

**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
ALBERT KLAPSTEIN, MEMBER FOR LEDUC**

March 4, 2003

THE ALLEGATIONS

In late January, the Hon. Shirley McClellan, Minister of Agriculture, Food and Rural Development, spoke to me about any possible restrictions under the *Conflicts of Interest Act* with respect to a Member of the Legislative Assembly being able to sit on the Board of Horse Racing Alberta. On February 18, 2003, I met with Albert Klapstein, Member for Leduc, who had been serving as an ex officio member of the Board of Horse Racing Alberta. Mr. Klapstein had been advised by the Minister and myself that membership on the Board is listed as a disqualifying office under Part 3 of the Schedule of the *Conflicts of Interest Act*.

Mr. Klapstein requested that I conduct an investigation of this matter, pursuant to section 22(3) of the Act, which states:

- 22(3)** A Member may request, in writing, that the Ethics Commissioner investigate any matter respecting an alleged breach of this Act by the Member.

The investigation would focus on a possible breach of section 6(1)(b), which states:

- 6(1)** A Member breaches this Act if the Member
- (b) becomes at any time while a Member
 - (i) an employee of the Crown, whether the employment is permanent or temporary or on a full-time or part-time basis, or
 - (ii) the holder of any of the offices set out in the Schedule.

The Schedule (as listed in the Revised Statutes of Alberta 2000) reads, in part:

SCHEDULE

DISQUALIFYING OFFICES

Part 3

Other Disqualifying Offices

The office of chair or member of any of the following:
Horse Racing Alberta

THE INVESTIGATION

During my investigation, I received information and documentation from the following individuals:

- Hon. Shirley McClellan, Minister of Agriculture, Food and Rural Development;
- Mr. Albert Klapstein, Member for Leduc;
- Mr. Brian Manning, Deputy Minister, Agriculture, Food and Rural Development;
- Mr. Peter Pagano, Legislative Counsel, Alberta Justice.

All individuals cooperated fully with my requests and provided the documents sought.

FINDINGS OF FACT

Minister McClellan advised that under section 2 of the *Racing Corporation Amendment Act, 2002* (now the *Horse Racing Alberta Act*, the Minister of Agriculture, Food and Rural Development may appoint a person to the board but those persons do not have voting rights on the board. The Minister chose to appoint Mr. Klapstein as an ex officio member to the Board and that appointment was approved by Cabinet in July 2000. The Chair of Horse Racing Alberta was advised of Mr. Klapstein's appointment via letter dated August 12, 2002.

The Horse Racing Alberta web site does list Mr. Klapstein as an ex officio member of the Board.

Mr. Klapstein advised me that he had attended five meetings of Horse Racing Alberta between August 21, 2002 and January 29, 2003. He further advised that he received no compensation for attending the Board meetings. The Minister was considering payments for the Member for this Board service and that is when the issue was raised with me.

I discussed with Peter Pagano, Q.C., Legislative Counsel with Alberta Justice, whether there was any distinction between being a "member" of the Board and being an "ex officio member" of the Board with respect to application of the *Conflicts of Interest Act*. Mr. Pagano said there was no distinction and that a Member of the Legislative Assembly could not sit as an ex officio member.

The Minister admits that she was remiss in not checking with the Department of Justice on this appointment. Had the appointment been through an Order-in-Council (O/C) process, the result might have been different. The process for O/C appointments was outlined in a previous investigation report.

The Minister provided me with a copy of a letter to Horse Racing Alberta rescinding Mr. Klapstein's appointment as an ex officio member of the Board of Horse Racing Alberta.

CONCLUSION

It is my decision that Mr. Klapstein has breached section 6(1)(b) of the Conflicts of Interest Act. I believe the breach was inadvertent and that the appointment was made in good faith.

SANCTION

The *Conflicts of Interest Act* provides that sanctions may be imposed when I determine that a breach of the Act occurs. Section 25 sets out the range of options in this regard, including a reprimand, penalty, suspension from the House, or expulsion.

Mr. Klapstein and the Minister both advised that no fees or honoraria were paid to the Member for his attendance at Board meetings. There are, therefore, no funds that might be reimbursed in this case.

In this instance, I believe section 25(3) is appropriate. It states:

- 25(3)** If the Ethics Commissioner is of the opinion that the breach was trivial, inadvertent or committed in good faith, the Ethics Commissioner may recommend that no sanction be imposed.

I am satisfied that both the Minister and the Member acted in good faith regarding this appointment. It is therefore my recommendation that no sanction be imposed.

I would recommend, however, that Ministers establish internal mechanisms to ensure that appointments of Members to any body (whether by O/C or otherwise) be reviewed with respect to the possible application of the *Conflicts of Interest Act* to that appointment.

Robert C. Clark
Ethics Commissioner
March 4, 2003