



**OFFICE OF THE ETHICS COMMISSIONER
PROVINCE OF ALBERTA**

**Report to the Speaker
of the Legislative Assembly of Alberta**

of the Investigation

by Donald M. Hamilton, Ethics Commissioner

**into allegations involving
Gary Masyk,
Member of the Legislative Assembly
for Edmonton-Norwood**

July 20, 2004

ALLEGATIONS

This office received a letter dated April 19, 2004, from a citizen (“the complainant”) requesting that an investigation be conducted into certain matters involving Gary Masyk, the Member for the Legislative Assembly for Edmonton-Norwood (“the Member”). The complainant referred to media reports that the Member was in arrears with respect to maintenance enforcement payments for child support and noted that the Assembly had recently considered Bill 18, *Maintenance Enforcement Amendment Act, 2004*. The complainant also referred to comments in the article that suggested no enforcement action had been taken against the Member and questioned if there had been special treatment for the Member.

The complainant asked that I confirm certain information contained in the media report relating to the amounts owed by the Member and that the Member had complied with the *Conflicts of Interest Act* regarding disclosure of the support obligations.

The complainant also asked whether the Member had participated in discussions on automobile insurance reform proposals in the past year.

I replied to the complainant by letter that I would conduct an investigation as requested in the complainant’s letter but that I would not confirm confidential information (i.e. amounts) contained in the Member’s private disclosure statement.

The Member was advised by letter dated May 3, 2004, that the investigation would be conducted and that the investigation would relate to his participation, if any, in discussions on amendments to the *Maintenance Enforcement Amendment Act, 2004* or proposed changes to automobile insurance that might involve the maintenance enforcement program. A further letter was sent to the Member dated May 31, 2004, in which I cited sections 2 and 3 as the focus of this investigation. I also noted that I would be reporting on whether or not the Member had met his obligations under the *Conflicts of Interest Act* with respect to disclosure.

The text of sections 2 and 3 are set out below.

Part 2 Obligations of Members

- 2 (1) A Member breaches this Act if the Member takes part in a decision in the course of carrying out the Member's office or powers knowing that the decision might further a private interest of the Member, a person directly associated with the Member or the Member's minor child.
- (2) Where a matter for decision in which a Member has reasonable grounds to believe that the Member, the Member's minor child or a person directly associated with the Member has a private interest is before a meeting of the Executive Council or a committee of the Executive Council or the Legislative Assembly or a committee appointed by resolution of the Legislative Assembly, the Member must, if present at the meeting, declare that interest and must withdraw from the meeting without voting on or participating in the consideration of the matter.
- (3) A Member who fails to comply with subsection (2) breaches this Act.

- (4) If a matter referred to in subsection (1) requires a decision of a Minister, the Minister may request another Minister to act in the Minister's stead in connection with the decision and the Minister to whom it is referred may act in the matter for the period of time necessary.
 - (5) In the case of a meeting of the Legislative Assembly or a committee of it, where a Member has complied with subsection (2), the Clerk of the Legislative Assembly or the secretary of the meeting shall file with the Ethics Commissioner, as soon as practicable, a copy of the deliberations and proceedings, as recorded in Alberta Hansard, of the meeting from which the Member withdrew.
 - (6) In the case of a meeting of the Executive Council or a committee of it, where a Member has complied with subsection (2), the secretary of the meeting shall record (a) the declaration, (b) the general nature of the private interest declared, and (c) the withdrawal of the Member from the meeting.
 - (7) The secretary of the meeting shall file the information recorded under subsection (6) with the Ethics Commissioner as soon as practicable after the meeting.
 - (8) Information filed with the Ethics Commissioner under subsection (7) is confidential and may not be disclosed or inspected, but the information may be inspected and used by the Ethics Commissioner if the information is likely to be material in determining whether a Member has breached this Act.
 - (9) If no record was kept of who was present at a meeting at the time a matter for decision arose in which a Member, a Member's minor child or a person directly associated with a Member had a private interest, no inference that the Member was present at the meeting at the time the matter arose can be made for the purposes of determining whether there was a breach under subsection (2).
- 3** A Member breaches this Act if the Member uses the Member's office or powers to influence or to seek to influence a decision to be made by or on behalf of the Crown to further a private interest of the Member, a person directly associated with the Member or the Member's minor child.

PERSONS INTERVIEWED

The following individuals were interviewed during the course of the investigation:

Mr. Gary Masyk, Member for Edmonton-Norwood

The complainant

Mr. Manuel da Costa, Executive Director, Maintenance Enforcement, Alberta Justice

Mr. Nand Narine, Manager, File Intervention, Collections, Maintenance Enforcement, Alberta Justice

Ms Angela Kerr, Senior Advisor, Policy and Legislation, Maintenance Enforcement, Alberta Justice

In addition to interviews, Statutory Declarations were requested and received from:

Hon. David Hancock, Q.C., Minister of Justice and Attorney General

Ms Carol Haley, Chief Government Whip and Member for Airdrie-Rocky View

Dr. W.J. David McNeil, Clerk of the Legislative Assembly

Doris Porter and Kristine Oberg, Cabinet Policy Coordinators, Executive Council

In my discussions with the complainant and the Member, I satisfied myself that there is no relationship between these individuals. I am satisfied that the complainant was reacting to a media report on matters involving the Member and which raised questions in the mind of the complainant. For purposes of this investigation, I do not find it necessary to identify the complainant.

DISCLOSURE OF SUPPORT OBLIGATIONS

Section 11 of the *Conflicts of Interest Act* requires that each Member file a disclosure statement with the Office of the Ethics Commissioner (“the Office”) in the form provided by the Office. Copies of blank private disclosure forms are available on our website (www.ethicscommissioner.ab.ca) and the forms do include “support obligations” under the liabilities section. The Ethics Commissioner meets with each Member on an annual basis and reviews that year’s disclosure statement with the Member. In the Fall, public disclosure forms are prepared by the Office and are normally provided to the Office of the Clerk of the Legislative Assembly around November 1 for public access.

The Member was first elected to the Legislative Assembly in the general election of 2001. The Member disclosed support obligations to this office during his 2001 disclosure meeting. There are further notations from 2003 on his file with respect to support obligations. Given what I have learned as a result of this investigation, I believe the information on the file – as recorded by this office -- is not complete in that it is unclear on certain details.

This situation points out the importance of “details” in disclosure statements. In recording assets or liabilities, we need information such as creditors, debtors and amounts to ensure the disclosure statements are complete and accurate. When the information is provided verbally (as occurs on occasion), we must ensure there is proper communication between the Member and ourselves to ensure that the file is complete. In my two meetings with this Member since my appointment as Ethics Commissioner, I have found the Member to be very forthcoming in discussing his obligations. For these reasons, I am satisfied that the Member responded to our requests for information in a manner that this office and the Member believed was in compliance with the disclosure requirements.

Section 14 of the *Conflicts of Interest Act* states that:

14(4) The following shall be excluded from a public disclosure statement unless the Ethics Commissioner is of the opinion that disclosure of the asset, liability, financial interest, source of income or information is likely to be material to the determination of whether a Member is or is likely to be in breach of this Act:

(f) support obligations.

“Support obligations” are specifically excluded from public disclosure under most circumstances. The Legislature obviously intended that certain information ought to remain “private,” and I intend to respect that decision of the Legislature. It is my opinion that the amount owed is not relevant to this investigation.

PRIVATE INTEREST OF GARY MASYK

The *Conflicts of Interest Act* does not define the term “private interest.” In section 1(1)(g), the Act lists several things that a “private interest” does not include:

1(1)(g) "private interest" does not include the following:

- (i) an interest in a matter
 - (A) that is of general application,
 - (B) that affects a person as one of a broad class of the public, or
 - (C) that concerns the remuneration and benefits of a Member;
- (ii) an interest that is trivial;
- (iii) an interest of a Member relating to publicly-traded securities in the Member's blind trust;

Does Mr. Masyk have a “private interest” with respect to maintenance enforcement issues and the Maintenance Enforcement program specifically?

Mr. da Costa advised that Alberta is an opt-in province with respect to maintenance enforcement. That is, when a person (“the creditor”) is to receive support payments as a result of a court order, that person may opt to have that order registered with Maintenance Enforcement but they are not required to do so. Maintenance Enforcement maintains files where individuals choose to have the court orders registered. Some debtors comply with the court orders. Maintenance Enforcement staff maintain records on those files but they do not have to take enforcement action.

Maintenance Enforcement also assists creditors in obtaining funds from debtors who do not make payments according to the court order. A number of enforcement actions are available to Maintenance Enforcement, including garnishee orders on a debtor’s income, notices to Alberta registries (e.g. personal property and vehicle or driver’s licence renewals), and notices to federal government agencies such as the Passport Office for suspension of a debtor’s passport.

Since Maintenance Enforcement is not involved in all court ordered support payment arrangements and since it does not take enforcement actions in every case, it is my view that, where a Member has a file with Maintenance Enforcement, that Member will have a “private interest.” It is my decision in this case that Mr. Masyk does have a private interest in matters involving the Maintenance Enforcement Program in Alberta Justice.

MR. MASYK’S DEALINGS WITH MAINTENANCE ENFORCEMENT

Mr. da Costa and his staff requested that I obtain the consent of the debtor, Mr. Masyk, prior to discussing the file since the *Maintenance Enforcement Act* and relevant regulations did not provide authority for the Executive Director to discuss the file with the Ethics Commissioner. Mr. Masyk’s consent was obtained.

It was confirmed that Mr. Masyk does have a file with Maintenance Enforcement and that there are arrears. The comment in the media article that there is an “apparent lack of effort to collect” is not accurate. Mr. da Costa and his staff discussed the file with me and the enforcement actions that have been taken. I am satisfied that Mr. Masyk has not received “special treatment.”

Mr. Narine, who has been responsible for the handling of the Member’s file at Maintenance Enforcement, said that the Member has not used the Member’s position or powers to attempt to influence any decision made by Maintenance Enforcement.

Without going into specifics on this file, I will confirm that there are arrears, that they are accumulating, and that stays have been sought through the court that have affected collection processes and certain enforcement actions.

The Minister of Justice and Attorney General, responsible for the Maintenance Enforcement Program, states in his Statutory Declaration that the Member never sought special treatment through the Minister’s office. The Minister states he was advised of the file in 2001 by Maintenance Enforcement and that he initiated a conversation with the Member and encouraged the Member to resolve any outstanding issues.

The Minister states he advised the Member that if the matter remained in arrears, enforcement actions would be taken.

ALLEGATIONS RELATING TO MAINTENANCE ENFORCEMENT AND PROPOSED CHANGES TO AUTOMOBILE INSURANCE

The complainant raised two matters that have been under review by the Members of the Legislative Assembly. I will deal with Bill 18, *Maintenance Enforcement Amendment Act, 2004*, in the following section.

The second matter raised by the complainant was not detailed in the complainant's letter. The letter simply asked "Please confirm if Mr. Masyk did excuse himself from all dealings with respect to the changes to auto insurance in Alberta in the past year."

I included this matter in my letter to the Member advising him that I would be conducting an investigation because I did not know whether maintenance enforcement had been in any way tied with any proposed reforms to automobile insurance.

I asked the complainant for a clarification of this matter and the complainant indicated that insurance companies may raise insurance premiums where a policyholder has had a licence suspended for non-traffic related reasons.

I discussed this "linkage" with Mr. da Costa and his staff during our interview and was told by them that there have been a few such cases reported but that the premium increases in those cases were more likely linked to traffic offences for the policyholders involved. In one case, the policyholder simply moved coverage to another company. They further advised that they were unaware of any linkages under consideration in automobile insurance reforms that involve maintenance enforcement actions.

Based on the information provided by Mr. da Costa and his staff and on the Statutory Declarations of elected officials and other officials, there are no reforms relating to automobile insurance at this time that relate to maintenance enforcement.

Since there is no identified linkage between automobile insurance reforms and maintenance enforcement actions at this time, it is my opinion that there are no grounds for this allegation and I will not consider it further in this report.

ALLEGATIONS RELATING TO AMENDMENTS TO THE MAINTENANCE ENFORCEMENT ACT

Prior to Introduction

Prior to a Bill being introduced in the Legislature, it may be considered in a number of forums. Draft legislation is reviewed by Executive Council (Cabinet), government caucus, and the appropriate Standing Policy Committee.

According to the Statutory Declarations of the Chief Government Whip and the Minister of Justice and Attorney General, Mr. Masyk did not attend any Cabinet meetings. The Member told me that he did not attend the Standing Policy Committee meetings where the draft legislation was under consideration. The Minister of Justice and Attorney General states he does not recall the Member attending a Standing Policy Committee meeting on Bill 18. In her Statutory Declaration, Ms Haley states the Member did not attend Standing Policy Committee meetings at which Bill 18 was discussed.

According to the Statutory Declaration of Ms Porter, Mr. Masyk was not present at any Cabinet meetings or Standing Policy Committee meetings when Bill 18 was under discussion.

In addition to Ms Haley's Statutory Declaration, I also had a brief conversation with her in my office. Ms Haley could not recall any comments on the subject of maintenance enforcement that the Member might have made during a caucus meeting. Mr. Masyk also did not recall commenting on the subject of maintenance enforcement at a caucus meeting.

Legislative Process in the Legislature

During my investigation, I asked both the Chief Government Whip and the Clerk of the Legislative Assembly to address whether the Member was present during, or participated in, any discussions, debates or votes regarding Bill 18 in the Legislative Assembly or any of its committees.

The Chief Government Whip and the Clerk of the Legislative Assembly both stated in their respective Statutory Declarations that the Member was present in the Legislative Assembly at some point on March 8, 2004 (the date of First Reading for Bill 18), March 10, 2004 (one of two days on which Second Reading occurred), March 15, 2004 (when the Bill was considered by Committee of the Whole), and on March 18, 2004 (the date the Bill received Third Reading and was passed). Bill 18 was also considered at Second Reading stage on March 9, 2004. The attendance records attached to the Clerk's Statutory Declaration show that the Member was absent that date.

Both the Chief Government Whip and the Clerk stated that they could not confirm whether the Member was actually present at the exact time that Bill 18 was debated or voted upon. The attendance records maintained by the Sergeant-at-Arms record the names of those Member who are absent from the Assembly on a particular date. However, the record does not show whether a particular Member was present or absent at a specific time or for a specific debate.

Both the Clerk and the Chief Government Whip state that the Member did not participate in any debates on Bill 18 in the Legislative Assembly. They also state that he did not declare an interest and he did not withdraw from any debates or votes on Bill 18.

The Clerk states that no recorded votes (called "divisions") were taken on Bill 18 at any reading stage or during Committee of the Whole. All votes were voice votes only. There is, therefore, no record of who may have voted for or against the Bill at any stage of its progress through the Assembly.

However, notwithstanding the lack of records which definitively show that the Member was present in the Legislative Assembly at the exact time Bill 18 was debated or voted upon, the Member himself said he was present during debates in the Legislative Assembly on Bill 18. He also said that he supported the amendments in the Bill.

FINDINGS

Private Interest of Gary Masyk

As stated earlier in this report, it is my view that the Member does have a "private interest" in maintenance enforcement issues as a result of his file held by Maintenance Enforcement of Alberta Justice.

I. Alleged Breach of Section 2

There are two subsections of section 2 that must be dealt with in considering whether a breach has occurred. For ease of reference the relevant portions of section 2 of the Act are:

2 (1) A Member breaches this Act if the Member takes part in a decision in the course of carrying out the Member's office or powers knowing that the decision might further a private interest of the Member, a person directly associated with the Member or the Member's minor child.

(2) Where a matter for decision in which a Member has reasonable grounds to believe that the Member, the Member's minor child or a person directly associated with the Member has a private interest is before a meeting of the Executive Council or a committee of the Executive Council or the Legislative Assembly or a committee appointed by resolution of the Legislative Assembly, the Member must, if present at the meeting, declare that interest and must withdraw from the meeting without voting on or participating in the consideration of the matter.

(3) A Member who fails to comply with subsection (2) breaches this Act.

As noted in the 2002 investigation report involving the Minister of Sustainable Resource Development, the Hon. Mike Cardinal, subsections (1) and (2) both deal with Members participating in decisions where the Member has a private interest. However, a breach of subsection (1) requires that the Member take part in a decision “knowing that the decision might further a private interest.

In this investigation, I find that the Member did take part in a decision where the Member had a private interest. However, I do not find that the Member did so knowing that he might be furthering a private interest. In fact, the Member said he supported the amendments which clearly would not “further” his interests but might in fact allow for further actions against him.

As noted in the Cardinal investigation report, section 2(2) has a different threshold for a breach to occur. Under subsection (2), where a Member has reasonable grounds to believe that the Member has a private interest, the Member must, if present at the meeting, declare that interest and must withdraw from the meeting without voting on or participating in the consideration of the matter.

By his own admission, the Member was present when Bill 18 was under consideration in the Legislative Assembly. He did not declare a private interest and he did not withdraw from the House.

II. Alleged Breach of Section 3

In addition to the alleged breach of section 2 of the Act, the request for this investigation asked that I also consider whether section 3 has been breached.

3 A Member breaches this Act if the Member uses the Member's office or powers to influence or to seek to influence a decision to be made by or on behalf of the Crown to further a private interest of the Member, a person directly associated with the Member or the Member's minor child.

Based on the testimony of Mr. Narine and Mr. da Costa and on the Statutory Declaration of the Minister of Justice and Attorney General, there is no evidence that the Member used his office or

powers to influence or to seek to influence a decision regarding his file with the Maintenance Enforcement Program.

CONCLUSIONS

I. Disclosure of Support Obligations

I find no breach of the Member's disclosure obligations under the Act.

II. Alleged Breach of Section 2

Section 2(1)

I find no breach of section 2(1) of the *Conflicts of Interest Act*.

Section 2(2)

I find that the Member has breached section 2(2) of the *Conflicts of Interest Act*.

III. Alleged Breach of Section 3

I find no breach of section 3 of the *Conflicts of Interest Act*.

SANCTIONS

The *Conflicts of Interest Act* offers a range of sanctions that I can recommend in a report to the Legislative Assembly. In this case, I recommend no sanction as I do not believe the Member acted to further a private interest and I do not believe that his private interest has been furthered. I believe the Member acted in good faith in what he believed was the right decision in the public interest. I would, however, remind all Members that section 2 does require Members to be aware of their private interests and govern themselves according to their obligations under that section.

During the course of this investigation, an apparent oversight with respect to the *Maintenance Enforcement Act* and its regulations was discovered. This office is not included in the list of offices to which the Director of Maintenance Enforcement is permitted to reveal confidential information. I would support any amendments to that Act or its regulations that would permit the Director to cooperate with this office during an investigation. I was pleased that we did receive the Director's cooperation in this case, with the consent of the Member involved.

Donald M. Hamilton
Ethics Commissioner