

OFFICE OF THE ETHICS COMMISSIONER
PROVINCE OF ALBERTA

INVESTIGATION INTO ALLEGATION
INVOLVING KEN ROSTAD, MEMBER FOR CAMROSE

April 28, 1993

ALLEGATION

The Office of the Ethics Commissioner received a request for an investigation under section 22(1) of the *Conflicts of Interest Act* on April 21, 1993, from Gary Dickson, Member of the Legislative Assembly for Calgary-Buffalo. The letter requested an investigation regarding a letter of reference written by Ken Rostad, Member for Camrose, on behalf of a constituent who had been found guilty of a criminal offence. The letter to this office is attached as Appendix 1.

Both Honourable Members were notified by letter on April 23 that this Office would conduct an investigation. The Speaker of the Legislative Assembly was also notified that the matter was before the Ethics Commissioner on that date. These three letters are attached as Appendix 2.

Meetings with Mr. Rostad and Mr. Dickson were arranged for April 26 and 27, respectively.

FACTS

Mr. Rostad confirms he wrote the letter to the court for the use of the court. Mr. Rostad has known the defendant and his family since approximately 1979. The defendant's father approached the Member to ask whether he would be willing to write a character reference for the accused should the accused be found guilty. Mr. Rostad agreed to write the letter and pointed out to the accused's father that no letter could be written until the case reached the sentencing stage. Mr. Rostad subsequently received a letter from the individual, following a guilty verdict, requesting a character reference letter from Mr. Rostad.

A letter addressed "To the court" was prepared on plain stationery, showing Mr. Rostad's home address, and the letter was sent to the individual at his home outside the province. The opening paragraph of the letter indicated that Mr. Rostad was writing in his personal capacity. The Member was unaware, until April 21, whether his letter had been used by the individual. Following the questions raised in the House on April 21, the Member has been told that approximately 40 letters of reference were received on behalf of the person convicted in this case.

FINDINGS

It has been alleged that the Member for Camrose attempted to influence a decision. Any letter of reference is an attempt to influence a matter. What needs to be identified in this case is whether the matter was an **improper** attempt to influence a decision under the *Conflicts of Interest Act*.

Mr. Rostad, as a lawyer and former Attorney, knew the court's procedures. He was aware that in writing the letter, it would become part of the court record in this case. He sent the letter to the individual and it subsequently was presented to the court as part of the public record in a very open

manner.

An important issue to consider is the right for a defendant to put forward an effective defence, including the ability to make submissions about appropriate sentencing. The making of submissions about the appropriate sentence includes the right to call character witnesses or to receive character reference letters. The convicted person cannot be deprived of the right to put forward the strongest submissions possible about the appropriate sentence, including letters of reference from individuals who are well-respected in the community because of the positions they hold and their knowledge of the person being sentenced.

Constituents routinely seek the assistance of their elected Member. Letters of reference are often sought for a variety of reasons. Such representations have become accepted examples of the activities in which a Member "normally engages on behalf of constituents" as referred to in section 5 of the Act.

It must also be noted that the Member did not benefit personally in this case.

In the particular case under review, the allegation is made that the Member for Camrose should not have written the letter as he was the Attorney General until December 15, 1992, and that he continued to have influence as a result of that position. Mr. Dickson asserted that Part 6 of the *Conflicts of Interest Act* imposes a broader obligation on former Ministers than merely matters involving the Crown. He maintained that the principle involved in section 29 extends beyond the Crown and would include the judiciary.

In reviewing this request for an investigation, this office considered the separation of powers which exist in our democratic government. The Executive, the Judiciary, and the Legislative Assembly are all fiercely protective of their independence from each other. Although the Attorney General (now called the Minister of Justice) is responsible for the administration of justice generally, that Minister has no supervisory or other authority with respect to judges. Because the courts do not fall within section 29, that section does not apply in this case.

The actions taken by the Member for Camrose do not breach any section of the *Conflicts of Interest Act*.

RECOMMENDATIONS

In acting on behalf of a constituent, Members are often vulnerable to allegations of an improper use of their office to influence a decision. The potential for a perception of conflict exists in many cases and applies equally to private Members as to members of the Executive Council.

The practice of providing letters of reference on behalf of constituents needs to be reviewed. More and more, the general public is demanding that the public good take precedence over actions which benefit a single individual. A higher standard of conduct is now expected: both a real conflict and the appearance of a conflict are now unacceptable. Additionally, the strengthening of the independence of the Judiciary, the Legislative Assembly, and the Executive in their separate capacities is to be encouraged. This office makes the following recommendations for the consideration of the Legislative Assembly in its review of the provision of reference letters by MLAs.

The Office of the Ethics Commissioner is available to all Members for the provision of advice under

section 41 of the Act. Members may seek guidance from this office **prior** to acting on any matter. The Act provides protection to Members who fully disclose a situation and act according to the advice provided by the Ethics Commissioner.

Should the Legislative Assembly continue to include letters of reference as "normal activities" performed by Members on behalf of constituents, this office recommends that guidelines be established to assist Members in providing references for constituents. The guidelines should set out rules to cover such subjects as the use of letterhead in such cases, the provision of reference letters for persons not well known to the Member, and a clear indication of the capacity (ministerial, MLA, or personal) in which the letter is being written.

The Legislative Assembly may wish to establish a record (possibly within the Office of the Ethics Commissioner) where Members may deposit reference letters they have written. Any concerns regarding the letter might be raised with the Member at the time the letter is provided.

An additional concern arose in this investigation because section 22(6) of the Act states "Where a matter has been referred to the Ethics Commissioner under subsection (1), (3) or (4), neither the Legislative Assembly nor a committee of the Assembly shall inquire into the matter." This particular matter was simultaneously raised in the Assembly and with the Office of the Ethics Commissioner.

It is recognized that privilege is one of the most important matters to be considered by the Assembly and that the Assembly must retain its full authority to deal with matters of privilege. However, clarification by the Assembly would assist in determining the process to be followed when matters are raised in both the Assembly and with this office.

SANCTIONS

No sanction is recommended as the Member has not breached the *Conflicts of Interest Act*.