



**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
HOWARD SAPERS,
MEMBER FOR EDMONTON-GLENORA**

25 January 2000

THE ALLEGATIONS

As a result of my investigation into allegations involving Hon. Stockwell Day (see report of November 15, 1999), Mr. Sapers wrote to me on November 22, 1999, concerning his own experience relating to a defamation suit in 1996.

Mr. Sapers asked whether I could advise him on a possible violation of section 7 of the *Conflicts of Interest Act*, which states:

- 7(1) A Member breaches this Act if the Member or, to the knowledge of the Member, the Member's spouse or minor child accepts from a person other than the Crown a fee, gift or other benefit that is connected directly or indirectly with the performance of the Member's office.
- (2) Subsection (1) does not apply to a fee, gift or other benefit that is accepted by the Member or the Member's spouse or minor child as an incident of protocol or of the social obligations that normally accompany the responsibilities of the Member's office if
- (a) the total value of the fees, gifts and benefits given from the same source to the Member and the Member's spouse and minor children in any calendar year is \$200 or less, or
 - (b) the Member applies to the Ethics Commissioner
 - (i) as soon as practicable after the fee, gift or benefit is received by the Member, or
 - (ii) as soon as practicable after the Member has knowledge that the fee, gift or benefit has been accepted by the Member's spouse or minor child,and either obtains the Ethics Commissioner's approval for its retention, on any conditions the Ethics Commissioner prescribes, or, if the approval is refused, takes such steps as the Ethics Commissioner directs with respect to the disposition of the fee, gift or benefit.
- (3) The Ethics Commissioner may give an approval under subsection (2)(b) only where the Ethics Commissioner is satisfied that there is no reasonable possibility that retention of the fee, gift or other benefit will create a conflict between a private interest and the public duty of the Member.

I met with Mr. Sapers on December 14, 1999, and we discussed his request. It was agreed that I would proceed under section 22(3) of the *Conflicts of Interest 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

As discussed with Mr. Sapers on December 14, my investigation in this matter would be based on my comments in my November 15, 1999 report relating to allegations against Mr. Day. In that report, I said:

I believe that contributions to a "legal defence fund" are presently prohibited by section 7 of the *Conflicts of Interest Act*. But even if they were not, acceptance of such gifts or benefits would raise serious questions of conflicts of interest in my mind.

During the course of this investigation, I obtained information from:

- Hon. Ken Kowalski, the current Speaker of the Legislative Assembly;
- Stan Schumacher, the former Speaker of the Legislative Assembly;
- Dr. W.J. David McNeil, Clerk of the Legislative Assembly;
- Howard Sapers, Member for Edmonton-Glenora; and
- Moses Jung, former Executive Assistant to Speaker Schumacher.

All individuals cooperated fully with my investigation and responded promptly to my requests for information.

FINDINGS OF FACT

A Statement of Claim was filed against Mr. Sapers (and Grant Mitchell, former Leader of the Official Opposition and Member for Edmonton-McClung) on March 19, 1996. The lawsuit was filed by Robert Talbot and related to remarks made by the Members concerning "Hotel de Health." That company was, at that time, interested in running private hospitals in Alberta.

In my November 15, 1999 report, I referred to the 1996 lawsuit as follows:

During the course of my investigation, I asked Mr. Sapers, M.L.A. for Edmonton-Glenora, about his experiences in seeking coverage in the Spring of 1996. He advised that he made verbal inquiries of the Speaker's office regarding the role played by Parliamentary Counsel or Alberta Justice when an M.L.A. is sued. He said he was told that a Member should retain private counsel and he did so. Certainly remarks made at the Members' Services Committee meetings in 1989 would seem to indicate that the two Parliamentary Counsel were not

certain of the application of the Risk Management and Insurance coverage as it related to litigation claims.

By letter dated December 17, 1999, the Hon. Ken Kowalski, Speaker of the Legislative Assembly, confirmed that his office has no record of the request from Mr. Sapers regarding legal support or coverage available to Members, nor is there a record of any advice provided to Mr. Sapers. Speaker Kowalski did provide a current address and phone number for Mr. Jung in the event that Mr. Jung could be of assistance in my investigation.

Dr. McNeil confirmed, by letter dated December 21, 1999, that neither he nor Parliamentary Counsel were able to locate any records in their offices relating to a request for advice by Mr. Sapers or advice provided to him on the lawsuit involving Hotel de Health. Dr. McNeil also noted that he had stated in his Statutory Declaration on the investigation involving Mr. Day that "I am not aware of the LAO receiving a specific request from Howard Sapers regarding coverage". That Statutory Declaration was attached to the November 15, 1999 report as Appendix 8.

Phone conversations were held with Mr. Jung (who now lives in the United States) on December 21 and 22, 1999. Mr. Jung recalls Mr. Sapers asking for advice. Mr. Jung believes the matter may have been discussed at a Table Officers meeting around the time Mr. Sapers raised the issue. Since no records were made of the request or discussions, no exact dates are available. ("Table Officers meetings" are daily meetings between the Speaker and his House Officers when the Legislature is in session). Present at the meeting may have been Dr. McNeil and Parliamentary Counsel (Mr. Jung did not recall which of three possible Parliamentary Counsel were present at the discussion). It is his recollection that the conclusion of the discussion was that there was no provision for legal coverage or support from Parliamentary Counsel regarding the lawsuit. Mr. Jung verbally communicated that response to Mr. Sapers.

Mr. Jung vaguely recalls a discussion that someone should do follow-up on the issue as the sense at the Table Officers meeting was that "it wasn't right" that a Member would not be covered. He believes one option discussed was the Speaker raising the issue with the Members' Services Committee. He does not recall any action being taken and specifically does not recall any conversations with Alberta Justice or Alberta Treasury's Risk Management Division respecting Mr. Sapers.

Based on the information provided by the Legislative Assembly Office, Mr. Sapers advised me that he sought legal representation for both Mr. Mitchell and himself. Barry Zalmanowitz of Milner Fenerty agreed to represent the Members. Correspondence was exchanged between the parties. A Demand for Particulars was served on the claimant by Mr. Zalmanowitz. Apparently no particulars were provided and no Statement of Defence was filed. To Mr. Sapers' knowledge, the lawsuit is still alive but is "dormant."

Mr. Sapers advised that Mr. Zalmanowitz "advised that he would be happy to consider his services as a gift to the Liberal Party of Alberta and would seek a tax receipt for a donation in kind." Mr. Sapers provided me with a copy of the invoice he received from Mr. Zalmanowitz. The total payable, including GST, is \$1,262.30. Mr. Zalmanowitz did

receive an official receipt from the Alberta Liberal Party on February 26, 1998, for a contribution in the amount of \$1,262.30.

Mr. Sapers made the following request in his November 22 letter to me:

Would you please advise as to whether or not the above described events violate the principles enumerated in the report of your investigation regarding Mr. Day. Please note that I did not advise your office of the free provision of legal services for several reasons. Firstly, the matter is not absolutely closed and therefore the question of fees is not completely resolved. Secondly, invoicing which was received in this matter did not differentiate between those services provided for me exclusive of those services provided for Mr. Mitchell and thirdly, the donation of legal services ultimately was made to the Liberal Party of Alberta.

CONCLUSION

In my November 15, 1999 report, as noted earlier, I said that I believed contributions to a "legal support fund" for a specific Member would constitute a breach of section 7(1) of the Act on the part of that Member.

In this case, the legal services were provided to Mr. Sapers. These services constitute a "fee, gift or other benefit" to a Member since the Member did not pay for the services. The "fee, gift or other benefit" was related directly or indirectly to the performance of Mr. Sapers' office. It does not make any difference that the party issued a receipt for the legal services. Such contributions "in kind" may well be acceptable contributions to a political party under the *Election Finances and Contributions Disclosure Act* or the *Income Tax Act*, but they are a "benefit" to Mr. Sapers under the *Conflicts of Interest Act*.

If the legal fees relate to a matter connected "directly or indirectly" with the performance of the Member's office and come from any person other than the Crown, then section 7(1) applies to the situation and **cannot** be accepted. The Act does not give me discretion to allow a Member to accept a fee, gift or other benefit that is connected directly or indirectly with the performance of the Member's office. I have discretion with respect to fees, gifts or other benefits that are received as an incident of protocol or of social obligations associated with the Member's office. Legal representation is neither "protocol" nor is it a "social obligation."

Mr. Sapers took appropriate action by notifying the Speaker's office when he was served with a Statement of Claim. As stated in my November 15 report, Mr. Sapers received the wrong advice from the Legislative Assembly Office. I believe the Risk Management Division should have been made aware of the claim immediately and a decision as to coverage ought to have been made by Risk Management at that time. Instead Mr. Sapers was left to believe he was on his own with respect to legal representation and payment for that representation. He therefore made what he felt were the necessary arrangements to defend himself.

As I discovered during the course of the investigation relating to Mr. Day, the issue of insurance coverage for Members has never been clearly set out for all concerned. I think that has been rectified. Mr. Sapers was a victim of a mistake of fact by the Legislative Assembly Office and that mistake gave rise to a breach of the *Conflicts of Interest Act* by Mr. Sapers.

It is my decision that Mr. Sapers has breached section 7 of the *Conflicts of Interest Act*.

I must hasten to add that, based on the initial mistake of fact, I believe the breach was inadvertent or committed 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.

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.

Had the legal fees been waived, I might have chosen to recommend that Mr. Sapers pay the amount waived. However, since the fees were submitted as a contribution "in kind" to the Alberta Liberal Party and no doubt submitted to Revenue Canada as part of a tax claim, I believe the matter should be left as is.

I therefore recommend that no sanction be imposed in this matter.

Robert C. Clark
Ethics Commissioner
25 January 2000