executive Council,
- (a) on behalf of himself or any other person, solicit or accept a contract or benefit from a department of the public service or a Provincial agency with which the former Minister had significant official dealings during the former Minister's last year of service as a Minister,
 - (b) accept employment with a person or entity, or appointment to the board of directors or equivalent body of an entity, with which the former Minister had significant official dealings during the former Minister's last year of service as a Minister, or
 - (c) act on a commercial basis in connection with any ongoing matter in connection with which the former Minister, while in office, directly acted for or advised a department of the public service or a Provincial agency involved in the matter.
- (2) For the purposes of subsection (1), a former Minister has had significant official dealings with a department of the public service, Provincial agency, person or entity if the former Minister, while in office, was

directly and substantively involved with the department, Provincial agency, person or entity in an important matter.

- (3) Subsection (1) does not apply
- (a) to any contract with or benefit from the Crown if the conditions on which and the manner in which the contract or benefit is awarded, approved or given are the same for all persons similarly entitled, or if the award, approval or grant results from an impartially administered process open to a significant class of persons, or
 - (b) to an activity, contract or benefit if the Ethics Commissioner has exempted the activity, contract or benefit from the operation of subsection (1) and the former Minister observes and performs any conditions on which the Ethics Commissioner has granted the exemption.

PART III: THE INVESTIGATION

In conducting this investigation, notes were taken at each interview and the interview with Mr. Evans, Q.C., was recorded. The following individuals were interviewed during the course of the investigation:

Mr. Brian Evans, Q.C., former Minister of Justice and Attorney General
Ms Sue Olsen, Member of the Legislative Assembly for Edmonton-Norwood
Mr. Lennie Kaplan, Alberta Liberal Caucus
Mr. Neil McCrank, Q.C., Deputy Minister of Justice and Deputy Attorney General
Mr. Doug Rae, Q.C., Assistant Deputy Minister (Civil)
Mr. Al O'Brien, Deputy Provincial Treasurer
Mr. Keith Smith, Administrator, Motor Vehicle Accident Claims
Mr. G. Alan Meikle, Q.C., Solicitor, Civil Law Branch, Alberta Justice

PART IV: FINDINGS OF FACT

Section 29 refers to a former member of Executive Council's last year of service. The time period for the purposes of this investigation is therefore March 26, 1996, to March 26, 1997. The six-month period for post-employment restrictions for Mr. Evans expired September 26, 1997.

Brian Evans, Q.C., served as Minister of Justice and Attorney General during his last year in public service and therefore it is only that portfolio that is relevant to this investigation. During the six-month period following his departure from Executive Council, Mr. Evans accepted employment with Cook Duke Cox, a law firm in Alberta. Prior to doing so, Mr. Evans did not

seek or obtain any advice from my office relating to that employment and his obligations under section 29 of the *Conflicts of Interest Act*.

In making the allegation, Ms Olsen provided me with copies of financial information from Public Accounts which showed the following payments from the Department of Justice to Cook Duke Cox:

1993/94	\$ 874
1994/95	\$304,046
1995/96	\$125,208

The Public Accounts also show the following payments from Alberta Justice to Cook Duke Cox in Trust:

1994/95	\$15,145
1995/96	\$19,002

As noted above, section 29 refers only to “significant official dealings” within the former Minister’s last year as Minister. I therefore only pursued payments made from March 26 to March 31 in fiscal year 1995/96 and payments from April 1, 1996 to March 26, 1997.

Alberta Justice provided me with detailed financial information relating to payments from that department to Cook Duke Cox for 1994/95, 1995/96, and 1996/97. It was noted that the information relating to payments in 1996/97 was based on internal financial records as the Public Accounts for that year had not as yet been released.

In fiscal year 1995/96, Justice information confirmed the payments of \$125,208 and \$19,002 to Cook Duke Cox and Cook Duke Cox in Trust. According to evidence provided to me, those payments represented:

\$140,854	Claims under the <i>Motor Vehicle Accident Claims Act</i>
\$ 2,920	Crown’s share of cost of Appeal Books in Opron matter
\$ 436	Court Order relating to estate involving the Public Trustee

None of the payments, according to their records, were made between March 26, 1996 and March 31, 1996 (portion of Mr. Evans’ last year as Minister).

In fiscal year 1996/97, Alberta Justice made payments of \$275,524 to Cook Duke Cox as follows:

\$275,074	Claims under the <i>Motor Vehicle Accident Claims Act</i>
\$ 450	Legal fees pursuant to order of Crimes Compensation Board

The payments made pursuant to the *Motor Vehicle Accident Claims Act* relate to eight separate claims, all of which occurred during the time period relevant to this investigation.

Information provided by Alberta Treasury confirmed the 1995/96 payments to

Cook Duke Cox of	\$125,208
and to Cook Duke Cox in Trust of	\$ 19,002.

Their records show expenditures from Alberta Justice in 1996/97 to

Cook Duke Cox of	\$ 490.50
and to Cook Duke Cox in Trust of	\$275,033.09.

The \$490.50 total relates to two expenditures: \$450 for legal fees related to Crimes Compensation and \$40.50 for reimbursement of miscellaneous costs relating to Motor Vehicle Accident Claims.

Due to changes in cheque processing in the Alberta public service, Alberta Treasury no longer receives back-up documentation relating to specific expenditures. Alberta Treasury was, therefore, only able to confirm that the payments were made and were made in the amounts identified. Alberta Treasury was not able to confirm the reason for the payments or identify the program under which the payments were made.

One payment which occurred outside the relevant time period was pursued during the investigation because of the size of the payment and the proximity to the relevant time period. That payment was made to Cook Duke Cox by the Department of Public Works, Supply and Services on January 18, 1996, in the amount of \$9.4 million and related to the court decision on the action involving Opron and the Paddle River Dam.

In fiscal year 1996/97, Motor Vehicle Accident Claims expended a total of \$27,114,586. The expenditures to Cook Duke Cox were 1.02 percent of the total paid under that legislation.

PART V: FINDINGS

Motor Vehicle Accident Claims

It was clear from the evidence provided to me that the payments made by Alberta Justice to Cook Duke Cox for the time period in question almost exclusively dealt with Motor Vehicle Accident Claims (the other payments are identified earlier in this report). In order to assist me in determining whether Mr. Evans had significant official dealings with Cook Duke Cox, my investigation focused on that program within Alberta Justice and any possible involvement of the former Minister.

Under the *Motor Vehicle Accident Claims Act*, the Administrator of that Fund is notified of actions where someone is injured in a motor vehicle accident involving an uninsured driver or an unknown driver. The program has a \$200,000 upper limit for each accident.

Under that Act, the responsible Minister appoints an individual within Alberta Justice to act as Administrator of that Fund. The Administrator is Keith Smith, who also serves as Manager, Revenue and Trust, in the Financial Services section of Alberta Justice. Mr. Smith has a staff of five persons who assist him in fulfilling his role as Administrator. Mr. Smith was the Administrator throughout the Minister's last year as a member of Executive Council.

Some personal injury lawyers acting for claimants advise the Administrator that there is a potential claim to be made against the Fund as soon as they commence acting for the claimant. The Administrator also receives notice when a Noting in Default is filed when a defendant fails to file a defence to a Statement of Claim. While the majority of claims against the Fund are made through counsel for the claimant, some claimants may act on their own behalf. For the purposes of this report, I will refer solely to counsel for the claimant as that is the more usual circumstance.

Once the Administrator is notified that a personal injury claim will be made against the Fund, the Administrator prepares a memorandum of instruction to the Civil Law Branch of Alberta Justice and passes the file to the Civil Law Branch. Mr. Meikle, as solicitor to the Fund within the Civil Law Branch, assigns a Civil Law solicitor to handle the file. That assigned counsel then communicates with counsel for the plaintiff (the claimant) and the parties attempt to negotiate a settlement.

According to the Administrator, the majority of claims are resolved without the necessity of a trial. When agreement is reached between the parties, a Consent Judgment is prepared by counsel for the plaintiff and it is endorsed by the Civil Law counsel assigned to the case. The Civil Law counsel then prepares a memorandum of settlement to the Administrator and returns the file to him. Counsel for the plaintiff also receives instructions from Justice that certain conditions must be met before the claim will be paid, which include assignment of the judgment to the Crown so that the Crown obtains the rights to the judgment and may then pursue collection against the defendant (the uninsured driver). Once the assignment has been made and service on the defendant has been effected, the Administrator's staff prepares a cheque requisition form and a cheque is issued to the plaintiff's counsel.

Justice officials all said that since Cook Duke Cox would be acting on behalf of clients, all payments to Cook Duke Cox would be in trust for those clients. The Administrator was asked to explain why some cheques were issued to "Cook Duke Cox" and some to "Cook Duke Cox in Trust." He indicated that, for administrative purposes in preparing cheques, it was decided that only one vendor name would be used and therefore "Cook Duke Cox" is the one used. As much information as possible is provided on the cheque stub to allow law firms to determine that the cheque is intended to be placed in trust for the specific client identified.

Opron and Paddle River Dam

As indicated above, I also raised questions relating to the 1996 payment of \$9.4 million to Cook Duke Cox from the Department of Public Works, Supply and Services following the court decision on the Paddle River Dam. I was advised by Mr. Evans that Cook Duke Cox was counsel for Opron and therefore in an adversarial role to the Crown. In any event, I was assured by Alberta Justice and Alberta Treasury that payments to Cook Duke Cox on that matter were concluded prior to the time period under consideration. I am therefore satisfied that that payment is not at issue in this investigation.

Justice's Role as Crown Counsel

It was explained to me by Mr. Evans and confirmed by Mr. McCrank and Mr. Rae that it is the role of Alberta Justice to provide legal counsel to all government departments. Outside counsel is sometimes considered for special expertise, to avoid conflicts, or because of time or workload commitments. Although there is an expectation that Justice be consulted on contracts with outside counsel, there is no requirement that departments consult Justice. Mr. Evans and Mr. McCrank stated that at no time during the time period in question did Mr. Evans recommend to any other department, any Minister, or to Executive Council that Cook Duke Cox be retained for any purpose. Mr. Evans stated that his opinion about that particular firm was not sought by any of his Cabinet colleagues and he did not offer an opinion about that firm to any colleague.

Due to budgetary restrictions on Alberta Justice, it has become a common practice that where a department hires outside counsel, that department assumes financial responsibility for legal costs. The retention of counsel may or may not be discussed with Alberta Justice, although they are available for that consultation.

PART VI: CONCLUSION

Significant Official Dealings

According to section 29(2), "significant official dealings" involve situations where the former Minister was directly and substantively involved with the department, Provincial agency, person or entity in an important matter.

Mr. Evans said that he at no time contacted the Administrator or any Civil Law solicitor with respect to any specific file involving Motor Vehicle Accident Claims. He stated that he had never recommended Cook Duke Cox to anyone with respect to any claim. Mr. Evans' statement was confirmed by testimony from Mr. McCrank, Mr. Rae, Mr. Smith, and Mr. Meikle. Injured parties choose their own counsel and Alberta Justice would be unaware of any accident or incident for which a claim might be made. Therefore, the Minister would have no involvement in the choice of counsel for the plaintiff.

The claim is settled between Civil Law counsel and plaintiff's counsel. Mr. Meikle confirmed that he was unaware of any instance where the former Minister had contacted a Civil Law solicitor with respect to the settlement of any Motor Vehicle Accident Claim. Mr. Rae advised that, as Assistant Deputy Minister (Civil), he was unaware of any contact between the former Minister and a Civil Law solicitor on any Motor Vehicle Accident Claims Fund claim.

Mr. Evans did indicate that he had discussions relating to the budgetary requirements of the *Motor Vehicle Accident Claims Act*. However, he maintained that at no time did he ever speak to the Administrator or Justice counsel with respect to a specific claim. Mr. Smith confirmed that Mr. Evans had never spoken with him on a specific claim.

Finding

Section 29(2) of the *Conflicts of Interest Act* requires “direct and substantive involvement” by the former Minister. I did not find any evidence that Mr. Evans was directly or substantively involved in any case where a payment was made from Alberta Justice to Cook Duke Cox, during the time period in question. I therefore find that the former Minister, Mr. Evans, did not have significant official dealings with Cook Duke Cox during his last year of service as Minister of Justice and Attorney General as alleged.

Robert C. Clark
Ethics Commissioner