

The circumstances of the conduct involve a possible infraction of s. 10 of the Act which states as follows:

s. 10 A member shall not use his or her office to seek to influence a decision made or to be made by another person so as to further the member's private interest or improperly further another person's private interest.

The matter concerns a court proceeding which occurred in the constituency of the Member Towtongie. The court issued a publication ban regarding the proceedings. Accordingly, I will not disclose the identities of any parties to the proceedings, the location of the proceedings except in general terms nor the date of the proceedings. Suffice it to say that the court matter occurred in the constituency of Cathy Towtongie in the fall of 2018 and Ms. Towtongie was present at the proceedings.

In conducting this Review, I reviewed the transcript of the legal proceedings in its entirety, made written requests to Ms. Towtongie and the presiding Justice regarding the circumstances of the matter and I spoke with each Ms. Towtongie and the presiding Justice regarding their respective recollections of the circumstances. While the circumstances of the matter as related by each are not as clear as one would ideally like in a Review of this nature, it is not unusual for there to be variations in memory and recollection from separate individuals.

Ms. Towtongie had met or introduced herself to the presiding Justice the day prior to the events in question. On the material day, a break occurred in the proceedings and the Justice entered what I will refer to as the common area open to the public to obtain a cup of coffee. While not wearing his complete robe, he was attired in such a manner as to be recognizable as the presiding Justice. While obtaining coffee he heard Ms. Towntongie make remarks to the effect that she knew one of the parties to the proceedings and that she thought well of that person. It is worth noting that the party to the proceedings referred to by Ms. Towntongie was not a relative of the Member nor was there any relationship of significance or otherwise between them.

The Justice recalls that he asked of Ms. Towtongie "Are you speaking to me?". He further indicated that he advised that if that was the case, namely if Ms. Towtongie was speaking to him regarding the proceedings which were then in progress, she should not be doing so. Upon returning to the court proceedings, the presiding Justice put on the record the nature of the exchange and that he was disregarding any content of the remarks for the purposes of the legal proceedings.

In speaking with the Justice he advised me that he had the impression that Ms. Towtongie was speaking to him or speaking in such a manner that he would hear her remarks. However he further advised that he did not feel that Ms. Towtongie was specifically trying to influence the outcome of the proceedings and that, at the conclusion of the brief exchange between them, he considered the matter to be at an end. The Justice did not take steps to bring the matter to the attention of myself as Integrity Commissioner.

Ms. Towtongie advised that she was not speaking directly to the Justice nor did she intend for him to hear or take into account her words, which were, according to her recollection, that "How could this be. All these facts.. he works for -----" (omitted to maintain confidentiality of the proceedings). She further advised that she is hard of hearing, did not have her hearing aids at the time, and that, as a result, it was common for her to speak her thoughts out loud in such a manner. I find this particular fact regarding the hearing aids not persuasive in that hearing aids would necessarily affect what the person wearing them **hears**, but not necessarily what that person **says**.

An infraction of section 10 of the Integrity Act, or similar provisions in Acts in other jurisdictions, is considered a very serious matter. It is for this reason that I embarked on this Review on my own initiative, without a specific complaint having been filed.

In circumstances where there is a conflict in evidence, the nature of the facts in disagreement must be carefully examined. In this case the most relevant

question for consideration is whether the elected Member was speaking directly to the presiding Judge, or in a manner such that she intended him to hear the remarks, with an intent to influence the proceedings for the benefit of a third party. I am influenced by the following in this consideration:

- The presiding Justice inquired “Are you speaking to me?” which indicates, at least to some degree, that he was uncertain as to whether the remarks of Ms. Towtongie were specifically directed to him;
- The presiding Justice, although putting the circumstances on the record in court, considered the matter to be at an end. It is possible that in putting the circumstances on the record, the presiding Justice was careful to alleviate any concerns that legal counsel or parties directly involved in the proceedings may have had regarding any verbal exchange between him and the elected Member, rather than specifically outlining a concern regarding the conduct of Ms. Towtongie;
- Neither the presiding Justice nor any person directly involved in the court proceedings brought the matter forward to myself as Integrity Commissioner in the form of a complaint.

In reviewing this matter, and in reviewing decisions regarding improper influence rendered in other jurisdictions, I am not satisfied that the elected Member Ms. Towtongie specifically attempted to influence the decision of the court in these legal proceedings. The evidence recalled by each of the participants to this conversation is not sufficiently clear to support such a conclusion. I therefore find that there has been no infraction of section 10 of the *Integrity Act*.

However, I can state that the conduct in question of the elected Member comes perilously close to such an infraction. Elected Members of the Assembly must be vigilant, conscious and extremely careful of their words and conduct in situations where these could be interpreted as attempts to

influence the decisions of those around them. Caution and discretion is always the better course of conduct.

Where issues have arisen that give concern as to whether there has been a breach of the *Integrity Act* by an elected Member or other person governed by the legislation, I encourage such concerns to be set out in the form of a complaint to the Integrity Commissioner in the form stipulated in the legislation.

A handwritten signature in black ink, appearing to read 'K. Peterson', with a long horizontal flourish extending to the right.

Katherine R. Peterson, Q.C.

Integrity Commissioner

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