

# The Chief Electoral Officer's Report on Apparent Contraventions of the *Election Act*



**February 2015**



Office of the  
Chief Electoral Officer  
of Ontario



Bureau du directeur  
général des élections  
de l'Ontario

February 19, 2015

The Honourable Dave Levac  
Speaker of the Legislative Assembly  
Room 180, Legislative Building, Queen's Park  
Toronto, Ontario  
M7A 1A2

Dear Mr. Speaker,

Following every general election and by-election, I am required by s. 89 of the *Election Act* to report through you to the Assembly as to whether or not in my opinion the election was "free or otherwise of any of the actions which are declared to be offences or corrupt practices under this Act".

The February 5, 2015 by-election in the Electoral District of Sudbury was held in accordance with the writ for election that was issued on January 7, 2015 to fill the vacancy created by the resignation of Mr. Joseph Cimino on November 20, 2014.

After the vacancy arose, I received two letters of complaint, both dated December 15, 2014, and received respectively from Mr. Gilles Bisson, the MPP for Timmins-James Bay and Mr. Steve Clark, the MPP for Leeds-Grenville alleging that certain individuals had contravened subsection 96.1(e) of the *Election Act*. This provision concerns bribery in connection with inducing a person to become, refrain from becoming, or withdrawing from being a candidate. The complaints related to the selection of the Ontario Liberal Party's candidate in the by-election.

I directed that a regulatory investigation be conducted under the authority provided to me by section 4.0.1 of the *Election Act*, which affords me powers under the *Public Inquiries Act, 2009*.

Having reviewed the evidence and findings from this regulatory investigation, I am of the opinion that the actions of Gerry Loughheed Jr. and Patricia Sorbara amount to apparent contraventions of subsection 96.1(e) of the *Election Act* as reflected in my attached report. Consequently, I have reported this matter to the Attorney General of Ontario in accordance with section 4.0.2 of the *Election Act*.

As my attached report describes, no Chief Electoral Officer of Ontario has ever conducted a regulatory investigation into allegations of bribery or ever reported an apparent contravention of the home statutes of my office to the Attorney General. Quite apart from my statutory duties, I believe that in such an unprecedented circumstance it is incumbent on me to uphold the integrity of the electoral process and provide a full and detailed account of the process I followed and the steps I have taken in discharging my duties.

Sincerely,

A handwritten signature in cursive script that reads "Greg Essensa". The signature is written in black ink on a light-colored background.

Greg Essensa  
Chief Electoral Officer

## INTRODUCTION

On Thursday, November 20, 2014, Mr. Joseph Cimino, the MPP for the Electoral District of Sudbury, resigned his seat in the Legislative Assembly of Ontario.

In accordance with subsection 19(3) of the *Legislative Assembly Act*, the Speaker then addressed a Warrant to me advising me of the vacancy created by this resignation.

The creation of a vacancy in Sudbury touched off a series of events that became the subject of complaint to my office.

My report describes:

- the two complaints I received from MPPs;
- the manner in which my office deals with complaints;
- the protocol I have with the Ministry of the Attorney General for reporting apparent contraventions of the *Election Act* and the *Election Finances Act*;
- when and how my office initiated the investigation of these complaints;
- an overview of the investigation;
- an explanation of the relevant legal considerations;
- the findings of the investigation; and,
- what I have reported to the Ministry of the Attorney General

There has been considerable public and media attention paid to these complaints.

The complaints allege that the conduct of certain individuals amounts to bribery and therefore were in breach of s. 96.1(e) of the *Election Act*, which was enacted in 1998.

The complainants have asked me to investigate the matter, which I have done. In conducting my regulatory investigation, I relied on the powers entrusted to me by section 4.0.1 of the *Election Act*. Following an investigation, if I believe there has been an apparent contravention, I am mandated to report it to the Attorney General pursuant to s. 4.0.2 of the *Election Act*. Both sections were enacted in 2007.

No Chief Electoral Officer of Ontario has ever conducted a regulatory investigation into allegations of bribery or ever reported an apparent contravention of the home statutes of my office to the Attorney General.

For these reasons, I believe it is incumbent on me, as the independent officer of the Legislative Assembly mandated with administering and overseeing the integrity of Ontario's provincial elections, to provide a full and detailed account of the process I followed and the steps I have taken in discharging my duties.

Let me now turn to discuss the two complaints I have investigated.

## THE DECEMBER 15, 2014 COMPLAINTS

In order to understand these complaints, it is necessary to understand some of the context.

Mr. Cimino, a member of the New Democratic Party of Ontario's caucus in the Legislative Assembly, resigned within approximately five months of Ontario's June 12, 2014 General Election. Almost immediately after the vacancy was announced, Mr. Andrew Olivier, the former candidate for the Ontario Liberal Party in the 2014 General Election, publicly announced, using his Twitter account, his intention to run again as his party's candidate in the anticipated by-election.

Despite that intention, the Ontario Liberal Party began considering other individuals as possible candidates— including Mr. Glenn Thibeault. At the time the vacancy arose, Mr. Thibeault was the federal Member of Parliament for Sudbury as well as the chair of the national caucus of the New Democratic Party of Canada, the Official Opposition in the House of Commons.

Prior to the public announcement that Mr. Thibeault would be appointed, Mr. Olivier was approached and advised he was not the preferred candidate for the Ontario Liberal Party in the upcoming by-election. Mr. Olivier was asked to consider nominating Mr. Thibeault in an uncontested nomination contest. Mr. Olivier was reluctant to do so and, over the course of a few days in mid-December 2014, communicated with a number of individuals about this situation.

Following those communications, on the morning of Monday, December 15, 2014, Mr. Olivier held a press conference and made a number of allegations in respect of who said what to him about his future in relation to Mr. Thibeault's candidacy. Mr. Olivier's statement said the communications included "suggestions of a job or appointment" for him. This statement drew the attention of the media – and at least two MPP's.

Referring to Mr. Olivier's statement, Mr. Gilles Bisson, MPP (Timmins-James Bay) wrote to complain to me that section 96.1(e) of the *Election Act* had been breached in a letter dated December 15, 2014. He copied OPP Commissioner Hawkes on this letter and the Attorney General of Ontario. The next day, December 16, 2014, Mr. Bisson wrote to me again to suggest how my office, or the police, should go about investigating the matter. He did not copy OPP Commissioner Hawkes on this letter but did copy the Information and Privacy Commissioner of Ontario.

In a letter dated December 15, 2014, Mr. Steve Clark, MPP (Leeds-Grenville) wrote in support of Mr. Bisson's request asking me to investigate whether section 96.1(e) of the *Election Act* had been breached. In this letter, Mr. Clark advised me that he had also written OPP Commissioner Hawkes requesting that the OPP begin a *Criminal Code* investigation into the same circumstances described in Mr. Olivier's statement to the media.

Both complaints are found in Appendix 1 of my report.

As described below, my office dealt with both complaints in accordance with the comprehensive policy I instituted for dealing with complaints alleging breaches of the statutes I am responsible for administering, the *Election Act* and the *Election Finances Act*.

## **THE COMPLAINT PROCESS**

I was appointed Chief Electoral Officer of Ontario in 2008 after Ontario's October 2007 General Election. In advance of the next general election, the October 2011 General Election, I instituted a Complaints, Investigation and Enforcement Policy under my two home statutes (See Appendix 2).

This policy was adopted following consultation with all of Ontario's registered political parties and, as required by the *Election Finances Act*, it was gazetted on July 30, 2011.

My office's Complaints, Investigation and Enforcement Policy sets out how I deal with the complaints I receive and the investigations I conduct. Some of the key features of my office's policy include that:

- 1) we acknowledge in an appropriate manner, at my discretion, the receipt of complaints we receive to a complainant as well as to the persons or entities subject to the complaint;
- 2) we treat complaints and investigations confidentially;
- 3) I may, at my discretion, advise a complainant as well as the persons or entities subject to a complaint or investigation whether or not I have reported a matter as an apparent contravention to the Attorney General;
- 4) when I publicly report on the conclusion of investigations, whether initiated at my direction or in response to a complaint we have received, it is in a report to the Legislative Assembly;
- 5) my office waits until I report to the Legislative Assembly on whether or not I have reported a matter as an apparent contravention to the Attorney General before publicly acknowledging that fact; and,
- 6) where my required consent is sought before the laying of charges under the *Election Act* or the *Election Finances Act*, appropriate supporting documentation is provided to me.

As an independent officer of the Legislative Assembly, I believe these precepts uphold the integrity of the electoral process and my statutory mandate.

My office has observed this policy in the investigation of the complaints of Mr. Bisson and Mr. Clark.

When I received these complaints, my office acknowledged their receipt and formally provided the persons named in these complaints with copies of them. It is our policy to do so even when, as in the case of these complaints, the complainants chose to publicly release their letters of complaint to the media.

#### **PROTOCOL FOR REPORTING APPARENT CONTRAVENTIONS TO THE ATTORNEY GENERAL**

As referenced in the introduction to this report and my office's Complaints, Investigation and Enforcement Policy, I am mandated to report apparent contraventions to the Attorney General pursuant to s. 4.0.2 of the *Election Act* and subsection 2(1)(g) of the *Election Finances Act*. Before the dissolution of the Commission on Election Finances in 1998 and the transfer of its responsibilities under the *Election Finances Act* to my office, the Commission had a protocol with the Ministry of the Attorney General regarding the reporting of apparent contraventions.

Since being appointed Chief Electoral Officer in 2008, I determined that it would be appropriate to review and update that protocol given the prior dissolution of the Commission and the assumption of new investigatory powers by my office pursuant to s.4.0.1 of the *Election Act* in 2007.

One of the central reasons for putting in place an appropriate protocol was that I wanted to ensure that the reporting of apparent contraventions to the Attorney General was consistent with the statutory requirement but at the same time did not put the Attorney General, as a Minister of the Crown and member of the government's caucus in the Legislative Assembly, in a conflict of interest.

In May 2014, my office concluded the Protocol for Reporting Apparent Contraventions of the *Election Finances Act* or the *Election Act* with the Ministry of the Attorney General (See Appendix 3). Our respective offices entered into this protocol on the understanding that it would be a public document. To that end, my office communicated this protocol to all registered political parties in Ontario in 2014.

In this protocol, any potential for placing the Attorney General in a personal conflict of interest is eliminated because the report of an apparent contravention is made by my office directly to the Deputy Attorney General of Ontario.



Some of the key features of the protocol are:

- 1) once the Deputy Attorney General receives a report of an apparent contravention from me, it is referred immediately to the Assistant Deputy Attorney General-Criminal Law Division for review;
- 2) prior to the Assistant Deputy Attorney General-Criminal Law Division referring the matter to the police if such referral is warranted, my office is advised of that fact;
- 3) the Assistant Deputy Attorney General-Criminal Law Division is required to advise me within five calendar days as to whether or not my advising the complainant or persons or entities being reported of my report “would endanger someone’s personal safety or impede an investigation or prosecution”;
- 4) in recognition of my role as an independent officer of the Legislative Assembly, the protocol acknowledges I may advise I have reported an apparent contravention in a report after an election, in an annual report, or in response to an inquiry from one of its committees; and,
- 5) appropriate supporting documentation and information is provided to me where my required consent is sought before the laying of charges under the *Election Act* or the *Election Finances Act*.

My office is not mandated to conduct prosecutions. It is up to the police service to which the Assistant Deputy Attorney General-Criminal Law Division refers a matter to determine whether to lay charges in consultation with the Crown, which has carriage of any prosecution.

After my office acknowledged the receipt of the complaints from Mr. Bisson and Mr. Clark, I directed my compliance staff to meet them and provide them my office’s Complaints, Investigation and Enforcement Policy as well as the protocol I have entered into with the Ministry of the Attorney General.

My staff met with each complainant and explained and answered questions concerning the policy.

My staff also explained and answered questions concerning the protocol and how it protects the Attorney General from being placed in a conflict of interest.

The complainants were advised my office was investigating their complaints. The investigative strategy was not discussed with them nor were they provided any particulars about the investigation. They were asked to volunteer any relevant information to my staff and were advised that the investigation would be concluded in a timely and appropriate manner but were given no timelines in that regard.

## THE START OF MY INVESTIGATION

As Chief Electoral Officer, I understand that the offences set out in my home statutes are prosecuted under the *Provincial Offences Act*; they are not *Criminal Code* offences.

The investigative powers that I have been entrusted are to further my regulatory oversight of provincial elections. My office conducts regulatory investigations, not criminal investigations.

As both Mr. Bisson and Mr. Clark also referred the subject matter of their complaints for criminal investigation to the Ontario Provincial Police, I contacted the Ontario Provincial Police following the receipt of these complaints to advise the police that my office did not want to start to take any steps that might interfere with a possible criminal investigation. We were advised that police investigators planned to meet with Mr. Olivier and they offered to ask if Mr. Olivier would consent to a transcript of his interview being provided to my office.

On January 12, 2015, Mr. Olivier consented to the release of an interview that the Ontario Provincial Police conducted with him and he sent my office a copy of that transcript. That day, shortly after my office received that transcript, it was publicly announced that the Ontario Provincial Police were closing their criminal investigation.

On January 13, 2015, I instructed my staff to commence a regulatory investigation into these complaints and the allegations made by Mr. Olivier.

On January 14, 2015, I instructed my staff to engage Brian Gover, of Stockwoods LLP, to advise and assist with my investigation as he and his firm have extensive expertise in such regulatory matters.

I retained Stockwoods to:

- 1. Provide Investigative Assistance** in the conduct of the regulatory investigation into the complaints by giving legal advice and strategic guidance with respect to the identification and questioning of witnesses and/or the identification and analysis of relevant documents or other information;
- 2. Provide a Report** to me summarizing the evidence gleaned from the investigation in combination with a legal opinion on certain relevant legislation and jurisprudence to assist me in determining whether any apparent contravention of the *Election Act* has been established by the testimony or other evidence obtained in the course of the investigation; and
- 3. Assist in the Preparation of a Report to the Ministry of the Attorney General** in the event that any apparent contraventions of the *Election Act* were identified pursuant to the investigation.

## INVESTIGATION OVERVIEW

As part of this investigation, seven individuals were interviewed:

- **Marianne Matichuk**

Ms. Matichuk, the former mayor of Sudbury, was interviewed as she had been considered a potential candidate for the Ontario Liberal Party when the vacancy arose and spoke with Gerry Lougheed, Jr. on December 11, 2014.

- **Glenn Thibeault**

Mr. Thibeault was interviewed because he met with Mr. Olivier the weekend before Mr. Olivier held his press conference on December 15, 2014.

- **Lisa McLaren**

Ms. McLaren, who is Mr. Olivier's girlfriend, was interviewed to determine what conversations and meetings she had witnessed between December 11 and 15, 2014.

- **Andrew Olivier**

Mr. Olivier was interviewed because he made allegations on December 15, 2014 on which the two complaints made to my office are based.

- **Gerry Lougheed Jr.**

Mr. Lougheed was interviewed as Mr. Olivier's December 15, 2014 allegations refer to Mr. Lougheed.

- **Patricia Sorbara**

Ms. Sorbara was interviewed as Mr. Olivier's December 15, 2014 allegations refer to Ms. Sorbara.

- **Premier Kathleen Wynne**

Premier Wynne was interviewed as Mr. Olivier's December 15, 2014 allegations refer to her.

Summonses were issued requiring attendance at a designated time and place to answer questions and to produce to my investigation team copies of relevant electronic

and paper material, which included documents, communications, and in some cases recordings.

The power for me to issue a summons is found in section 4.0.1 of the *Election Act*, and requires my staff to follow the requirements of section 33 of the *Public Inquiries Act, 2009*. These requirements were explained when each summons was issued and before the start of each interview.

Interviews were conducted between January 26 and February 3, 2015, in either Sudbury or Toronto, at the convenience of the person being interviewed.

All interviews were conducted in the presence of a court reporter who transcribed the interview.

All interviewees were cooperative in answering questions and producing materials requested by the summons.

## **LEGAL CONSIDERATIONS**

### **Apparent Contraventions**

This report provides me the opportunity, as Chief Electoral Officer, to explain what an “apparent contravention” is for purposes of my home statutes and how I apply that standard.

To form an opinion that conduct amounts to an “apparent contravention” as set out in s. 4.0.2 of the *Election Act*, I must be satisfied, based on the evidence obtained in my investigation, that there is a *prima facie* case of a contravention.

This means I must be aware of sufficient facts that, if proven correct, would constitute a contravention of the *Election Act* or the *Election Finances Act*. When I form an opinion that there has been an “apparent contravention”, I do not weigh questions of credibility or balance competing facts as between the parties. I am neither deciding to prosecute a matter nor determining anyone’s guilt or innocence. Those decisions are respectively for prosecutors and judges. My mandate is to review the evidence and totality of the relevant circumstances and, if there is a *prima facie* case, to refer it to the Ministry of the Attorney General.

In doing so, as the independent officer of the Legislative Assembly who is responsible for overseeing the integrity of the electoral process, I also consider the public interest. The decision I make is not an automatic or formulaic exercise. I have to take into account the circumstances relating to each case.

Although I do not have to weigh questions of credibility or balance competing facts as would a judge, my non-partisan role in overseeing the integrity of provincial elections

means that I have to be satisfied that there is more than simply a “fair probability” that there has been a contravention before concluding that any possible contravention has reached the threshold of being “apparent”.

### **Section 96.1 of the *Election Act***

The complaints I have received allege that s. 96.1(e) of the *Election Act* has been contravened. The provision reads as follows:

**96.1** No person shall, directly or indirectly,

(a) offer, give, lend, or promise or agree to give or lend any valuable consideration in connection with the exercise or non-exercise of an elector’s vote;

(b) advance, pay or cause to be paid money intending that it be used to commit an offence referred to in clause (a), or knowing that it will be used to repay money used in the same way;

(c) give, procure or promise or agree to procure an office or employment in connection with the exercise or non-exercise of an elector’s vote;

(d) apply for, accept or agree to accept any valuable consideration or office or employment in connection with the exercise or non-exercise of an elector’s vote;

(e) **give, procure or promise or agree to procure an office or employment to induce a person to become a candidate, refrain from becoming a candidate or withdraw his or her candidacy.**

### **Is there an apparent contravention of section 96.1 of the *Election Act*?**

In order for there to be an apparent contravention of s. 96.1(e) of the *Election Act*, I must be satisfied that there is evidence that a person has either directly or indirectly given, procured or promised to agree to procure an office or employment to induce another person to either become a candidate (as defined in the *Election Act*), refrain from becoming a candidate or withdraw his or her candidacy.

As set out below, when determining how this provision applies to a particular fact situation, there are a number of considerations to keep in mind.

### No Authority to Carry Out Promise Needed

The person making the potential offer, promise or attempted procurement does not need to be shown to be capable of actually following through and delivering on the articulated office or appointment to contravene the section. I do not first need to be satisfied that someone actually has or had the ability to offer an office or appointment before considering whether there is evidence that they did or did not make a promise or offer to procure an office or appointment in contravention of the Election Act.

### Office or Employment Must be Discernible

The office or employment must be discernible from the evidence I see before any promise to procure can be considered to be a contravention of the *Election Act*. However, it is unnecessary to show that a particular job was offered. I am to apply a purposive interpretation to the *Election Act* focusing on the harm that that legislation is intended to address. In this regard, an apparent contravention could be established if a candidate is offered a range of options rather than a specific role in a specific office.

### The meaning of “Promise”

With respect to the reference in s. 96.1(e) to a “promise” to agree to procure, the contravention can be committed unintentionally provided there is evidence that the individual making the promise did in fact make such a promise. Two people need not agree to carry out a particular course of conduct in order to contravene s. 96.1(e).

### The meaning of “Candidate”

This complaint relates to conduct in relation to candidates. Section 1 of the *Election Act* defines a candidate as follows:

“candidate at an election” and “candidate” mean a person elected to serve in the Assembly and **a person who** is nominated as a candidate at an election or **is declared by himself** or herself or by others to be a candidate on or after the date of the issue of the writ or **after the dissolution or vacancy in consequence of which the writ has been issued**

....

“election” means an election of a member or members to serve in the Assembly (Emphasis added)

A person cannot be properly characterized as a “candidate at an election” prior to the issuance of a writ for election.

In the case of an individual who makes a declaration subsequent to a dissolution or vacancy, the definition of “candidate” means the scenario in which a writ “has” already been issued.

The conduct that is prohibited by s. 96.1(e) can take place before the issuance of a writ. For example, a person can contravene s. 96.1(e) by inducing an individual – before an election is even called -- to refrain from being a candidate before a writ is issued. This can be determined by looking at the nature and circumstances of the communications and understandings between the individuals.

## INVESTIGATION

As a result of the interviews conducted in the investigation, and the productions obtained from the persons interviewed, the following table summarizes in detail the key events:

November 20, 2014	Joseph Cimino resigned as MPP for Sudbury and created a vacancy in the Legislative Assembly that would be filled in a by-election.
November 21, 2014	Andrew Olivier declared his intention (via Twitter) to seek the Ontario Liberal Party (OLP) nomination in the by-election.
December 11, 2014	Gerry Lougheed Jr. contacted two individuals to advise them of Glenn Thibeault's recruitment : (1) Marianne Matichuk; and (2) Andrew Olivier. Andrew Olivier recorded his meeting with Gerry Lougheed Jr. (who later verified that it is his voice in the recording).
December 11, 2014	Premier Wynne contacted Andrew Olivier and explained her vision for Sudbury, which involved Glenn Thibeault as the OLP candidate (Andrew Olivier stated under oath he did not record the conversation).
December 12, 2014	Patricia Sorbara contacted Andrew Olivier and spoke with him for approximately 24 minutes. He recorded this conversation with Patricia Sorbara (who later verified that it is her voice in the recording).
December 15, 2014	Andrew Olivier held his press conference.
December 15, 2014	The Complaints were filed with the Chief Electoral Officer and the OPP.
December 16, 2014	Glenn Thibeault resigned from the NDP Caucus in the House of Commons to sit as an Independent MP.
December 20, 2014	Andrew Olivier was interviewed by the OPP in relation to the subject matter of the complaints.

January 5, 2015	Andrew Olivier announced that he would enter the anticipated Sudbury by-election as an independent candidate.
January 5, 2015	Glenn Thibeault resigned from the House of Commons.
January 7, 2015	The writ for the by-election was issued and February 5, 2015 was set as polling day.  Glenn Thibeault was appointed as the OLP candidate in the by-election by Premier Wynne
January 12, 2015	The OPP announced that it closed its investigation into the complaints.
January 13, 2015	The Chief Electoral Officer commenced his investigation.
January 15, 2015	Andrew Olivier publicly released the recordings of his conversations with Gerry Lougheed Jr. and Patricia Sorbara.
January 16, 2015	The OPP re-opened its investigation.
January 26 - February 3, 2015	At the request of the Chief Electoral Officer, the following individuals were interviewed: Marianne Matichuk, Glenn Thibeault, Lisa McLaren, Andrew Olivier, Gerry Lougheed Jr., Patricia Sorbara, and Premier Kathleen Wynne.
February 5, 2015	Glenn Thibeault won the Sudbury by-election.
February 12, 2015	The Chief Electoral Officer submitted his report of apparent contraventions to the Deputy Attorney General.

At the conclusion of the investigation, Stockwoods LLP, provided me with a report that includes a description of the investigative approach that was adopted as well as the factual findings of the investigation based on a review of all the transcripts, recordings, and relevant documents.



## REPORT OF APPARENT CONTRAVENTIONS

I have reviewed the report of Stockwoods LLP as well as all transcripts of the interviews and recordings. Having taken into account these facts and the applicable legal provisions, I am of the opinion that the actions of Gerry Loughheed Jr. and Patricia Sorbara constitute apparent contraventions of subsection 96.1(e) of the *Election Act*.

I have, therefore, reported this to the Attorney General in accordance with s. 4.0.2 of the *Election Act* and the protocol adopted for such matters.

I have no mandate to conduct prosecutions. According to the Protocol for Reporting Apparent Contraventions of the *Election Finances Act* or the *Election Act* in place with the Ministry of the Attorney General, the Assistant Deputy Attorney General-Criminal Law Division decides whether or not to refer the matter to the police. It is up to the police to decide whether to lay charges in consultation with the Crown, which would then prosecute the matter.

At this time, I understand the OPP is conducting a criminal investigation into these events.

For these reasons, I have reported as required by section 89 of the *Election Act* on whether or not I believe apparent contraventions were present in the Sudbury by-election. However, apart from providing the Legislative Assembly with this report, I will not be making further statements at this time.

To assist the public in knowing this matter was dealt with in a timely and proper manner, I have explained the steps I have taken in my regulatory investigation and reported on its outcome. I believe that to comment at this time on the evidence, or to disclose the report which is now in the hands of the Ministry of the Attorney General, would not be appropriate. Given that there is an ongoing criminal investigation, and my desire to ensure that my report does not interfere with it or any other investigation, I have had to balance the public interest of transparency against the need to ensure that the legal processes underway are not unduly influenced.

## APPENDIX 1

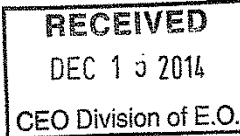


# Gilles Bisson

MPP Timmins—James Bay

15 December 2014

Mr. Greg Essensa, Chief Electoral Officer  
Elections Ontario  
51 Rolark Drive  
Toronto, Ontario  
M1R 3B1  
Fax 866-714-2809



Sent by Fax

Dear Mr. Essensa,

I am requesting that Elections Ontario immediately investigate an alleged bribery attempt in Sudbury, Ontario.

This morning, former Sudbury Liberal Candidate Andrew Olivier alleged that he was offered a job or appointment in exchange for not seeking the Liberal Party nomination in the upcoming Sudbury by-election.

According to his statement, Mr. Olivier alleged that he was asked to meet with "Gerry Lougheed, who was contacting me on behalf of the Premier" and Mr. Lougheed "mentioned that if I stepped aside and endorsed this other person, that I should that I request to see what was in it for me [sic]. Perhaps a job or appointment."

After his meeting with Mr. Lougheed, which was held on behalf of the Premier, Mr. Olivier received a call directly from Premier Kathleen Wynne in which he alleges she asked him personally not to run for the nomination.

Mr. Olivier alleges that "finally, on Friday, the head of the Ontario Liberal Party campaign, Pat Sorbara, called me and reiterated suggestions of a job or appointment." Mr. Olivier describes Ms. Sorbara as the "head of the Ontario Liberal Party campaign."

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# Gilles Bisson

MPP Timmins—James Bay

As you know, Section 96.1 of the *Election Act* reads:

## *Bribery*

*96.1 No person shall, directly or indirectly,*

*(a) offer, give, lend, or promise or agree to give or lend any valuable consideration in connection with the exercise or non-exercise of an elector's vote;*

*(b) advance, pay or cause to be paid money intending that it be used to commit an offence referred to in clause (a), or knowing that it will be used to repay money used in the same way;*

*(c) give, procure or promise or agree to procure an office or employment in connection with the exercise or non-exercise of an elector's vote;*

*(d) apply for, accept or agree to accept any valuable consideration or office or employment in connection with the exercise or non-exercise of an elector's vote;*

*(e) give, procure or promise or agree to procure an office or employment to induce a person to become a candidate, refrain from becoming a candidate or withdraw his or her candidacy. 1998, c. 9, s. 44.*

The allegation made by Mr. Olivier is deeply concerning. Mr. Olivier indicated that was being contacted on behalf of the Premier to offer him a job or appointment to induce him to refrain from becoming the Liberal candidate in the upcoming Sudbury by-election. As you know, this is a serious allegation, and a conviction carries a penalty of \$25,000 and prison term of two years less a day.

Ontarians deserve to know if this allegation is true, and if so, who ordered Mr. Lougheed and Ms. Sorbara to offer Mr. Olivier a "job or appointment" in exchange for his withdrawal from the Liberal nomination race.

Given the possibility that a by-election could be called at any time, I request a complete and immediate investigation by your office.

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**Gilles Bisson**

MPP Timmins—James Bay

For your convenience, Mr. Olivier's statement can be found at the following link:

Sincerely,

Gilles Bisson, MPP  
Timmins - James Bay  
Ontario NDP House Leader

Cc:

Vince Hawkes, Commissioner of the Ontario Provincial Police  
Attorney-General of Ontario, the Hon. Madeleine Meilleur

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**Queen's Park office**

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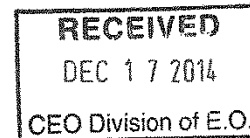


# Gilles Bisson

MPP Timmins—James Bay

16 December 2014

Mr. Greg Essensa, Chief Electoral Officer  
Elections Ontario  
51 Rolark Drive  
Toronto, Ontario  
M1R 3B1  
Fax 866-714-2809



Sent by Fax

Dear Mr. Essensa,

Yesterday I requested you launch an investigation into bribery allegations involving the Liberal Party for the upcoming Sudbury by-election. These are serious allegations that involve the Premier of Ontario Kathleen Wynne, Pat Sorbara (currently listed as the Premier's Deputy Chief of Staff) and Gerry Lougheed (senior Liberal operative). In light of this, I am calling on you to take all necessary steps under your purview to ensure that all the information that will be required for a possible investigation is not destroyed or deleted.

Such steps should include obtaining a legal preservation order and seeking the immediate and proactive seizure of the Premier's hard drive, as well as hard drives for her Chief of Staff and Deputy Chiefs of Staff and other individuals, as required. I would also suggest seeking preservation of emails at the Liberal Party of Ontario, and that of Sudbury MP Glenn Thibeault.

It's essential that your investigation move quickly to determine who was involved in this alleged bribery attempt and that records are not destroyed.

As you may be aware, former Premier McGuinty's Chief of Staff David Livingston is currently under investigation by the OPP anti-rackets squad regarding the deletion of government emails and breach of trust in the \$1.1 billion gas plant scandal. I am deeply concerned that emails or other records relating to these bribery allegations may be destroyed in this instance as well.

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# Gilles Bisson

MPP Timmins—James Bay

The outcome of your investigation could hinge on the ability of investigators—whether they are from Elections Ontario or the police—to seize information in its complete form. I trust that you will act in the best interest of Ontarians.

Sincerely,

A handwritten signature in black ink, appearing to read "Gilles Bisson".

Gilles Bisson, MPP  
Timmins - James Bay  
Ontario NDP House Leader

Cc:

Brian Beamish, Information and Privacy Commissioner of Ontario

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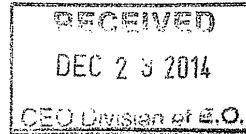
LEGISLATIVE ASSEMBLY

**STEVE CLARK, MPP**  
Leeds-Grenville

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December 15, 2014



Greg Essensa  
Chief Electoral Officer  
Elections Ontario  
51 Rolark Drive  
Toronto, ON M1R 3B1

Dear Mr. Essensa:

I'm writing to support the NDP House Leader's request for Elections Ontario to open an immediate investigation into allegations of offers made to an Ontario Liberal Party candidate to withdraw from the party's nomination for the upcoming Sudbury by-election.

As you are no doubt aware, these allegations were detailed in a statement today by former Sudbury Liberal candidate, Andrew Olivier.

In his statement to the media, Mr. Olivier said Premier Kathleen Wynne called him personally to ask him to withdraw from the nomination. Mr. Olivier then alleged two people, whom he indentified as Gerry Lougheed Jr. and Pat Sorbara (currently Deputy Chief of Staff to the Premier), called to suggest "a job or appointment" if he stepped aside.

I am deeply disturbed by these allegations, which strike at the heart of our democratic process. That's why earlier today I wrote OPP Commissioner Vince Hawkes to request a police investigation into whether any offences under the Criminal Code of Canada Sects. 121 and 125 occurred.

As these alleged actions may also have violated Sect. 96.1 of the *Elections Act*, I believe it is imperative for your office to open an investigation so that Ontarians may know the full circumstances behind Mr. Olivier's decision.

For your convenience, I have enclosed a copy of my letter to Commissioner Hawkes.

Yours sincerely,

Steve Clark, MPP,  
Official Opposition House Leader





## APPENDIX 2

## **Complaints, Investigation, and Enforcement Policy**

### **Form of complaints**

1. (1) A complaint to the Chief Electoral Officer relating to matters governed by the *Election Act* shall be made in writing, be signed by an individual, and include contact information for that individual.

(2) An individual who makes a complaint in accordance with (1) shall be considered the complainant.

### **Receipt of complaints**

2. (1) When the Chief Electoral Officer receives a complaint that relates to a matter governed by the *Election Act*, the Chief Electoral Officer may decide whether or not to investigate the complaint.

(2) When the Chief Electoral Officer decides to investigate a complaint, an acknowledgement of the receipt of the complaint will be sent to the complainant and a copy of the complaint referred to in 1(1) above may be sent to the person or entity against whom the complaint is made.

(3) At the sole discretion of the Chief Electoral Officer, the complainant and the person or entity against whom the complaint is made may be apprised of the status of the investigation of the complaint and its resolution to the extent that the Chief Electoral Officer deems appropriate.

### **Refusal and referral of complaints**

3. When the Chief Electoral Officer decides not to investigate a complaint, the complainant:

(1) shall be advised of this; and,

(2) may be referred to another regulatory or legal authority , if the complaint does not relate to a matter governed by the *Election Act*.

### **Confidentiality of complaints**

4. Where a complaint has been received, the Chief Electoral Officer may not publicly acknowledge the fact of a complaint to anyone other than the complainant or the person or entity named in the complaint until:

(i) the investigation into the complaint has been concluded and the determination made that there is no apparent contravention to report to the Attorney General; or

(ii) the subject matter of the complaint has been reported to the Attorney General as an apparent contravention.

### **Confidentiality of investigations**

5. Where a complaint has been investigated or the Chief Electoral Officer has at his or her own discretion conducted an investigation as to whether or not a person or entity has failed to comply with the *Election Act*, the Chief Electoral Officer may not publicly acknowledge the fact of an investigation until:

- (i) the investigation has been concluded and the determination made that there is no apparent contravention to report to the Attorney General; or
- (ii) the subject matter has been reported to the Attorney General as an apparent contravention.

### **Reporting on investigations**

6. (1) Once an investigation has concluded with or without referral to the Attorney General, the Chief Electoral Officer may decide to report in his or her next annual or other report tabled with the Legislative Assembly about:

- (i) the fact of the investigation and the resources employed to conduct the investigation,
- (ii) the subject matter of the investigation and what section of the *Election Act* the investigation concerned,
- (iii) what person or entity the investigation concerned.

### **Reporting apparent contraventions to the Attorney General**

7. Where the Chief Electoral Officer is of the opinion that there is an apparent contravention of the *Election Act*, the Chief Electoral Officer shall report that fact to the Attorney General and may, at the sole discretion of the Chief Electoral Officer, notify the person or entity of that referral.

### **Consent to prosecution**

8. (1) Where the Chief Electoral Officer is asked to consent to a prosecution of a contravention of the *Election Act*, the request shall:

- (i) be made in writing,
- (ii) be signed by an individual,
- (iii) include contact information for that individual,
- (iv) provide a written explanation as to why the individual believes the *Election Act* has been contravened, and

(v) provide a copy of the sworn information under the *Provincial Offences Act* that the individual certifies will be put before the justice of the peace hearing the prosecution.

(2) Following the review of a written request to consent to prosecution, the Chief Electoral Officer shall:

(i) provide a consent in writing,

(ii) advise in writing that consent is not granted, or

(iii) request further explanation and evidence in respect of the alleged contravention of the *Election Act*.

**Public acknowledgement of consents**

9. (1) When a request to consent to the initiation of a prosecution has been received, the Chief Electoral Officer may publicly acknowledge whether or not consent to initiate the prosecution has been granted.

(2) The Chief Electoral Officer may also decide to report on requests for consent to prosecution in his or her next annual or other report tabled with the Legislative Assembly.

## APPENDIX 3

## **PROTOCOL FOR REPORTING APPARENT CONTRAVENTIONS of the *Election Finances Act* or the *Election Act***

### **Report from Chief Electoral Officer**

If the Chief Electoral Officer is of the view that there has been an apparent contravention of the *Election Act* or the *Election Finances Act*, this apparent contravention shall be reported to the Deputy Attorney General. The report shall be made in writing by the Chief Electoral Officer to the Deputy Attorney General in a letter which sets out the purpose of the letter, the Act and provision(s) that were allegedly contravened, a brief summary of the alleged contravention(s), and a list of all supporting material submitted with the letter that is relevant to the apparent contravention. The supporting material should include, but not necessarily be limited to, all notes, reports, witness statements, incident reports, documentation generated regarding the incident, any forensic reports generated or the results of any forensic or other investigation carried out regarding the incident. Complete names and contact information for all witnesses and the person or entity that is alleged to have contravened the Act is required.

Upon receiving a report from the Chief Electoral Officer of an apparent contravention of the *Election Act* or the *Election Finances Act*, the Deputy Attorney General will immediately refer the matter, without investigation, to the Assistant Deputy Attorney General – Criminal Law Division (ADAG–CLD) who may refer it to the police once the ADAG–CLD has advised the Chief Electoral Officer, as described below, whether an acknowledgement by the Chief Electoral Officer would endanger someone’s personal safety or impede an investigation or a prosecution.

### **Acknowledgement of Report of an Apparent Contravention**

Where the Chief Electoral Officer has reported an apparent contravention of the *Election Act* or *Election Finances Act* pursuant to this protocol, the Chief Electoral Officer may advise the complainant and the person or entity reported of the fact of that referral within 5 days of the report, unless the Chief Electoral Officer is specifically advised by the ADAG–CLD in a particular case that to do so would endanger someone’s personal safety or impede an investigation or a prosecution.

The Chief Electoral Officer may acknowledge in a report to the Legislative Assembly on an election, in his subsequent annual report, or in a response to an inquiry from a committee of the Legislative Assembly whether he has reported any apparent contraventions of the *Election Act* or the *Election Finances Act*.

## **Consent of the Chief Electoral Officer**

If, following their review of a matter referred by the ADAG-CLD, the police decide that it would be appropriate to lay a charge under the *Election Act* or the *Election Finances Act*, the police must seek the Chief Electoral Officer's consent to commence a prosecution. The ADAG-CLD will be available to consult with the police about whether this is a reasonable prospect of conviction and whether a prosecution is in the public interest.

The request for a consent to commencing a prosecution for any alleged offence shall be made in the form prescribed by the Chief Electoral Officer. The Chief Electoral Officer may require that a request from police to commence a prosecution will only be considered if the police advise the Chief Electoral Officer that they have consulted with the ADAG-CLD and have been advised that there is a reasonable prospect of conviction and a prosecution is in the public interest. In all cases, the advice of the ADAG-CLD is to be construed as advice only and the decision as to whether or not to commence a prosecution remains that of the Chief Electoral Officer.

Where, in the exercise of the Chief Electoral Officer's discretion, a decision is made to consent to a prosecution, the Chief Electoral Officer shall so advise the investigating police agency. The police will then swear the information, which will be endorsed by the Chief Electoral Officer to indicate his consent to the prosecution.

**May 2, 2014**