

OFFICE OF THE ETHICS COMMISSIONER
PROVINCE OF ALBERTA

INVESTIGATION INTO ALLEGATION
INVOLVING HON. KENNETH R. KOWALSKI,
MINISTER OF PUBLIC WORKS, SUPPLY AND SERVICES

AUGUST 26, 1993

ALLEGATION

The Office of the Ethics Commissioner received a letter dated May 11, 1993, from the Leader of the Liberal Opposition, Laurence Decore, requesting an investigation under section 22(1) of the *Conflicts of Interest Act*. The Member asked this Office to review material distributed by the Minister of Public Works, Supply and Services to government Members, showing detailed descriptions of capital projects in individual constituencies.

The Hon. Ken Kowalski, Minister, and Mr. Decore were advised by letter from this Office dated May 17, 1993, that an investigation would be conducted.

FACTS

The Budget Address was presented to the Legislative Assembly on Thursday, May 6, 1993. The budget speech delivered by the Provincial Treasurer gives a brief overview of the government's fiscal plans for the approval of the Legislature. Traditionally in Alberta, detailed information on proposed expenditures is provided in the various estimates books along with the budget speech. However, this year, the estimates books were not distributed to the Members of the Legislative Assembly on May 6 but were received by the Members on the following dates:

<u>Document</u>	<u>Date Tabled</u>
Informing Albertans, A Financial Plan for Alberta, Budget '93	May 6, 1993
A Financial Plan For Alberta, Budget '93, Budget Speech	May 6, 1993
A Financial Plan For Alberta, Budget '93	May 6, 1993
1993-94 Capital Fund Estimates	May 11, 1993

<u>Document</u>	<u>Date Tabled</u>
1993-94 Estimates of Proposed Investments, Alberta Heritage Savings Trust Fund, Capital Projects Division	May 11, 1993
1993-94 Government Estimates, General Revenue Fund: Advanced Education and Career Development; Agriculture, Food and Rural Development; Education; Energy; Family and Social Services; Health, Justice; Labour	May 12, 1993
1993-94 Government Estimates, General Revenue Fund	May 14, 1993
1993-94 Legislative Assembly Estimates	May 14, 1993

Mr. Kowalski informed this Office that his office prepared constituency-by-constituency information to assist Members in identifying capital projects proposed or underway in their constituencies. This information, the Minister advised, was available to any Member who requested it. According to the Minister's office, information of this nature is routinely requested, prepared, and distributed. No record is kept of the verbal requests received by that office.

A sample of the data prepared by the Minister's office is attached as Appendix A.

FINDINGS

In conducting its investigation, this Office focused on section 4 of the *Conflicts of Interest Act*, which reads:

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.

We then considered

- (1) whether the information distributed was "insider information" as contemplated by this section; and
- (2) what private interest of the Member, the Member's direct associate, or a minor child of the Member is furthered in this case?

(1) Insider Information

As stated above, the Budget Address was presented on May 6. Detailed expenditure information was not contained in the material distributed on that date.

Prior to any budget being presented, it is common for governments to announce that specific projects will be given priority in the next budget. However, until such time as the Legislature gives approval to the estimates and the Appropriation Act, such proposals are just that -- proposals. At what point does budget information cease to be "insider information": when a project is announced or when the actual estimates are presented? The estimates themselves do not contain any more information than that a specific project is proposed at a particular area (e.g. a hospital in a specified town). That project may have been announced by an MLA several months earlier and will only proceed once the Legislature agrees to commit the funds. Site selection and the tender process follow the commitment of funds.

In previous years, any Member of the House could have used the estimates books to assemble information on proposed projects in the Member's constituency. This year, Members did not have access to the detailed budget. The information released by the Minister of Public Works' office was, therefore, prepared using information not readily available to the public. But was the information "insider information" as contemplated by section 4 of the Act?

The release of information such as the type involved in this investigation is related to Cabinet secrecy and to parliamentary privilege. In May of this year, the Speaker ruled that the release of certain budget information prior to it being presented to the Assembly was a contempt of the Assembly -- a matter for the Assembly to decide.

The release of the information in this case can only be a breach of the *Conflicts of Interest Act* if it is released in order to further a **private** interest. Release of the information for any other reason should be a matter of concern for the Executive Council and for the Legislative Assembly.

It is my opinion that the type information involved in this allegation is not "insider information" as contemplated by the Act.

Private Interests

The *Conflicts of Interest Act* specifies, in section 1(1)(g) that a "private interest" does not include an interest in a matter:

- that is of general application,
- that affects a person as one of a broad class of the public, or
- that concerns the remuneration and benefits of a Member.

Additionally, a "private interest" does not include an interest that is trivial or an interest of a Member relating to publicly traded securities in the Member's blind trust.

What "private interest" is furthered in this case? No allegation has been made that any individual has financially benefited from the material distributed.

In light of advice provided to all Members of the Legislative Assembly regarding election campaign

activities, which was issued by this Office prior to the election writ being issued on May 17, 1993, we considered whether public funds might have been used for political purposes in this case. Does the distribution of specific budget information to selected individuals constitute in any way a "private interest" of the Member?

Commissioner W.D. Parker, in the report of the Commission of Inquiry into the Facts of Allegations of Conflict of Interest Concerning the Honourable Sinclair M. Stevens, noted at page 299:

It should be noted that the allegations contain as an element the suggestion that Mr. Stevens' favourable treatment of Hyundai was motivated not only by considerations involving the potential political benefit that would accrue to him through having the parts plant placed in his own riding, but by his private business interests as well. If the allegation had related only to Mr. Stevens' private political interests, I would have had grave doubts about whether, even if true, such an allegation was an allegation of conflict of interest into which I should inquire and report. This is a complex question that requires a careful assessment of the proper extent to which a minister of the Crown can act to forward his or her own partisan political ends. I do not find it necessary, however, to deal with the question of whether such a political interest, standing alone, would be sufficient to be considered as creating a conflict. It is because this assertion is combined with the allegation that Mr. Stevens was motivated by his private business interests as well that I shall deal with it as an allegation of conflict of interest.

As stated above, there has been no allegation that a private business interest has been furthered in this case. Mr. Parker raised the question of the "proper extent to which a minister of the Crown can act to further his or her own partisan political ends." It must be stated that no one has alleged that the Minister has acted to further his own partisan political ends. We considered the question simply because the material, it was alleged, was distributed to members of one political party and not to members of other parties.

As Commissioner Parker said, this type of allegation is complex. Many activities undertaken by Ministers -- and indeed by all Members -- may be considered by other people to have political implications. Politics and activities of politicians (in government or by private Members) are inextricably connected. In such cases, it may be more important to look beyond the "politics" of a particular situation and ask: "Has the public good been adversely affected in order to increase the political standing of a Member or the Member's party?"

Where the Office of the Ethics Commissioner receives an allegation of this type, now or in the future, it is my view that in order to constitute a conflict of interest under the *Conflicts of Interest Act*, the allegation must contain more than an allegation of the furtherance of political interests -- a clear private interest relating specifically and directly to the Member, the Member's minor children, or the Member's direct associates must be demonstrable. A political interest alone, if it exists, is not sufficient for a finding of a breach of the *Conflicts of Interest Act*.

During election campaigns, the Office of the Ethics Commissioner should not be required to comment on the promises or platforms of persons seeking elected office. Aside from matters falling under election legislation, decisions on political promises or activities should ultimately rest with the electorate.

I have not been provided with any information that a private interest has been furthered in this

instance.

With respect to the possible use of public funds for political purposes, this office has not received any documentation that the information was prepared specifically for the use of one party. We were advised that the information was provided to each individual who requested it.

SANCTIONS

No sanction is recommended as no breach of the Act has occurred.