

**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
JANIS TARCHUK,
MEMBER FOR BANFF-COCHRANE**

25 January, 2000

THE ALLEGATIONS

Mrs. Tarchuk, Member for Banff-Cochrane, wrote to me on December 6, 1999, seeking advice regarding her appointment to the Local Authorities Pension Plan Board. She noted that she had recently been made aware that membership on the Board is listed as a disqualifying office under Part 3 of the Schedule of the *Conflicts of Interest Act*.

I met with Mrs. Tarchuk on December 13, 1999, and we discussed the issue. It was agreed that she would request that I initiate an investigation under 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.

Mrs. Tarchuk asked that I investigate 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 reads, in part:

SCHEDULE

DISQUALIFYING OFFICES

Part 3

Other Disqualifying Offices

Local Authorities Pension Plan Board

THE INVESTIGATION

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

- Hon. Stockwell Day, Provincial Treasurer;
- Hon. David Hancock, Q.C., Minister of Justice and Attorney General; and
- Mr. Julian Nowicki, Deputy Minister, Executive Council.

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

FINDINGS OF FACT

In my discussion with Mrs. Tarchuk, she advised that she was recommended for the Order-in-Council appointment by the Hon. Stockwell Day, Provincial Treasurer. He is the Minister responsible for pension administration matters.

Since there are a number of offices involved in this matter, I will address the actions taken by each under separate headings.

ALBERTA JUSTICE

Hon. Mr. Hancock responded by letter dated December 22, 1999, signed by Paul Bourque, Deputy Minister of Justice. The letter from Justice states that the original Recommendation for Order-in-Council (ROC) for the appointment of Mrs. Tarchuk to the Local Authorities Pension Plan Board was received by the Legislative Counsel Office in Alberta Justice on April 29, 1998. The Order-in-Council (No. 175/98) was passed at the May 5, 1998 Cabinet meeting and was signed by the Lieutenant Governor on May 6, 1998. A copy of the ROC was provided to me and it shows that the recommendation was made by Hon. Stockwell Day.

Justice advised that Order-in-Council appointments normally follow the process outlined below:

- 1 The Legislative Counsel Office has a specific lawyer and one support staff who deal with the preparation of OCs. On occasion the lawyer will delegate work to another lawyer. In the event of illness to the support staff member, there is a back-up support staff member.
- 2 For each appointment that requires an OC, there is a file. If the appointment is a "Disqualifying Office" it is noted on the inside cover of the file.
- 3 Recommendations for Order in Council (ROC) are sent to the support staff member by the Executive Council Office. The support staff member prepares a draft OC, based on the information provided in the ROC and on precedents. The lawyer reviews the draft to ensure that it complies with the legislation under which the appointment is made. If the lawyer discovers any problems (including a disqualifying office issue), the lawyer phones the contact person listed on the ROC to advise them of the problem.
- 4 Once the OC is finalized, the OC is placed on a "Proposed List" for Cabinet consideration.

The letter from Alberta Justice said that Legislative Counsel Office failed to identify the disqualifying office in this case. A lawyer other than the one who normally reviews appointments had reviewed this particular ROC. The error was discovered when a request for re-appointment was received by the Legislative Counsel Office.

ALBERTA TREASURY

Hon. Stockwell Day, Provincial Treasurer, confirmed by letter dated January 13, 2000, that Mrs. Tarchuk had been appointed to the Local Authorities Pension Plan Board by Order-in-Council 175/98 on May 6, 1998. Mr. Day said "With a policy commitment from the Government to see these funds eventually move out of statute, Crown representation on the Board is especially important."

Mr. Day confirms that it was discovered during the re-appointment process in December 1999 that Mrs. Tarchuk was restricted from serving on the Board by virtue of the *Conflicts of Interest Act*. Mrs. Tarchuk

resigned from the Board by letter dated December 6, 1999. Alberta Pensions Administration sent a memo to Alberta Justice on December 6, 1999, requesting that Mrs. Tarchuk's appointment be rescinded. Order-in-Council 484/99, dated December 8, 1999, was passed to rescind Order-in-Council 175/98. Mr. Day provided copies of all relevant documentation.

EXECUTIVE COUNCIL

By letter dated December 21, 1999, Mr. Nowicki advised that Executive Council approves appointments of Board members by Order-in-Council. The ministry that recommended the appointment is responsible for preparing the Recommendation for Order-in-Council (ROC). That ministry "would normally check any prohibitions on appointments."

Mr. Nowicki further advised that Alberta Justice is responsible for reviewing the ROC. The information he provided confirms the information and process outlined by the Hon. David Hancock and described earlier in this report. Mr. Nowicki states that "Executive Council relies on the nominating ministry and the Department of Justice to verify the validity of appointments."

The error in the appointment of Mrs. Tarchuk to the Local Authorities Pension Plan Board was discovered during the re-appointment process.

OFFICE OF THE ETHICS COMMISSIONER

Mrs. Tarchuk became a Member of the Legislative Assembly in 1997. Page 2 of the initial private disclosure forms filed with my office asks the following:

3. OFFICES AND DIRECTORSHIPS

- (B) Do you hold any offices or directorships that are not permitted by section 6 of the *Conflicts of Interest Act*? Members of the Executive Council should also refer to section 20 of the Act. Please list any offices or directorships held by you, as defined in those sections.

In 1997, Mrs. Tarchuk indicated that she held no such offices as defined by section 6.

Members are required to file annual disclosure statements with my office. The forms used after the initial filing are "simplified" but contain the following requests for information relative to "Offices and Directorships" on page 1.

3. OFFICES AND DIRECTORSHIPS

- (A) Are there any changes to your disclosure with respect to your services as an officer or director of any corporation? Yes ? No ? If yes, please indicate the name of the corporation and the position held by you.
- (B) Are there any changes to your disclosure with respect to any offices or directorships that are not permitted by section 6 of the *Conflicts of Interest Act*? Members of the Executive Council should

also refer to section 20 of the Act. Yes ? No ? If yes, please list any offices or directorships held by you, as defined in those sections.

In her 1998 private disclosure form, Mrs. Tarchuk listed her appointment to the Local Authorities Pension Plan Board as a change under 3(A). It should have been listed under 3(B). There is no indication on Mrs. Tarchuk's file that her appointment was raised as a concern and there is no indication that my office questioned the listing of the appointment under 3(A) rather than 3(B).

In preparing a public disclosure form for Mrs. Tarchuk, the appointment was disclosed and has continued to be disclosed since 1998. The disclosure has never been raised as an issue or breach of the Act prior to December 1999, when the appointment was slated for re-appointment.

My office is not normally contacted regarding Order-in-Council appointments and I was not contacted prior to December 1999 by Alberta Justice, Alberta Treasury, or Executive Council regarding this particular appointment.

CONCLUSION

It is my decision that Mrs. Tarchuk has breached section 6(1)(b) of the Conflicts of Interest Act. I believe the breach was inadvertent and that a number of "failures" contributed to the breach.

I must accept responsibility for the failure of my own office to identify this disqualifying office. Mrs. Tarchuk declared her appointment and no "alarm bells" sounded for me. A review of our disclosure process is underway to ensure that this situation does not reoccur. I do offer my most sincere apology to Mrs. Tarchuk for my oversight.

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.

Mrs. Tarchuk advised me that she received approximately \$2,090 in 1999 for service on this Board and approximately \$2,500 in 1998. The amounts include honoraria for attendance at Board meetings and travel time to those meetings. I considered whether or not these funds ought to be repaid.

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.

In light of the mistake of fact made in this matter by all parties involved, it is my recommendation that there be no reimbursement of funds Mrs. Tarchuk received for her service on this board.

While all Members have ultimate responsibility for meeting their obligations under the *Conflicts of Interest Act*, when a Member seeks, receives, and relies on the advice and guidance of others, I believe that reliance should be a mitigating factor in assessing a sanction. In this case, Mrs. Tarchuk relied on

Alberta Treasury and Alberta Justice regarding the appointment. She disclosed the appointment to my Office and the mistake of fact was not noted at that time.

It is therefore my recommendation that no sanction be imposed.

Robert C. Clark
Ethics Commissioner
25 January, 2000