

Report on the request from MHA for Conception Bay South regarding the compliance of MHA for Humber-Gros Morne with the Code of Conduct and the Conflict of Interest principles applicable to Members of the House of Assembly.

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INTRODUCTION

On January 12, 2023, MHA Petten, (MHA, Conception Bay South) requested an opinion pursuant to s.36(1) of the *House of Assembly Accountability, Integrity and Administration Act*, S.N.L. 2007 c. A.10-1,¹ and s.40(1) of the *House of Assembly Act*, R.S.N.L. 1990 c. H-10², regarding compliance of MHA Furey (MHA – Humber-Gros Morne) (hereinafter “Premier Furey”) with the Code of Conduct and his statutory obligations.

In his request, MHA Petten stated:

I write pursuant to these Acts to request that the commissioner give an opinion and/or make recommendations regarding the compliance of the member for Humber-Gros Morne (Premier Andrew Furey) with his conflict of interest and code of conduct obligations with respect to his July 2021 stay at a luxury fishing lodge – Rifflin’ Hitch Lodge – owned by Mr. John Risley. Mr. Risley is the chair of the company World Energy GH2, which has been seeking to establish a commercial wind energy generation project to produce energy for sale. At the time of the Premier’s stay at his lodge, the provincial government had a moratorium in place prohibiting such a project.

MHA Petten identified the sections of the Code of Conduct for Members of the House of Assembly³ which he believed were in issue, namely, the Preamble and Articles 1, 3, 4, 5, 7, 9, and 11 which state:

1. Members shall inform themselves of and shall conduct themselves in accordance with the provisions and spirit of the Standing Orders of the House of Assembly, the House of Assembly Accountability, Integrity and Administration Act, the Members’ Resources and Allowances Rules, the *Elections Act, 1991*, the *House of Assembly Act* and this Code of Conduct and shall ensure that their conduct does not bring the integrity of their office or the House of Assembly into disrepute.
3. Members reject political corruption and refuse to participate in unethical political practices which tend to undermine the democratic traditions of our province and its institutions.
4. Members will act lawfully and in a manner that will withstand the closest public scrutiny. Neither the law nor this code is designed to be exhaustive and there will be occasions on which Members will find it necessary to adopt more stringent norms of conduct in order to protect the public interest and to enhance public confidence and trust.

¹ House of Assembly Accountability, Integrity and Administration Act, S.N.L. 2007 c. H-10.1, s.36(1)

² House of Assembly Act, R.S.N.L. 1990 c. H.-10, s.40

³ Code of Conduct for Members of the House of Assembly

5. Members will not engage in personal conduct that exploits for private reasons their positions or authorities or that would tend to bring discredit to their offices.
7. Members will base their conduct on a consideration of the public interest. They are individually responsible for preventing conflicts of interest and will endeavour to prevent them from arising. Members will take all reasonable steps to resolve any such conflict quickly and in a manner which is in the best interests of the public.
9. Members will not use official information which is not in the public domain, or information obtained in confidence in the course of their official duties, for personal gain or the personal gain of others.
11. Members should promote and support these principles by leadership and example.

According to MHA Petten this trip to the fishing lodge raised the following ethical concerns:

- Despite requests in the House of Assembly, MHA Furey refused to table receipts confirming who paid for the vacation.
- Regardless of whether MHA Furey paid for his stay or not, the appearance of impropriety is glaring.
- MHA Furey's decision to spend a vacation at the retreat of someone seeking a major policy change from the Premier's government – a change that would greatly benefit that person – is unethical.
- Refusing to prove the lodge vacation was not a gift of the proponent is also highly unethical.
- Even though Premier Furey has stated that he has established an "Ethical Wall" for himself – without providing any details of what this is, who defined it, when it was put in place, or how it works – he has refused to state categorically that he recused himself from the initial cabinet-level decision to lift the wind energy moratorium – which was wanted by the lodge owner who hosted Premier Furey.
- In light of the Premier's behaviour, his promise to recuse himself from future decisions is all but moot. By his words and deeds, he has signaled loudly and clearly to the ministers who serve at his pleasure around the cabinet table that both John Risley and another director of World Energy GH2, Mr. Brendan Paddick, are his close personal friends. In the context of this decision to vacation at Mr. Risley's luxury resort while Mr. Risley was proposing this venture and seeking the policy change that would permit it, Premier Furey's new "ethical wall" actually shouts out loudly to his cabinet colleagues that the Premier has a very personal stake in the outcome of this decision on World

Energy GH2. As they face the decision, they cannot help but be fully aware of how highly invested their boss is in their choice.

- Premier Furey “double downed” on this message in October 2022 when, at a Liberal fundraising dinner attended by Mr. Risley (whose World Energy GH2 company bought a table), the Premier spoke of the benefits of wind energy. He said: “This is a generational moment. And I fear that at times.... local jurisdictional issues will drag us into the weeds and we won’t be able to raise our head to see the true opportunity that is before us.”
- Finally, a Premier does not cease to be premier or cease to be bound by conflict of interest laws and the member’s code of conduct during a part of the clock or calendar he chooses to call “my time”. A Premier is Premier 24-7, 365 days of the year, and responsible for the choices he makes at all times throughout his tenure.

On January 16, 2023, MHA Petten’s request for an opinion was provided to Premier Furey.

Upon review of MHA Petten’s request, it was determined that s.40 of the *House of Assembly Act*, R.S.N.L. 1990 c. H-10, was inapplicable.

On January 20, 2023, MHA Petten was contacted advising of the inapplicability of s.40 and I inquired if it was his intention to reference s.42 of the *House of Assembly Act*, R.S.N.L. 1990 c. H-10, which authorizes the Commissioner to provide an opinion.

By letter dated January 23, 2023, MHA Petten confirmed that he was requesting an opinion pursuant to s.36(1) of the *House of Assembly Accountability, Integrity and Administration Act*, S.N.L. 2007, c. H-10.1, and s.42 of the *House of Assembly Act*, R.S.N.L. 1990 c. H-10.

LEGISLATION

Section 36(1) of the *House of Assembly Accountability, Integrity and Administration Act*, S.N.L. 2007, c. H-10.1 states:

36. (1) A member who has reasonable grounds to believe that another member is in contravention of the code of conduct adopted under subsection 35 (1) may, by application in writing setting out the grounds for the belief and the nature of the alleged contravention, request that the commissioner give an opinion respecting the compliance of the other member with the provisions of the code of conduct.

Section 42(1) of the *House of Assembly Act*, R.S.N.L 1990, c. H-10.1 states:

42. (1) A member who has reasonable grounds to believe that another member is in contravention of this Part or a code of conduct may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the commissioner give an opinion respecting the compliance of the other member with the provisions of this Part or a code of conduct.

These provisions authorize a member who has reasonable grounds to believe that another member is in contravention of the Code of Conduct, or Part II of the *House of Assembly Act*, R.S.N.L. 1990 c. H-10.1, to request an opinion from the Commissioner for Legislative Standards.

PROCESS

At the outset, the parties were advised that upon receipt of a request for an opinion an initial review of the request occurs to determine if a formal inquiry into the matter is necessary.

This initial step included a detailed review of the request and documentation submitted by MHA Petten, and interviews to determine if there are reasonable grounds to conduct an inquiry, recognizing that an inquiry is also guided by the public interest and the prudent use of public resources.

On January 19, 2023, the Premier was interviewed.

On March 15, 2023, the Deputy Minister of Industry, Energy and Technology, and the Executive Director of Renewable Energy were interviewed.

On June 8, 2023, the Clerk of the Executive Council was interviewed.

RELEVANT FACTS

By Order-In-Council 2006-026, dated January 26, 2006, the government made a policy decision and declared a moratorium on commercial wind development.

On June 10, 2021, the Honourable Andrew Parsons, Minister of Industry, Energy and Technology addressed the province's pursuit of wind energy in the House of Assembly and stated:

What I can say is that obviously there is a transition happening. There is no doubt, we've embraced it. I will tell you that organizations like NOIA and the operators themselves have embraced it. We see a bright future for things like wind, for things like hydrogen; for green energy. We will invest in that and we'll take advantage of the federal funds.⁴

In July 2021, Premier Furey, while vacationing with his father, then Senator George Furey, attended the Riffin Hitch Fishing Lodge in Labrador. The lodge is owned by John Risley, a businessman and proponent of the development of wind energy in Newfoundland and Labrador.

⁴ House of Assembly, Hansard, 50th General Assembly, 1st Sess., Vol. L No 14 (10 June 2021) at p.629.

On April 5, 2022, the Honourable Andrew Parsons, Minister of Industry, Energy and Technology, announced that government was lifting the moratorium on wind development, and creating an opportunity for industrial customers to generate wind energy for their own consumption and wind generation for export.

Given the nature of these allegations, it was necessary to explore the development of wind energy policy in the province and the concept of “ethical walls” and how they are intended to operate.

Wind Energy

On March 15, 2023, I met with representatives of the Department of Industry, Energy and Technology. Representatives included the Deputy Minister, and the Executive Director of Renewable Energy. At the meeting we were advised that the understanding of the moratorium on the development of wind energy was associated with the objective of the day with respect to power development in the province and how Muskrat Falls was to be integrated into that system. Officials also noted that the issue of wind energy development by the province pre-dated the election of the current Government.


This is supported through a review of the 2007 Energy Plan entitled, *“Focusing Our Energy”*, which included a section dedicated to wind and identified the following policy actions:

- Adopt a new policy on Crown Lands issuance for wind power that only the Energy Corporation, or a company selected by it, will be able to obtain a Crown lease for a wind power development.
- Work with Aboriginal governments and groups in areas where potential wind developments are subject to an Aboriginal treaty or land claim.
- Pursue opportunities for locating manufacturing and fabrication of wind turbine components such as towers, tower bases, and turbine blades in the province.

The development of wind energy was also identified in the Liberal Red Book in the 2015 general election. *“Onward, Clear Direction Proven Leadership”*, stated the following with respect to wind development:

Your Liberal Government also recognizes the significant opportunities renewable energy presents in terms of economic development and environmental progress. With an abundance of developed and undeveloped renewable energy sources such as hydro and wind, Newfoundland and Labrador has much more to offer.

The federal government has also been pursuing the development of hydrogen to help it achieve net zero emissions. On December 16, 2020, Canada’s Minister of Natural Resources, the Honourable Seamus O’Regan, launched the Hydrogen Strategy for Canada, an ambitious framework that seeks to establish Canada as a global



hydrogen leader that includes millions of dollars in federal investment. This province’s potential wind energy development may be utilized for green hydrogen development.

The current process in this province that proponents of wind energy development must use is set out in the Guidelines: Crown Lands Call for Bids for Wind Energy Projects.⁵

These guidelines were created by the Department of Industry, Energy and Technology and outline the comprehensive requirements that proponents must satisfy. Proponents must provide a voluminous amount of detailed and technical information for assessment, including corporate information, financial information, a project summary, water requirements, risk mitigation strategies, submissions on grid impact, wind generation technology, grid support systems, schematics, project schedule, and benefits expected to accrue to the province. The bid process itself requires a significant amount of effort by any proponent.

Once a bid is submitted, it is assessed through a multi-staged evaluation process that includes an external fairness advisor. Bids are rated according to an objective set of criteria contained in the guidelines.

The comprehensive nature of the process being utilized by the province demonstrates a competitive objective bidding process designed to achieve the best value for the province. It is transparent with all proponents having an opportunity to participate. Additionally, officials confirmed that there has been no attempt at political interference in the merit-based process that has been designed by the department.

Ethical Walls / Conflict Screens

Ethical screens, or conflict screens, are not unique to Newfoundland and Labrador. These administrative mechanisms have been used federally to reduce the likelihood of a member being placed in a conflict of interest.

Establishing conflict screens eliminates the likelihood of a situation arising that would require recusal. Procedurally, a member identifies a person and/or issue that they believe may place them in a conflict of interest. Once identified, staff ensure that any documentation that may be subject to the screen is not provided to the member. By preventing a member’s exposure to a potential conflict, the member is protected.

⁵ <https://www.gov.nl.ca/iet/files/Guidelines-Crown-Land-Call-for-Bids-for-Wind-Energy-Projectsrev-121-Mar-3-2023.pdf>

ANALYSIS & FINDINGS

As noted above, the question of whether a formal inquiry is necessary is determined by the substance of the allegations. Therefore, MHA Petten’s allegations are assessed in the context of the facts and the law applicable to all members.

It must be recognized that the Commissioner for Legislative Standards is an independent officer of the House of Assembly, who by operation of law has detailed and extensive knowledge of a member’s private interests. Members have an obligation to disclose their interests to the Commissioner to facilitate the Commissioner’s preparation of a public disclosure statement. It is during this process that the Commissioner may also provide advice and recommendations to members, such as establishing a blind trust or divestiture of an asset. In essence, the Commissioner performs an oversight and advisory role in the public interest.

During my review, the Clerk of the Executive Council confirmed that a conflict screen was established by Premier Furey to avoid placing him in a conflict of interest on any files, discussions, or decisions that touch upon wind energy development. Furthermore, if an issue arose that could place Premier Furey in a conflict, he was quick to excuse himself from the room. All such recusals were recorded by the Clerk of the Executive Council. This practice of recusing oneself is consistent with s.33 of the *House of Assembly Act*, R.S.N.L. 1990, c. H-10.⁶

To investigate the issue of payment of Premier Furey’s fishing trip, a formal meeting was held with Premier Furey. During the meeting, both myself and legal counsel were given the opportunity to view a receipt confirming that the trip was paid from personal funds. According to Premier Furey, his wife paid for the fishing trip as a gift. There was no evidence that the trip was paid for by anyone associated with wind energy development. It was therefore a personal gift.

It is against this factual background that the allegations of MHA Petten must be examined to determine if there are reasonable grounds to proceed to a formal inquiry.

Guidance with respect to what constitutes reasonable grounds in the context of a review performed by an integrity commissioner can be found in the recent Report of The Honourable J. David Wake into Ontario Premier Doug Ford dated January 18, 2023.⁷

While it is recognized that the legislation in Ontario includes the phrase “reasonable and probable grounds”, the analysis in the Ford Report does assist in determining a standard a member must meet. Paragraphs 9 states:

⁶ House of Assembly Act, R.S.N.L. 1990, c. H-10, s.33.

⁷<https://www.oico.on.ca/web/default/files/public/Commissioners%20Reports/Re%20Premier%20Doug%20Ford%20and%20Minister%20Steve%20Clark%20-%20January%2018%2C%202023.pdf> [“Ford Report”]

[9] The concept of reasonable and probable grounds has been well developed in case law. It requires both a subjective and objective component, in that to have reasonable and probable grounds, a person must “**have an honest belief that an offence has been committed and objectively there must exist reasonable grounds for this belief...**” [Emphasis added].

Therefore, in the context of MHA Petten’s request for an opinion, it is insufficient that he *subjectively* believes that Premier Furey violated the legislation or the Code of Conduct. This belief must be *objectively* justifiable based upon the evidence.

When the evidence is viewed objectively, I find no basis for a finding of conflict of interest, a violation of the Code of Conduct, or applicable legislation. There is no evidence that Premier Furey furthered the private interests of himself or his family contrary to s.21 of the *House of Assembly Act*, R.S.N.L. 1990 c. H-10, or that he played a role in furthering the private interests of a third-party contrary to s.23 (2) of the *House of Assembly Act*, R.S.N.L. 1990 c. H-10. Furthermore, as the fishing trip was paid for with personal funds, there is no violation of s.26 of the *House of Assembly Act*, R.S.N.L. 1990 c. H-10.⁸

To the contrary, the evidence establishes that since being elected Premier Furey took proactive steps consistent with best practices to avoid being placed in a conflict of interest. The evidence of the Clerk of the Executive Council confirmed that a conflict screen is in place to prevent Premier Furey from being exposed to issues which may place him in a conflict of interest. In addition, when an issue arises that may place Premier Furey in a conflict of interest, he recuses himself from the meeting, and this recusal is recorded. This conduct is not only ethical but should be encouraged by all members when attempting to address potential conflicts.

It is evident that MHA Petten appears to be concerned with the optics of the Premier attending a vacation at a resort owned by an individual who is doing business with the government. However, neither the applicable legislation nor the Code of Conduct addresses “apparent” conflicts of interest. Mere subjective speculation is not enough to justify a formal inquiry into a matter which, upon an objective assessment of the evidence, fails to demonstrate any wrongdoing.

The Honourable George T. Evans, Q.C., the former Integrity Commissioner of Ontario, investigated former Premier the Honourable Michael Harris.⁹ His comments regarding the type of evidence necessary to support a finding of wrongdoing, should be considered by both MHA Petten, and all members, in the future when deciding whether to make a request for an opinion to the Commissioner:

Proof of a breach or complicity in a breach of the Member's Integrity Act must be based on facts rather than conjecture, suspicion, or affinity based on friendship, common interest or political affiliation. A person's reputation, irrespective of his station in life, is important and if it is to be impugned, there must be evidence to support that challenge.

⁸ House of Assembly Act, R.S.N.L. 1990, c. H-10, s.21, 23 & 26.

⁹ <https://ciec-ccie.parl.gc.ca/en/publications/Documents/InvestigationReports/Trudeau%20III%20Report.pdf> , at para. 267

The perception standard of morality which some suggest should be the test applied to politicians would require that a legislator should not engage in conduct which would appear to be improper to a reasonable, non-partisan, fully informed person. The problem with such an “appearance standard” is that there are few, if any, reasonable, non-partisan, fully informed persons.

One person’s perception of another's conduct is a purely subjective assessment influenced by many factors including the interest of the individual making the assessment. It is not the proper criteria by which the conduct of a legislator should be measured.

It is recognized that members operate in a political forum. However, given the serious nature of the Code of Conduct, which uses words such as “corruption” and “unethical”, it would be prudent for members to ensure that they have reasonable grounds before proceeding with a request for an opinion from the Commissioner. Speculation, conjecture, and suspicion should not be readily used to impugn the character of a fellow member.

Members should also recognize that there is a distinction between participating in a decision or debate versus announcing government policy. As leader of the Province, a Premier will often have to announce government policy. However, the mere announcement of a policy by the leader does not equate to a finding that they participated or influenced the decision process. In the present case, given the shift in government policy and the importance it may have to the provincial economy, it would reasonably be expected that Premier Furey would be involved in announcing this policy development.

CONCLUSION

Having reviewed the request for an opinion, the accompanying documentation, meeting with officials at the Department of Industry, Energy and Technology, the Clerk of the Executive Council, and Premier Furey, I have determined that there are no reasonable grounds to conduct a formal inquiry into the matter as there is no objective evidence of a violation of legislation or the Code of Conduct.

In the normal course, it is the practice of the Commissioner for Legislative Standards not to disclose the name of a member who makes a request for an opinion. However, in relation to this request, MHA Petten announced publicly that he has requested my opinion on the matter.¹⁰ In light of the public nature of this request, it is in the public interest that I exercise my discretion to release my findings. This Report will help to inform the public of the comprehensive process in place for wind development in the province, the ethical walls that have been put in place to prevent conflicts of interest, and the type of evidence that should be provided to the Commissioner from a member requesting an opinion into the conduct of another member. It is anticipated that all members will benefit from a review of this Report.

¹⁰ <https://www.cbc.ca/news/canada/newfoundland-labrador/barry-petten-letter-commissioner-legislative-standards-1.6713429>