



OFFICE OF THE CONFLICT OF INTEREST COMMISSIONER
PROVINCE OF PRINCE EDWARD ISLAND

**Report to the Speaker of the Legislative Assembly
concerning the Investigation by the Commissioner
into allegations involving the
Honourable Ronald MacKinley
Minister of Transportation and Public Works**

January 9, 2008

Madame Speaker and Members of the Legislative Assembly:

Background

On October 19, 2007, Mr. Michael Currie, Member of the Legislative Assembly (Georgetown-St. Peters) (hereinafter referred to as the “Complainant”) wrote to the Conflict of Interest Commissioner (hereinafter referred to as the “Commissioner”) to initiate a formal conflict of interest complaint against the Honourable Ronald MacKinley (hereinafter referred to as “Minister MacKinley”).

The Complainant alleges that Minister MacKinley has contravened Section 9 of the *Conflict of Interest Act*, R.S.P.E.I. 1988, c. C-17.1 (the “Act”) which provides as follows:

- “9. No member shall make a decision or participate in making a decision in the execution of the member’s office if the member knows or reasonably should know that in the making of the decision there is an opportunity*
- (a) to further the member’s private interest; or*
 - (b) improperly to further another person’s private interest.”*

The Complainant requested an opinion pursuant to Subsection 28 of the *Act* which is in the following terms:

- “28.(1) A member who has reasonable and probable grounds to believe that another member has contravened*
- (a) this Act; or*
 - (b) Prince Edward Island parliamentary convention,*
may request that the Commissioner give an opinion as to the matter.
- (2) The request shall*
- (a) be in writing;*
 - (b) set out the grounds for the belief and the contravention alleged; and*
 - (c) be supported by affidavit evidence.*

(3) The member making the request shall promptly give a copy of the request to the Speaker, who shall cause the request to be laid before the Legislative Assembly if it is sitting or, if not, within 10 days after the beginning fo the next sitting.”

On October 23, 2007, the Speaker laid the request for an opinion before the Legislative Assembly which was then sitting.

Issue

To conduct an investigation and to determine the circumstances surrounding Minister MacKinley’s decision as Minister of Transportation and Public Works to install traffic lighting at the intersection of MacPhail Drive and the Trans Canada Highway (TCH) in the Town of Cornwall and, further, to determine whether any conflict of interest was created or occurred and to make a report for the consideration of the Legislative Assembly.

Persons Interviewed or Contacted

- Kevin McCarville, Chief Operating Officer in the Town of Cornwall
- Patrick MacFadyen, Mayor of the Town of Cornwall
- Janice Harper, formerly Cornwall Town Planner
- Clifford McQuaid, Developer of Madison Heights Sub-division, in the Town of Cornwall
- Michael Currie, Member of the Legislative Assembly (Georgetown-St. Peters)
- Honourable Ronald MacKinley, Minister of Transportation and Public Works
- Steve MacLean, Deputy Minister, Department of Transportation and Public Works
- Stephen Yeo, Chief Engineer, Department of Transportation and Public Works
- Alan Aitken, Queens County Engineer, Department of Transportation and Public Works
- Darren Chaisson, Queens County Resident Engineer, Department of Transportation and Public Works
- Kevin Campbell, Manager of Traffic Operations Eastern Region
- John Ives, Realtor/Appraiser, Century 21
- Scott McEwen, Accredited Appraiser, McQuaid, McEwen & Associates

Referred Documents

1. Complaint of Mr. Michael Currie, Member of the Legislative Assembly (Georgetown-St. Peters) against Minister Ronald MacKinley dated October 19, 2007.
2. Response of Minister MacKinley dated November 6, 2007.
3. Rebuttal of the Complainant dated November 20, 2007.
4. Reply of Minister MacKinley dated November 30, 2007.
5. Town of Cornwall Strategic Plan, Town of Cornwall Zoning and Sub-division Control (Development) By-law
6. Town of Cornwall Official Plan 2003.
7. Transportation Master Plan - Town of Cornwall Draft Report August 2006.
8. Hansard, Legislative Assembly Statements by Members and Oral Question Period for Friday, October 19, 2007.

Particulars of Complaint

The Complainant indicates that the grounds for his belief that Minister MacKinley has breached the Act is as follows:

- “3. *In my first Affidavit, I state the grounds for my belief as follows (with the statements stated in square brackets now being added to my first Affidavit’s statements):*
- (a) *On October 19, 2007, in the Legislative Assembly, Mr. MacKinley acknowledged that, as Minister of Transportation and Public Works, he participated in making a decision that the Government of Prince Edward Island (“Government”) would do the following:*
- (I) *Erect traffic signals at the intersection of the Trans Canada Highway and W.B. MacPhail Drive, Cornwall, Prince Edward Island (“MacPhail/Trans Canada intersection”); and*
- (ii) *Also allow and create access from [this intersection of] the Trans Canada Highway onto Parcel No. 246884. Parcel No. 246884 is owned by Clifford,*

Vanessa and Melissa McQuaid ("McQuaid Parcel No. 246884").

- (b) Mr. MacKinley is the owner of Parcel Number 245936 [which is adjacent to McQuaid Parcel No. 246884].*
- (c) Recently, the north end of Madison Avenue has been paved and, also, the trees along the border of Madison Avenue and Mr. MacKinley's Parcel No. 245936 have been cleared. This facilitated access from Madison Avenue to Mr. MacKinley's Parcel No. 245936. CBC Compass reported this during its broadcast on Monday, October 15, 2007.*
- (d) Attached to my first Affidavit, and again attached to this Affidavit as Exhibit "A", is a copy of the PEI Geomatics map showing Mr. MacKinley's Parcel No. 245936 [and its location in relation to the Government approved four-way intersection/traffic signals].*
- (e) When the Government's approved four-way traffic signals are installed at MacPhail/Trans Canada intersection, thereby permitting access from the Trans Canada Highway onto the McQuaid Parcel No. 246884, the value of Mr. MacKinley's adjacent Parcel No. 245936 will increase dramatically. This is due to the Government's newly created accessibility between Mr. MacKinley's Parcel No. 245936 and the Trans Canada Highway.*
- (f) Mr. MacKinley admitted in the P.E.I. Legislative Assembly on October 19, 2007, that he approved the expenditure of taxpayers' money to build traffic signals at the MacPhail/Trans Canada intersection. By approving this project, Mr. MacKinley has breached the Conflict of Interest Act.*

- (g) *With Mr. MacKinley's approval of these traffic signals, this allows Mr. MacKinley's Parcel No. 245936 to receive approval from provincial and municipal planners for development of a subdivision, thus substantially increasing the value of Mr. MacKinley's Parcel No. 245936. It is our understanding that Mr. MacKinley's Parcel No. 245936 has already been rezoned to allow for comprehensive development.*
- (h) *In participating in the Government's decision, Mr. MacKinley knew, or reasonably should have known, that there was an opportunity to further his private interests. He thereby contravened the Conflict of Interest Act."*

In his Rebuttal dated November 20, 2007, the Complainant makes further and more specific allegations including:

- (1) The Complainant alleges that: *"...At the beginning of creating this four-way intersection/traffic signals, the first step was to align the entrance of MacPhail Drive to the hoped-for entrance to Mr. MacKinley's Parcel No. 245936. The installation of the four-way intersection/traffic signals and the creation of this new road, provide a valuable link between the Trans-Canada Highway and Mr. MacKinley's Parcel No. 245936; and, also, will expedite approval of Mr. MacKinley's subdivision plans for Parcel No. 245936."*
- (2) Minister MacKinley's land identified as Parcel No. 245936 has been rezoned from agriculture use to comprehensive development.
- (3) Trees and shrubs were recently cleared along Minister MacKinley's property line and the road access in the Madison Heights Subdivision was recently paved and services installed right up to Minister MacKinley's property identified as Parcel No. 245936.
- (4) The Complainant asserts that: *"...no municipal government planner would approve the further development of Mr. MacKinley's land adjacent to the Madison*

Heights Sub-division unless there was nearby lighted and safe access to the Trans Canada Highway.”

- (5) The Complainant suggests that: “...*this project on the four-way intersection/traffic signals was fast-tracked by Mr. MacKinley and due diligence was not undertaken.*” As examples, the Complainant alleges that: “...*the sketches and drawings for the four-way intersection/traffic signals are not well prepared and not engineer approved.*”
- (6) To further illustrate, the Complainant indicates that the *Hansard* record for the sitting of the Prince Edward Island Legislative Assembly on April 18, 2007 states that: “...*there was nothing planned in the road program for this four-way intersection/traffic signals...*”
- (7) The Complainant alleges that after the change of government and Minister MacKinley was appointed, the Minister had a conversation with Mayor MacFadyen which was reflected in the Town of Cornwall Council Minutes dated July 18, 2007 in the following terms:

“Mayor MacFadyen informs Council that he spoke with Ron MacKinley and was assured that lights will be installed on the TCH at the Cornwall Business Park and Madison Heights subdivision.”

The Complainant suggests that as the Minutes specifically reference both the Cornwall Business Park and Madison Heights Subdivision, this suggests that a four-way intersection/traffic lights was contemplated.

- (8) The Complainant alleges that the developer of the Madison Heights Subdivision did not comply with a condition in the Subdivision Agreement between the Town of Cornwall and the developer which stipulated that the developer was to purchase lands between the Subdivision and the TCH opposite the intersection leading to the Cornwall Business Park. The Complainant indicates that the deadline for the developer to have complied with this condition had passed and that the Town of Cornwall had waived the \$125,000 penalty provided in the agreement.

- (9) The Complainant indicates that: “...After a new government was sworn in, the developer then paid for the house to be moved. Why do this and incur significant costs? The developer must have had some knowledge that a four-way intersection/traffic signals was after all going ahead, with Mr. MacKinley’s influence in the new government, for the developer to all of a sudden pay to move the house.”
- (10) The Complainant again notes that Minister MacKinley’s quotation as outlined in *Hansard* on October 19, 2007 was that:
- “...the intersection will become a four-way if the developer follows through on spending about \$150,000 to move the house.”

The Complainant’s argument may be summarized as outlined in his Rebuttal as the following:

“...Add to these stated events: the realignment of MacPhail Drive to the hoped-for entrance to Mr. MacKinley’s Parcel No. 245936; the recent paving of the road up to Mr. MacKinley’s Parcel No. 245936; the removal of trees where the recently paved road meets the boundary to Mr. MacKinley’s Parcel No. 245936; the rezoning of Mr. MacKinley’s Parcel No. 245936; and the hereafter addressed removal of a house on the MacKinley side of the Trans Canada Highway to better allow for a four-way intersection; and I believe you can see the steps falling into place to create a four-way intersection/traffic signals to serve Mr. MacKinley’s private, or financial, interests.”

Facts:

The intersection of MacPhail Drive and the TCH began as a temporary access granted by the previous government of which the Complainant was a Minister. That access was originally approved by Executive Council in August of 1997 for use as a temporary access for a maximum period of 24 months. In January of 1998 Executive Council authorized utilization of the current temporary industrial access to the TCH on condition that the business park traffic generate minimal traffic volumes and that Cornwall seek

prior approval of the Department of Transportation and Public Works (hereinafter referred to as the “Department”) before any further development of the business park occurred.

On February 20, 2001 a letter was sent to the Town from Mr. Alan Aitken, then Central Regional Engineer, wherein he stated in part:

“...The access to the business park was originally approved by Executive Council on August 28, 1997 to function as temporary access to the site for a stipulated period of time. The period stipulated allowed sufficient time for the Town to acquire land and complete construction of a permanent access to the proposed Business Park.

On January 8, 1998, Executive Council authorized that the current temporary industrial access to Route 1 could be used for up to a total of 4 industrial operations.

*We feel that it is prudent for the Town to decide where they wish to locate the permanent access, be it at its present location or at an alternative approved location, **as upgrading of the TCH may be required to provide for safe movements of vehicles to and from the park.** The Department feels it is necessary to determine and construct the location of the permanent access prior to agreeing to any further intensification of usage beyond 4 industrial lots...” (Emphasis added)*

As of February 20, 2001, the Town was being advised that the TCH might require future upgrading to allow vehicles safe ingress and egress to the Cornwall Business Park.

The Town of Cornwall advised the Department by letter dated March 12, 2001 that: *“...the Town of Cornwall wishes to advise it is our position the existing access into the Cornwall Business Park shall be designated the permanent access...”* This letter confirmed the Town’s wish that the existing MacPhail Drive/TCH intersection be maintained in its present location.

By a letter dated July 30, 2001, Mr. Foch McNally, the then Chief Engineer for the Department, approved MacPhail Drive as a subdivision road leading to the Cornwall

Business Park. Mr. McNally's letter was addressed to the Town of Cornwall and provided in part, as follows:

"...The Department of Transportation and Public Works approves the development of the sub-division road to the Cornwall Business Park. Access to the Route 1 highway shall be at the temporary access previously approved by the Department. Your community should be aware that when the business park develops beyond six or seven businesses, there may be long delays for trucks entering onto Route 1 from the sub-division road.

Improvements to the Route 1 highway will be required in the future to provide access to the business park road; and the Department will provide the improvements as required... (Emphasis added)

Mr. McNally's letter confirmed the permanent approval of the existing three-way intersection of MacPhail Drive with the TCH. Mr. McNally further advised that future improvements would be required to the TCH to improve access to MacPhail Drive from the TCH and that those improvements would be the responsibility of the Department. Once again, a Departmental official was indicating that further improvements at the intersection would be required in the future.

On September 14, 2005, Mr. Clifford McQuaid, Ms. Melissa McQuaid and Ms. Vanessa McQuaid (hereinafter referred to as "the Developer") entered into a Subdivision Agreement with the Town of Cornwall to subdivide lands to be known as the "Madison Heights Subdivision." The location of the Subdivision is to the north of the TCH and, but for two intervening lots of land, contiguous with the TCH at the intersection with MacPhail Drive which leads to the Cornwall Business Park located south of the TCH. The location of the intersection is shown on the diagram marked Annex "A" which is attached. The Madison Heights Subdivision is comprised of the outlined building lots surrounding Madison Avenue, Jessie Street and a portion of Keri Drive. The Subdivision is separated from the TCH by Parcels No. 246884 and 245944.

Because of the proximity of the planned Subdivision and the existing intersection of MacPhail Drive and the TCH, the Madison Heights Subdivision layout plan was designed with two options. Option #1 is to have the Subdivision's Jessie Drive end in a cul-de-sac; and Option #2 is to have Jessie Drive extended to connect with the existing intersection,

thereby creating a four-way intersection. To date, neither of these options have been implemented.

During the planning process, inquiries to the Department were made by the Town of Cornwall as to whether the existing three-way intersection of MacPhail Drive and the TCH could be made a four-way intersection to allow access from the TCH to the Madison Heights Subdivision. Those inquiries by the Town of Cornwall were answered by a letter dated August 11, 2005 from Mr. Alan Aitken, then Central Engineer of the Department. This correspondence read in part as follows:

“The Department has reviewed Mr. McQuaid’s recent Subdivision layout proposal and have concluded that access to the TCH at the proposed location will not be considered at this time.

We have reviewed traffic counts for this intersection that were conducted in 2002 as well as other traffic counts at the signalized intersection of the TCH/Meadowbank Road and Heatherway Drive for comparison purposes and would suggest that adequate capacity exists at the intersection of Kellow Drive/John St. And the TCH to adequately handle expected traffic increases from the development. We will be conducting additional counts at this intersection in the near future but would expect that the current volume of traffic at this intersection are well below levels that would require an additional connection with the TCH at this time.

We would suggest that the development of this subdivision be staged in a manner that would allow direct access through existing connections with the Trans Canada. If signalization of the intersection at MacPhail drive (Cornwall Industrial Park) is warranted in the future due to traffic increase the Department may reconsider a connection from the proposed subdivision at that time....”

The position of the Department as of August 11, 2005 was that the existing intersection at MacPhail Drive and the TCH would remain a three-way intersection. This was notwithstanding the Town of Cornwall’s desire to make it a four-way intersection by connecting the intersection to Jessie Drive, thereby giving the Madison Heights Subdivision direct access onto the TCH.

From its inception as an intersection in 1997 until the fall of 2007, the MacPhail Drive/TCH intersection was a three-way intersection. The TCH which passes through the area has two lanes running generally north and south, with MacPhail Drive on the eastern side of the highway leading to the Cornwall Business Park. There were no traffic lights at the intersection, nor were there any turning lanes. The only traffic signal was a stop sign on MacPhail Drive to advise traffic to halt before entering onto the TCH. Many of the vehicles entering or leaving the business park were larger and slower trucks which often created dangerous conditions, as these vehicles attempted to turn onto the TCH to proceed either north or south. Equally, as those vehicles attempted to leave the TCH and enter the Cornwall Business Park, they often slowed or blocked approaching traffic from either direction until they had exited onto MacPhail Drive.

Minister MacKinley is the Member of the Legislative Assembly for Cornwall-Meadowbank and has been since 1985. His electoral District encompasses the MacPhail Drive/TCH intersection and his residence and farm are within 100 metres of the intersection. Minister MacKinley, as the Member and as a long-time resident of the area, was aware of the traffic situation and as early as April 1, 1998 said the following in the Legislature:

Ron MacKinley (L): *“A new question for the Minister of Transportation. (UPROAR) On August the 28th, Executive Council approved a new entrance on the Trans Canada Highway in Cornwall. This is a very unsafe access. I know many residents, whether they be from Cornwall or wherever, driving through there have complained to me about it and also to your department...Are you going to drop the speed zone to try to make that access safer that’s into the industrial park? August the 28th. The one you gave a temporary access to?”*

Minister MacKinley advises that over the years while he was in Opposition, he received many complaints from citizens concerning the safety of the MacPhail Drive/TCH intersection.

Because of the safety concerns, the Town of Cornwall experienced difficulty in attracting businesses to locate in the Cornwall Business Park. Cornwall Town Council was advised that prospective tenants were reluctant to locate in the business park because of the lack of traffic lights at the MacPhail Drive/TCH. This issue was addressed in the Legislature

during the debate on the Estimates by Minister MacKinley then in Opposition. The *Hansard* Record for April 18, 2007 provides as follows:

Mr. MacKinley: *...The business park is having difficulties in attracting business. This is what I'm getting from Cornwall council, we're getting request about (Indistinct) park. However, they will not purchase the property until the access is addressed.*

Steve MacLean Deputy Minister: *There's nothing planned for the road program for this year to do anything with that intersection. We are aware of Cornwall's concern about trying to get the development park with some more occupancy, and attract some tenants and that they feel and some of their prospective tenants feel, that signals would be advantageous...*

Later in the debate, on the same date, the then Minister advised as follows:

Hon. Gail Shea: *"...There are a number of issues right across the province where we have intersections that aren't safe and we've gotten to a number of them. So yeah, we do have Cornwall on the radar..."*

These exchanges in the Legislative Assembly indicate that the MacPhail Drive/TCH intersection was considered unsafe and that, due to other projects having priority, it was not expected the government of the day would be in a position to address the issue during the 2007 calendar year.

The position of the then government was reflected in the Cornwall Town Council Minutes of April 18, 2007 which states as follows:

"Mayor MacFadyen met with Minister Shea regarding an intersection at the entrance to the Business Park. MLA Ron MacKinley has also raised the issue in the legislature. The response was negative as Government believes there is not enough traffic to warrant an intersection..."

On April 30, 2007 the sitting government called an election for the May 28, 2007. The election resulted in the government being defeated and the present government being

elected. Mr. MacKinley was appointed Minister of Transportation and Public Works on June 12, 2007.

On the same day, Mayor MacFadyen met with Minister MacKinley to congratulate him on his re-election and to discuss the Town priorities. In an email dated June 13, 2007 Mayor MacFadyen wrote to Mr. Kevin McCarville, Chief Operating Officer for the Town, outlining in part his meeting with Minister MacKinley.

“...We also went to the business park and looked at an intersection there. I talked to him about the importance of bringing business to Cornwall. He was very supportive of everything we talked about and has a lead on a potential business. He asked which intersection was our top priority. I told him it would be the business park one (is this an accurate reflection of planning board?). There are a few businesses that are looking to come into the Town and we have already lost one because there are no lights there...”

Mayor MacFadyen made it clear to Minister MacKinley that future development of the Cornwall Business Park was dependant on traffic lights being installed at the existing intersection of MacPhail Drive and the TCH.

The Mayor reported to Council at its meeting of July 18, 2007 in the following terms:

“Mayor MacFadyen informs Council that he spoke with Ron MacKinley and was assured that lights will be installed on the TCH at the Cornwall Business Park and Madison Heights subdivision...”

The Minutes indicate that the Mayor's understanding was that the current government would be installing traffic lights at the intersection of MacPhail Drive and the TCH. There is nothing in the Minutes indicating that the intersection was to be expanded from a three-way intersection to a four way intersection. Mayor MacFadyen advises that during the Council meeting he did not refer to the intersection as being: *“...on the TCH at the Cornwall Business Park and Madison Heights subdivision”*. He advises that the Minutes are in error as the tape recording of the Council proceedings indicates that the Mayor's reference was to the intersection of MacPhail Drive and the TCH with no reference to the Madison Heights Subdivision. During the meeting, other Council members did discuss

the creation of a four-way intersection as that has been a long-held wish of the Town of Cornwall. It was this discussion that led to the Minutes being incorrectly recorded.

Mayor MacFadyen indicates that at no time did Minister MacKinley ever indicate that a four-way intersection was to be created. The Mayor indicates he informed Council that Minister MacKinley promised traffic lights for the existing three-way intersection at MacPhail Drive and the TCH and nothing more. In my opinion, it is clear that the reference to the Madison Heights Subdivision was a reference to the general location of the intersection. In any event, the Minutes of the Town of Cornwall reflect that “lights” will be installed not that the existing intersection would be expanded to a four-way intersection.

During early September 2007, a significant Departmental project that had been expected to proceed in the Town of Souris was deferred until the 2008 construction season. The project was deferred due to unforeseen circumstances beyond the control of the Department. The deferment of the project created room in the Departmental budget to consider other smaller projects that could be completed during the remaining construction season. Minister MacKinley, in consultation with the Deputy Minister and Departmental engineers, decided to revise the 2007 road program to include the installation of traffic lights at the intersection of MacPhail Drive and the TCH.

On September 25, 2007, Mr. Alan Aitken, Queens County Engineer, wrote to officials of the Town of Cornwall in the following terms:

“I’m sure you’ll be happy to know that the Department has put out an invited tender to provide a left turn lane from the TCH into the Cornwall business park and signalize the intersection...”

On September 28, 2007, the Department entered into a Tender Form and Agreement with Chapman Brothers Construction Limited. The contract was for the creation of a left-turn lane at the intersection of MacPhail Drive and the TCH allowing safer access into the Cornwall Business Park. Subsequently, Hanson Electric Limited submitted the lowest bid and was awarded the tender to signalize the intersection by installing traffic lights at the intersection of MacPhail Drive and the TCH.

From the 1997 approval of the MacPhail Drive/TCH intersection as a temporary access for the Cornwall Business Park until the present date, the intersection has been a three-way intersection. As of the date of this Report, the intersection is a three-way signalized intersection providing regulated ingress and egress to the Cornwall Business Park. The intersection as it exists today is outlined on the attached diagram marked Annex "B".

Circumstances relied upon to support the Complaint:

(1) The Complainant alleges:

"... that on October 19, 2007 in the Legislative Assembly, Minister MacKinley acknowledged that as Minister, he had participated in making a decision that the Government of Prince Edward Island ... would do the following:

(i) Erect traffic signals at the intersection of the Trans Canada Highway and W.B.MacPhail Drive, Cornwall, Prince Edward Island...; and

(ii) Also allow and create access from this intersection of the Trans Canada Highway onto Parcel No. 246884. Parcel No. 246884 is owned by Clifford, Vanessa and Melissa McQuaid...Mr MacKinley is the owner of Parcel No. 245936 which is adjacent to the McQuaid Parcel No. 246884...When the Government's approved four-way traffic signals are installed at MacPhail/Trans Canada intersection, thereby permitting access from the Trans Canada Highway onto the McQuaid Parcel No. 246884, the value of Mr. MacKinley's adjacent Parcel No. 245936 will increase dramatically. This is due to the Government's newly created accessibility between Mr. MacKinley's Parcel No. 245936 and the Trans Canada Highway..."

The relevant exchange in the Legislative Assembly on October 19, 2007 is as follows:

ORAL QUESTION PERIOD 19 OCTOBER 2107 PRELIMINARY PROCEEDINGS

"TRAFFIC LIGHTS AT CORNWALL

"Mr. M. Currie: Madam Speaker, I'll move to another area seeing I'm getting questions are going nowhere with the individual here.

"I'll now go to Cornwall. Are you putting another set of lights up in Cornwall, Hon. Minister?"

“Speaker: The Hon. Minister of Transportation and Public Works.

“Mr. MacKinley : Thank you, Madam Speaker.

“We’re putting a set of lights up into the industrial park, Mr. Minister, so the trucks and that. The problem is industrial park, Madam Speaker, I’ll have to give him a history of it. He approved, I believe it was, a temporary access when he was minister and everybody was against it but he put it in. Next thing you know it was paved. Basically, what should have been done was go down, hook up to MacRae Drive and put a set of lights in there but, as usual, he bulldozed ahead and he messed up bad. And now after many years, it’s got to be us that come along and fix your mistakes again because you’ve made it then a permanent access onto the highway and he doesn’t even remember the deal he had with the town...”

“...Mr. Currie: Madam Speaker, I guess I didn’t get an answer from the individual but I’m wondering: This is a four-way set of lights that’s going to be there?”

“Speaker: The Hon. Minister of Transportation and Public Works.

“Mr. MacKinley: The answer to the individual was - should have been extra too but I took so long. I mean it takes so long to get it through him and that reporter, if he had of done his homework, they would have saved the TV time because the people out in Calgary were laughing at it. Apparently, they get CBC news at three o’clock and if they don’t watch it at three o’clock, they tape it and they watch it that night. The boys in Calgary really know more about what’s going on here than I do sometimes so they even knew about the intersection and they were getting a great laugh about that when I saw them. The question is there was 180-some thousand dollars to put the intersection in and across the street there’s a road there where the intersection will become a four-way if the developer follows through on spending about \$150,000 to move the house and if he has to pave in to wherever the pavement is.”

“...Mr. M. Currie: I’m glad he brought that issue up because I feel there is somebody filling their pockets here and, certainly, the minister has now acknowledged that it’s the same individual that’s building both developments and it also, I guess, enhances the value of the property to a great degree all around there. I’m just wondering: do you own land next to this property, Hon. member?”

“Speaker: The hon. Minister of Transportation and Public Works.

“Mr. MacKinley: On the opposite side of the road from the industrial park, we own from there right near to North River corner. Actually, right down to North River corner probably takes all the MacKinleys in. That’s how far we own. The developer put this in. He bought the land through Parker Beer, which was the next door neighbour, and it went to the town. I believe in 2005 it was approved along with your department of highways. I know he’s not up to speed with it but I believe it was 2005 or something. I could table the development agreement from the town of Cornwall. I’d just have to check because it’s between the town of Cornwall and the individual whether the privacy thing comes in. I know it’s not between us...”

This exchange in the Legislature does not indicate that the Minister “*participated in making a decision...(to) allow and create access from this intersection of the Trans Canada Highway onto Parcel No. 246884 ...which is adjacent to Parcel No. 245936 owned by Mr. MacKinley...*” The Minister’s response in the Legislature was not as clear or forthright as it might have been but nowhere does he indicate that a four-way intersection was being created. What Minister MacKinley did say about a four-way intersection is as follows:

“...The question is there was 180-some thousand dollars to put the intersection in, and across the street there’s a road there where the intersection will become a four-way if the developer follows through on spending about \$150,000 to move the house, and if he has to pave in to where the pavement is.”

Unfortunately, the Minister was not categorical in stating that the work at the intersection was to enhance the existing three-way intersection. This response led the Complainant to conclude it was the developer, Mr McQuaid, and not the Department, that would determine whether the intersection was to become a four-way intersection connecting the Madison Heights Subdivision with the TCH. It was this fundamental misunderstanding that led the Complainant to draw adverse conclusions from certain other circumstances which will be discussed later.

The Complainant stated during the interview portion of this investigation as follows:

“...This all fits together in my mind...when ... this (Subdivision) Development Agreement ... says this individual (Mr. Clifford McQuaid) has to buy this property (Parcel No. 245944) to make this connection for the four-way intersection at the lights here (MacPhail Drive/TCH)... When I asked the question in the Legislature: ‘Is this going to be a four-way intersection?’ The answer that came back was: ‘Yes it will be when the developer buys the property and moves the house’. So, lo and behold, two or three days later my phone was ringing that this house is being moved off the site..”

Based on this information, the Complainant believed that a four-way intersection between Jessie Street and MacPhail Drive/TCH was being created.

As recorded in *Hansard*, the Minister did state in the Legislature that the intersection:

“...will become a four-way if the developer follows through on spending about \$150,000 to move the house and if he has to pave in to wherever the pavement is.”

The Minister was in error; his Department had no intention of creating a four-way intersection at the site, no matter what was done by the developer.

In fact, there is a further more important pre-condition to the intersection ever becoming a four-way intersection and that is that the Department must expressly approve any such future development. The Department’s refusal to allow a four-way intersection at the location is well known and was expressly communicated to the Town of Cornwall in 2005. The Department’s position concerning the intersection remains unchanged to this day. The Minister should have clearly communicated the Departmental position concerning the intersection to the Legislative Assembly. The fact that he owned real estate in the immediate area should have caused him to be extraordinarily forthright and candid.

The question from the Complainant: *“...I’m wondering: This is a four-way set of lights that’s going to be there?”* required a direct and accurate response. If the Minister was unsure as to the correct response, he should have advised the Legislature that he would provide the response later. If an accurate and complete response had been given then or soon thereafter, it is unlikely that this complaint would have been pursued.

Nothing said by the Minister on October 19, 2007 in the Legislature indicates that he participated in any decision “...to create or allow access from this intersection of the Trans Canada Highway onto Parcel No. 246884...which is adjacent to Parcel No. 245936 owned by Mr. MacKinley...” No such access has been created, nor has there been any “...government approved four-way traffic lights installed...”, it cannot be argued that: “...the value of Mr. MacKinley’s Parcel No. 24936 will increase dramatically... due to the Government’s newly created accessibility between Mr. MacKinley’s Parcel No. 24936 and the Trans Canada Highway.”

The work contracted for and recently completed has resulted in the previously existing three-way intersection at MacPhail Drive and the TCH becoming a signalized intersection with a left-turn lane into the Cornwall Business Park as shown on the attached diagram marked Annex “B”. The intersection remains a three-way intersection which does not enable access onto Parcel No. 246884 or by extension to Minister MacKinley’s Parcel No. 245936.

(2) The Complainant alleges that:

“Trees were recently cleared along Mr. MacKinley’s property line and the road in the Madison Heights subdivision was recently paved and services installed right up to Mr. MacKinley’s Parcel No. 245936. This shows that Mr. MacKinley intends to use Parcel No. 245936 for uses other than agriculture...”

The Madison Heights Subdivision was created as a result of an Agreement dated September 14, 2005 signed between the Town of Cornwall and Clifford, Melissa and Vanessa McQuaid. The Subdivision layout submitted by Mr. McQuaid required approval from both the Town and the Department. To obtain Departmental approval, Mr. McQuaid’s Subdivision had to comply with the Departmental requirement that all Subdivision roadways be conveyed to the Province and that any created Subdivision roadways must be connected to adjacent properties. The policy requires that a subdivision developer provide connections to adjacent properties to enable future orderly development. The Department’s policy is considered good planning practice. Where the connection does not provide access to any further lots on the developer’s property, then the Province cost-shares the cost of creating that connection. The Departmental policy is as follows:

“...Regarding subdivision roads making connection with adjacent properties:

- *the connecting road shall be built and deeded to the Province when the subdivision road intersecting the connecting road is built and deeded;*
- *the construction cost shall be borne completely by the developer when the connecting road is required to provide full frontage to a lot requiring that road for access;*
- *the construction cost shall be shared on a 50-50 basis by the Department and the developer for that portion of the connecting road that does not require the road for access if the lots are of such a size as not to allow future subdivision along the road.*

In an existing subdivision where the roads have been built except for a connector road, and that connector road goes to property which was not part of the original parcel being subdivided when roads were developed, the Department will share 50% of the cost of extending the road to the property line provided such road does not provide the only frontage to any lots in the existing subdivision when it is finished. This cost will only be shared in conjunction with the development of a subdivision on the adjacent parcel of land which is in compliance with the remainder of this policy...”

In compliance with the Departmental policy, a Subdivision Road Agreement dated November 3, 2005 was signed between the previous government represented by the then Minister of Transportation and Public Works, Ms. Gail Shea; the developer, Mr. McQuaid; and the Town of Cornwall. As required, access was created to Parcel No. 245936 which is owned by Mr MacKinley and who was then sitting in Opposition. Because no additional lots owned by the developer were accessed, the cost of creating the access to Mr. MacKinley’s property was cost-shared by the Developer and the Province as stated in the Subdivision Road Agreement.

Mr. McQuaid advises that the first layer of paving for the roadways was laid in November of 2005 and the final layer of sealant pavement was applied in May of 2006. The fire hydrant which is on Madison Avenue close to Minister MacKinley’s Parcel No.245936 was installed in compliance with the Subdivision Agreement dated September 14, 2005 between the Developer, Mr McQuaid and the Town of Cornwall. Its location is in conformity to the municipal bylaws and has been in its present location since 2005.

The paving of Madison Avenue to Mr. MacKinley's property line and the placement of the fire hydrant were not within the control of the Minister. Both events took place prior to Mr. MacKinley becoming a Minister and both events were in compliance with provincial and municipal regulations or bylaws. Neither event was "recent" within the implied meaning of the Complainant.

Minister MacKinley advises that while he and his wife were out of the province in October of 2005, their son and one of his employees cleared the trees and shrubs from his property line to allow ingress and egress on to Madison Avenue. Minister MacKinley advises that this was done to replace the previous access that had been lost with the development of the Madison Heights Subdivision. Minister MacKinley advises that the access onto Madison Avenue allows his farm equipment and vehicles another means of ingress or egress to the TCH, if traffic conditions make it difficult to enter the highway directly from his farm. Minister MacKinley's vehicles leaving his farm and entering onto Madison Avenue can exit at the Kellow Drive signalized intersection with the TCH.

The clearing of trees and shrubs to facilitate access onto Madison Avenue from Minister MacKinley's property did not occur recently, as suggested, but rather occurred in 2005 prior to Mr. MacKinley becoming a Minister. Since 2005, Minister MacKinley has used the access in the manner that he describes.

From the fact that a developer paved and serviced an adjacent subdivision in conformity with two separate Subdivision Agreements and that Mr. MacKinley used the created access does not "...show that Mr. MacKinley intends to use Parcel No. 245936 for uses other than agriculture..." To further imply that such was done to facilitate commercial or residential development of Parcel No. 245936 by Minister MacKinley is not a reasonable conclusion to draw.

(3) The Complainant alleges that:

"Mr. MacKinley's Parcel No. 245936 has also been rezoned from agricultural use to comprehensive development. I am assuming that Mr. MacKinley has already made the Commissioner aware of his recent rezoning of Parcel No. 245936 from agricultural use."

Minister MacKinley's Parcel No. 245936 was rezoned in 2003 at the initiation of the Town of Cornwall and not by Minister MacKinley. This rezoning was completed as part of a comprehensive rezoning of all lands between the present core of the Town of Cornwall and the community of North River.

Affected residents such as Minister MacKinley, were advised of this process by public meetings held on May 5 and May 12, 2003. Additionally, correspondence from the Town of Cornwall to Minister MacKinley dated September 9, 2003 outlined the process in the following terms:

“For the past year, the Town has been working on the five-year review of the Official Plan required under the Planning Act. Initial public meetings were held in May of this year. As part of the review, Planning Board has identified several changes to the Future Land Use Map which would help to encourage development and proper planning in the Town.

One of the changes being considered is the future land use designation for the lands between the former communities of North River and Cornwall. Although the area is currently designated for Agricultural use, it is Planning Board's position that it would be more appropriate to have the area designated Comprehensive Development Area (CDA) in order to facilitate the long term development of a strong central core for the Town. Changes to the Zoning Map, which forms part of the Zoning & Subdivision Bylaw, would be made during the review of the Bylaw, scheduled to begin in the winter.

Our records indicate that you are the current owner of Parcels #245936, 566273, 685867, 491274, and 245241. The current use of these properties is listed as Agricultural. The proposed change would affect the future land use designation and zoning of the land only. Any existing legal uses would be protected and the actual use of the land would only change at such time as you or any future owner of the parcel are willing to do so...”

The Town's rezoning did not mean that Parcel No. 245936 could not continue in agricultural use, rather the Town's action has the effect of allowing other uses in the future.

Minister MacKinley did not initiate the process to re-zone his properties, nor since 2003 has he changed the use of any of the affected properties from agricultural use.

(5) The Complainant alleges that:

“...no municipal or government planner would approve the further development of Mr. MacKinley’s land adjacent to the Madison Heights subdivision, unless there was a nearby lighted and safe access to the Trans Canada Highway.

For subdivision residents to travel from Mr. MacKinley’s Parcel No. 245936 to the existing Trans Canada entrance, creates too much traffic through a bedroom or residential area; and therefore, there would be great difficulty in getting the necessary approvals.”

The premise of this allegation is that Minister MacKinley authorized the creation of a four-way intersection connecting Jessie Street with the MacPhail Drive/TCH intersection. That underlying premise is incorrect. Minister MacKinley authorized the creation of a left-turn lane to the Cornwall Business Park and the signalization of the existing three-way intersection at MacPhail Drive and the TCH as outlined on the diagram attached as Annex “B”.

The Complainant infers that Minister MacKinley has approved the creation of a four-way intersection thereby creating an access from Minister MacKinley’s Parcel No. 245936 to: *“...a nearby lighted and safe access to the Trans Canada Highway.”* Presumably, what is meant is that without that access to the MacPhail Drive/TCH intersection, any subdivision development of Minister MacKinley’s Parcel No. 245936 would not be approved.

As has been stated previously, there is no access from Madison Heights Subdivision to the MacPhail Drive/TCH intersection as that intersection is a three-way intersection which does not connect the subdivision and therefore does not connect Parcel No. 245936 with the TCH.

Accepting the premise and the logic of the Complainant’s argument, one must conclude that as there is *“...no nearby lighted and safe access to the Trans Canada Highway...”* to Parcel No. 245936, then presumably, Minister MacKinley would never receive approval for any developmental plans that he might have for Parcel No. 245936.

It should be noted that since 2003, the Town of Cornwall's Official Plan 2003 has allowed Minister MacKinley to seek commercial development of Parcel No. 245936. Mr. Kevin MacCarville, Chief Operating Officer for the Town of Cornwall, advises that approval for the development of Minister MacKinley's Parcel No. 245936 would not depend on access to a four-way intersection of Jessie Street and the MacPhail Drive/TCH.

Minister MacKinley's Parcel No. 245936 presently has existing access routes. The first of the existing routes is the access route that has been discussed which is the access to Madison Avenue through Keri Drive to the four-way intersection of Kellow Drive and the TCH. There is, in addition to that route, a further access route to any development of Parcel No. 245936 and that is the access that already exists via MacRae Drive. The MacRae Drive access to Parcel No. 245936 is more direct than any access that might be created via Jessie Street.

Whether or not a four-way intersection at Jessie Street and MacPhail Drive/TCH would assist in the possible development of Parcel No. 245936 is a moot question as there is no four-way intersection. The decision of the Minister to create a left-turn lane into the Cornwall Business Park and to install traffic lights at the pre-existing three-way intersection of MacPhail Drive and the TCH, does not materially affect whether the Minister may acquire the necessary approvals for: *"...further development of Mr. MacKinley's land adjacent to Madison Heights subdivision.."*

It should also be noted that Parcel No. 245936 is a portion of the active farm owned by Minister MacKinley. The lands have never been for sale, nor has the Minister indicated that he has any plans to develop the property or alter its present use.

(6) The Complainant alleges that:

The developer moved the house that stood on Parcel No. 245944 to facilitate the connection of Jessie Street to the pre-existing three-way intersection of MacPhail Drive and the TCH thereby creating an access from the TCH to Madison Heights subdivision and indirectly to the Minister's Parcel No. 245936.

As previously stated, there has been no connection created between Jessie Street and the existing intersection of MacPhail Drive and the TCH. Consequently, no access has been created from the TCH to either Madison Heights subdivision or Parcel No. 245936.

Notwithstanding the foregoing, some discussion of the circumstances that gave rise to the Complainant's perception is required.

The Town of Cornwall's Comprehensive Development Plan is outlined in the Town's Official Plan 2003 which provides as follows:

"...Given the significant development limitations of the existing commercially zoned land in the Town, it is evident that Cornwall's commercial development potential can only be achieved by the designation of a newly expanded commercial area. By placing this new commercial area adjacent to the TCH in the undeveloped core area of the Town, there is also the potential to create a future 'downtown' area and foster the eventual infilling of the land between the two existing development nodes.

The precise location of the new commercial core will be determined through negotiations with affected land owners and negotiations with the Department of Transportation and Public Works for a new intersection on the TCH. The location of this intersection will greatly influence the precise development patterns in this area. Since these detailed negotiations have not been finalized, the appropriate approach is to designate the relatively large block of land in the vacant core area as a 'Comprehensive Development Area.' Precise plans for the development of this future commercial core area will be developed and approved via a process involving public consultation and review. Issues relating to servicing of this new commercial area must also be addressed..."

The Town of Cornwall outlined its "Plan Action" in part as:

"Plan Action

- *The Development Bylaw shall designate a large block of land in the geographic centre of the Town as a 'Comprehensive Development Area,' in conformance with the General Land Use Plan.*
- *Council shall continue discussions with land owners in this zone in regard to the future development of a commercial core area for the Town.*

- *Council shall work with the Department of Transportation and Public Works to identify the most appropriate location and design for a new four-way intersection on the TCH and commercial access road within the Comprehensive Development Area.*
- *Once the final plans for the new intersection are completed, Council shall prepare an overall Development Concept for this area which shall be submitted for public review and comments...*

The Town's intentions are clearly stated that a four-way intersection is required to assist in the development of the "Comprehensive Development Area" which includes *inter alia* Mr. MacKinley's Parcel No. 245936 and the property which is now known as the Madison Heights Subdivision.

In 2005 the developer, Mr. McQuaid, entered into a Subdivision Agreement with the Town of Cornwall to develop the Madison Heights Subdivision. The Subdivision is generally outlined on Annex "A" as surrounding Jessie Street and Madison Avenue, as well as part of Keri Drive. The Subdivision Agreement contained the following provision:

*"Article #12 Provision of Land for Access to the Trans Canada Highway
The developer will acquire and convey to the Town PID#245944, and other land necessary to create a connection from the subdivision to the Trans Canada Highway. Lot #1 will be exempt from design details noted in Article #10, as it will accommodate the house existing on PID #245944.*

Notwithstanding, the Town will issue building permits in the subdivision if the Developer demonstrates that he has a valid and enforceable agreement of purchase and sale in place with the owner of PID #245944. In any event the developer will acquire and convey to the Town PID #245944 by July 1, 2006. If the developer fails to convey PID #245944 to the Town by this date, he will pay the Town the sum of \$125,000."

There are two aspects of Article 12 which bear emphasizing. First, the Agreement is between the Town and the Developer, the provincial government is not a party to the Agreement. The Agreement stipulates that the Developer must acquire and convey to the Town Parcel No. 245944 and other land "... necessary to create a connection from the subdivision to the Trans Canada Highway..." As outlined in the Town's "Plan Action," it

is the intention of the Town of Cornwall to have a four-way intersection within the Comprehensive Development Area. The Town made it a condition of the Madison Heights Subdivision approval that the Developer acquire the property necessary to allow a connection to the existing three-way intersection of MacPhail Drive and the TCH. As can also be seen, the Subdivision was designed to accommodate any such future connection. The “Plan Action” also already states that it is understood that it is the Department that determines whether any four-way intersection is created.

In 2005 the Town Planner, Ms. Janice Harper, contacted the Department to determine if a four-way intersection would be created to connect the proposed Madison Heights Subdivision with the existing three-way intersection at MacPhail drive and the TCH. On August 11, 2005 Mr. Alan Aitken, Central Region Engineer for the Department, responded in the following terms:

“Re: Access to TCH from Proposed McQuaid Subdivision

The Department has reviewed Mr. McQuaid’s recent Subdivision layout proposal and have concluded that access to the TCH at the proposed location will not be considered at this time.

We have reviewed traffic counts for this intersection that were conducted in 2002 as well as other traffic counts at the signalized intersection of the TCH/Meadowbank Road and Heatherway Drive for comparison purposes and would suggest that adequate capacity exists at the intersection of Kellow Drive/John St and the TCH to adequately handle expected traffic increases from the development. We will be conducting additional counts at this intersection in the near future but would anticipate that the current volume of traffic at this intersection are still well below levels that would require an additional connection with the TCH at this time.

We would suggest that the development of this subdivision be staged in a manner that would allow direct access through existing connections with the Trans Canada. If signalization of the intersection at MacPhail Drive (Cornwall Industrial Park) is warranted in the future due to traffic increases the Department may reconsider a connection from the proposed subdivision at that time...”

Notwithstanding the Department's refusal to consider creating a four-way intersection connecting what was to become the Madison Heights Subdivision with the existing three-way intersection of MacPhail Drive and the TCH, the Town and the Developer entered into the Subdivision Agreement of September 14, 2005.

As previously mentioned, the Agreement obligated the Developer to acquire Parcel No. 245944 and to convey it to the Town of Cornwall on or before July 1, 2006. If the Developer failed to comply with that requirement he became indebted to the Town in the amount of \$125,000.

The Complainant states the following:

“...The developer of Madison Heights subdivision did not move the house; and the deadline for him to do so, passed. The \$125,000.00 penalty was then waived. The developer's efforts and costs would have not been worthwhile with the prior Government's decision to not make the MacPhail/Trans Canada intersection into a four-way intersection/traffic signals. After the new Government was sworn in, the developer then paid for the house to be moved. Why do this and incur significant costs? The developer must have had some knowledge that a four-way intersection/traffic signals was after all going ahead, with Mr. MacKinley's influence in the new Government, for the developer to all of a sudden pay to move the house...”

The Developer, Mr. McQuaid, met with the Commissioner and confirmed his obligation under the Subdivision Agreement to acquire Parcel No. 245944 and to convey it to the Town of Cornwall. He advised that the Town had not actively pursued its remedies until the summer of 2007, when the Town solicitor began discussions with his lawyers to have the matter resolved.

At about this time, the decision to install the left-turn lane into the Cornwall business Park and to install traffic lights at the MacPhail Drive/TCH intersection had been made and the tendering process was underway as is evidenced by an email exchange involving Ms.

Janice Harper, Town Planner of Cornwall, and Mr. Alan Aitken, Queen's County Engineer for the Department. That exchange is as follows and is in the correct chronological order:

From: Alan Aitken
Sent: Friday, September 28, 2007 10:42 AM
To: Janice Harper
Cc: Stephen Yeo
Subject: Re: lights at business park

Janice:

Tenders closed yesterday and budget seems fine, we have forwarded contract to the Minister late yesterday afternoon and if not already ready signed it probably will be today. Thus work could start next week.

The driveway of the house to the east of the intersection will be in the influence area of the intersection and thus may be affected by being more difficult to enter or exit when vehicles are stopped on the TCH. Immediate moving of the house is not required but the owner should be notified. The driveway could be tolerated for a number of months.

*Alan A. Aitken
Queens County Engineer*

>>>> *"Janice Harper" 09/28/07 9:49 AM*>>>
Alan,

Happy Friday.

Further to our conversation yesterday, could you confirm when you expect work to start and to finish on the proposed lights at the business park? We have a Committee of Council meeting on Monday and must inform Council of the issues surrounding this project. If you consider the location of the house at 217 TCH-to be an immediate safety issue, please let me know. Council will have to decide on

possible options with regard to getting the house moved from the site, and options must consider timelines.

*Janice Harper
Town Planner
Cornwall, P.E.I.”*

This exchange of messages resulted in the creation of a letter dated October 4, 2007 from the Town’s solicitor to Mr. McQuaid’s lawyer which Mr. McQuaid shared with the Commissioner. The letter requested immediate action from Mr. McQuaid in fulfilling his obligation under the Subdivision Agreement.

Following receipt of the letter, arrangements were made by Mr. McQuaid to move the house located on Parcel No. 245944 known as the “Pot’s house.” As agreed by Mr. McQuaid and the owners of Parcel No. 245944, Mr. Pot and Ms. Luymes, the house was relocated to Lot #1 of the Madison Heights Subdivision. The timing of the movement of the Pot’s house coincident with road construction on the MacPhail Drive/TCH intersection gave credence to the allegation that the house was being moved to accommodate the creation of a four-way intersection to connect with Jessie Street. Mr. McQuaid advises that he moved the Pot’s house because he was obligated to do so and the move as far as he was concerned was not in any way connected to the road construction work being done at the MacPhail Drive/TCH intersection.

Mr. McQuaid and Town officials confirm that the \$125,000 penalty referred to in Article 12 has not been waived. Mr. McQuaid confirms that, as of my discussions with him, he expects to transfer Parcel No. 245944 to the Town of Cornwall in the near future. The Developer indicates that he has no knowledge that a four-way intersection will be installed at the site and that he has no interest in connecting Madison Heights Subdivision with the TCH due to the cost involved, nor has he any obligation to do so.

The dealings of the Town of Cornwall and Mr. McQuaid as Developer of the Madison Heights Subdivision are beyond the control of Minister MacKinley. Certainly, the removal of the Pot’s house from Parcel No. 245944 was not taken as a result of any decision of the Minister. The Developer had contractual obligations to the Town which were unrelated to the Minister’s decision to create a left-turn lane into the Cornwall Business Park and install traffic lights at the three-way intersection of MacPhail Drive and the TCH.

(7) The Complainant alleges that:

“..Mr. John Jeffrey.. had a conversation with Mr. MacKinley about a lucrative offer made to him for a portion of Parcel No. 245936.”

During the interview portion of the investigation, the Complainant advised as to the identity of the person alleged to have made the offer.

Subsequently, the Complainant advised that Mr. Fraser Enman may have some information concerning the alleged conversation.

Minister MacKinley denies ever having a conversation with Mr. John Jeffery wherein the Minister advised that he had received “... a lucrative offer made to him for a portion of Parcel No. 245936.”

Minister MacKinley denies that he received any offer to purchase any portion of his property from the person alleged to have made the offer. The person alleged to have made the offer also denies that any offer was made.

Mr Fraser Enman when contacted concerning this issue denied any knowledge of any such conversation involving Minister MacKinley and anyone else.

The CBC has refused permission for Mr. John Jeffrey, a senior CBC reporter, to cooperate with this investigation.

Even if such an offer was made, it is totally irrelevant to the issue at hand. The decision of the Minister to install a left-turn lane into the Cornwall Business Park and the installation of traffic lights at the existing three-way intersection of MacPhail Drive and the TCH does not affect Parcel No. 245936.

(8) The Complainant alleges that:

“This project on the four-way intersection/traffic signals was fast-tracked by Mr. MacKinley and due diligence was not undertaken.”

As examples, the Complainant alleges that:

“...the sketches and drawings for the four-way intersection/traffic signals are not well prepared and not engineer approved.”

As previously stated, the project is not a four-way intersection, but rather a project to create a left-turn lane into the Cornwall Business Park and the installation of traffic lights at the intersection of MacPhail and the TCH. Because the Complainant suggests that improper preparatory work was undertaken, it is necessary to clarify the facts.

As indicated previously, the Estimates for the Department of Transportation and Public Works were discussed and approved by the Legislative Assembly during the spring session of 2007. It will be recalled that the Deputy Minister, Mr. Steve MacLean, indicated in response to a question by Mr. MacKinley, then in Opposition:

“There’s nothing planned for the road program for this year to do anything with that intersection. We are aware of Cornwall’s concern about trying to get the development park with more occupancy, and attract some tenants and that they feel and some of their prospective tenants feel, that signals would be advantageous...”

During the 2007 construction season, it became clear that monies allocated for the Town of Souris Main Street Project would not be expended, as that Departmental project was deferred to 2008.

As a consequence of that major project not proceeding as expected, the Department then had funds that could be re-allocated to other projects. This was explained by the Deputy Minister in an e-mail to the Commissioner in the following terms:

“...As I explained in our interview, Cabinet approves a ‘bottom-line’ general highway capital allocation during the budget process and the Department subsequently has authority to undertake any number of projects within that allocation. So, there is no formal transfer of funds from one project to another per se. The information above shows that the original road program and the final road program, will differ to extent that in the case of the latter \$1.93M extra is available for other projects as a result of the Souris project becoming stalled....”

Other projects deemed both necessary and capable of being completed during the remainder of the construction season were identified. One of the projects identified was a project to improve the intersection at MacPhail Drive and the TCH.

The Complainant reviewed the Project Specification Sheet dated September 2007 which outlined the project to create a left-turn lane within the existing roadway allowance of the TCH. The Complainant compared that drawing to the drawing created for another project, i.e., the Winsloe intersection. The Complainant noted that the latter project has drawings and specifications indicating much more extensive work being necessary than that of the Cornwall intersection. As a result, the Complainant infers that as the Cornwall drawings were not as sophisticated as those drawings for the Winsloe project, then the former were rushed and not as professionally prepared.

Mr. Stephen Yeo, Chief engineer for the Department, indicates that the drawings are quite different in their sophistication, primarily due to the fact that the Cornwall intersection required only a widening of the travel surface of the TCH to accommodate a left-turn lane into the Cornwall Business Park, whereas the Winsloe intersection required the creation of a four-way intersection and the necessary specifications to create that new intersection.

As to the diagram concerning the traffic light installation at the Cornwall intersection, the Complainant notes that the document is a sketch of the project overview and is not as detailed as might be expected. Mr. Kevin Campbell, Manager of Traffic Operations, Eastern Region, stated that he created the diagram in the same fashion as he would for any other project to install traffic lights. He further indicated that the diagram was created for the purpose of tendering the project to contractors who are very familiar with such installations and detailed specifications are not required.

Based on the information provided to me by various Departmental Engineers and officials, I am satisfied that the project was undertaken in a manner consistent with the established and ordinary practice of the Department and that all sketches and specifications were in accord with the professional standards of the Department.

(9) The Complainant alleges that:

“When the government approved four-way traffic signals are installed at MacPhail/Trans Canada intersection, thereby permitting access from the Trans Canada

Highway onto the McQuaid Parcel No. 246884, the value of Mr. MacKinley's [adjacent] Parcel No. 245936 will increase dramatically. This is due to the [Government's newly created] accessibility between Mr. MacKinley's Parcel No. 245936 and the Trans Canada Highway."

As stated earlier, the intersection of MacPhail Drive and the TCH continues to be a three-way intersection. There is no "*newly created accessibility between Mr. MacKinley's Parcel No. 245936 and the Trans Canada Highway.*" The present layout of the intersection is as set out in the diagram attached and marked Annex "B".

Parcels No. 245936 and No. 566273 are both shown on the attached diagram marked Annex "A". Parcel No. 245936 has been extensively discussed and Parcel No. 566273 is also owned by Minister MacKinley. Parcel No. 566273 is located on the TCH adjacent to and north of Parcels No. 245944 and No. 246884. Parcel No. 566273 contains Minister MacKinley's residence and barn and is bounded on the west and north by his Parcel No. 245936.

Given the close proximity of Minister MacKinley's lands to the subject intersection, the Commissioner requested expert advice from two professionals in response to the following question:

"Will the installation of traffic lights at the three-way intersection of the Trans Canada Highway and W. B. MacPhail Drive in Cornwall increase the value of lands identified as parcels No. 245936 and N. 566273?"

Mr. John Ives, FRA, CRA, is a respected realtor with over forty years' experience in the local real estate market. Mr. Ives is a Fellow of the Real Estate Institute of Canada since 1977. Mr. Ives is also a Canadian Residential Appraiser since 1987. He responded to my question as to whether the installation of traffic lights would increase the value of the identified lands, in the following terms:

"The short answer is no. Although Mr. MacKinley owns nearby parcels, ie. 245936 & 566273, this intersection does not give any access to these parcels... The MacKinley lands will increase in value due to normal market demands for land close to Charlottetown for residential purposes. Zoning has been in place since 2003. I would assume that at some point the said intersection would be made a '4-way' for safety reasons. If it were a 4-way

intersection it would still not give access to these parcels as the corner access, if put in place, would be to land now owned by Clifford McQuaid.”

Mr. Scott McEwen, BBA, AACI, P.App. is the principal of ARA McQuaid McEwen & Associates. Mr. McEwen is an Accredited Appraiser Canadian Institute and a Professional Appraiser. Mr. McEwen was also consulted and in his response to the question, he stated:

“Facts:

The appraiser consulted with the Town of Cornwall in respect to current accesses to the lands in question. According to the Town as well as a visual inspection, PID #5;66273-000 currently has access to the Trans Canada Highway. Secondly, PID #245936-000 according to the Town, has future accesses via adjoining lands both to the east and west of the subject site. Overall, the lands do not appear to be ‘land-locked’.

Secondly, it was determined that the lighted intersection is to be a three-way intersection with lights opposing both directions of the Trans Canada Highway and facing W.B. MacPhail Drive across the TCH. There appears to be no additional access to the subject lands.

Conclusions:

Considering the breadth and scope of the opinions obtained by other valuation firms and the research performed, it is felt that the installation of three-way lights at the intersection of W.B. MacPhail Drive and the Trans Canada Highway has not improved access specific to the subject parcels. Overall, there appears to be no measurable ‘betterment’ to the subject lands in question.

Again, specific to the question posed there was no evidence found to suggest that ‘...the installation of traffic lights (three-way) at (an) intersection...’ would arbitrarily increase a property’s market value. Other variables or factors could, in theory, represent a value shift but in response to the specific question posed adding other variables to the question posed would be at best subjective. Based on the details provided and the specific question

as posed by your office, it is felt that there is no arbitrary evidence to support a value increase for the lands in question.

Minister MacKinley's decision to create a left-turn lane into the Cornwall Business Park and the installation of traffic lights at the three-way intersection of MacPhail Drive and the TCH does not increase the value of Minister MacKinley's land.

Conclusion

The Complainant has alleged that Minister MacKinley has contravened section 9 of the Act which is in the following terms:

"9. No member shall make a decision or participate in making a decision in the execution of the member's office if the member knows or reasonably should know that in the making of the decision there is an opportunity

- (a) to further the member's private interest; or*
- (b) improperly to further another person's private interest."*

The Act does not define "private interest", but does say that:

- "(g) "private interest" does not include an interest in a decision,*
- (i) that is of general application,*
 - (ii) that affects a member or a person belonging to the member's family as one of a broad class of persons,*
 - (iii) that concerns the remuneration or benefits of a member or of an officer or employee of the Legislative Assembly, or*
 - (iv) where the interest is so remote or insignificant in its nature that a decision affecting the interest cannot reasonably be regarded as likely to influence the member..."*

The private interest to which the Complainant refers is the value of Minister MacKinley's Parcel #245936.

As has been indicated, the Complainant asserts that Minister MacKinley approved a four-way intersection connecting Jessie Street and the pre-existing three-way intersection of MacPhail Drive and the TCH. The Complainant asserts that this has created access from the TCH to Minister MacKinley's Parcel #245936. That access has enhanced the value of Minister MacKinley's property and because of that benefit the Minister has thereby contravened Section 9 of the *Conflict of Interest Act*.

The Complainant's allegations set forth in his Complaint and his Rebuttal indicating that the Minister's decision was to create a four-way intersection is incorrect. The Minister's decision was to create a left-turn lane into the Cornwall Business Park and to install traffic lights at the existing three-way intersection of MacPhail Drive and the TCH. No new access to Minister MacKinley's Parcel #245936 has been created and, as a consequence, there has been no enhancement to the value of that property.

In order for a complaint under the *Act* to stand, there must be clear and convincing allegations based upon cogent, unequivocal evidence. The allegations in this instance do not meet that test. The evidence advanced was largely circumstantial and based on an incorrect premise.

This complaint might have been avoided, had Minister MacKinley taken appropriate steps to clarify the Departmental position as to whether the intersection was to be made a four-way intersection or not. The evidence is that the intersection was to remain a three-way intersection and the Minister should have clearly outlined that position to the Legislative Assembly.

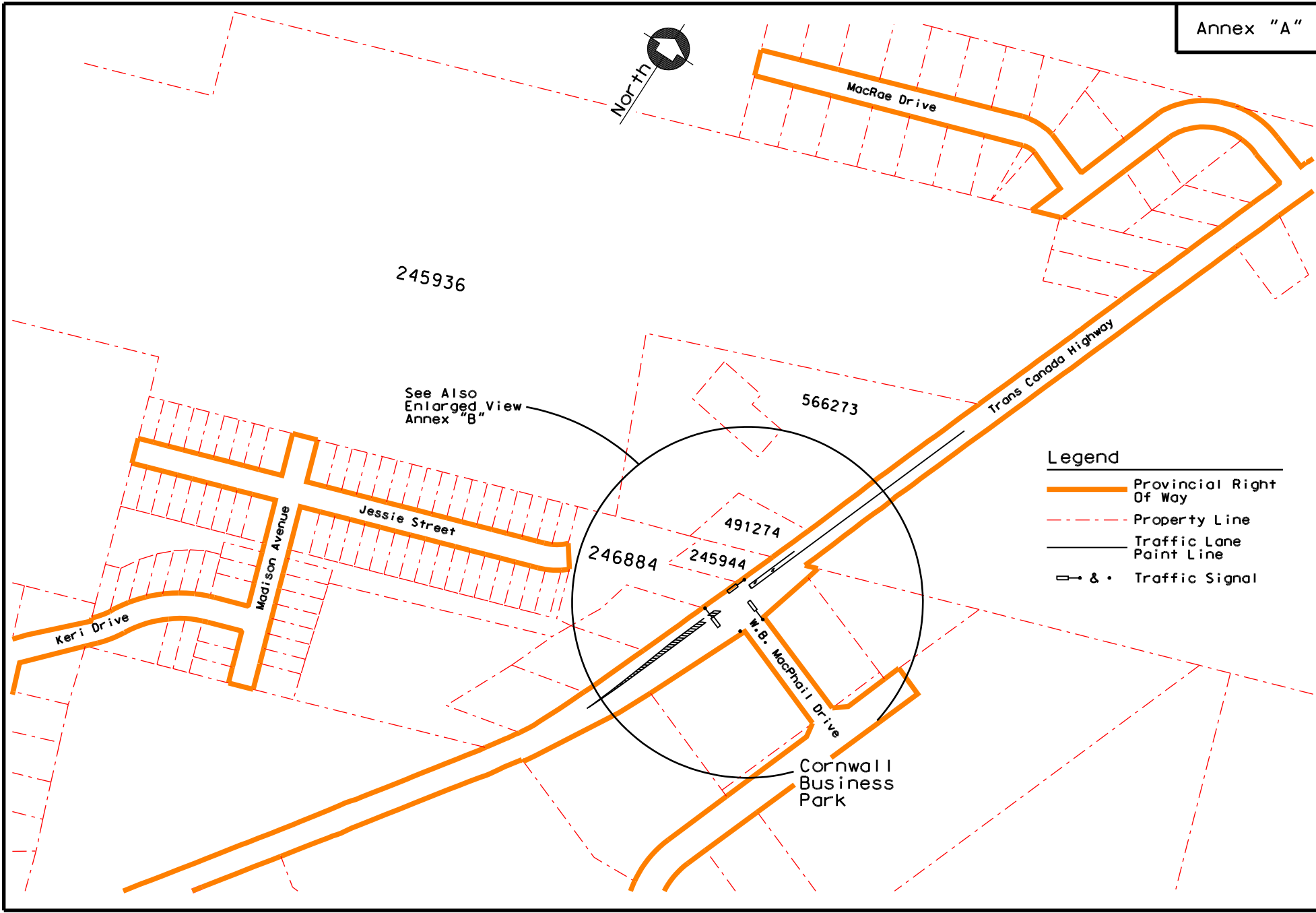
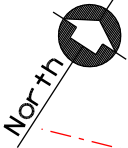
The Minister's decision to create a left-turn lane into the Cornwall Business Park and to install traffic lights at the intersection of MacPhail Drive and the TCH does not further the Minister's private interest. The decision of the Minister does not enhance the value of the Minister's lands, in particular Parcel No. 245936, as no new access to Minister MacKinley's land has been created. It is my finding that Minister MacKinley is not in a conflict of interest within the meaning of the *Act*.

The Minister's decision was in response to the Town of Cornwall's request that the intersection giving access to the Cornwall Business Park be signalized. The Town of Cornwall had been seeking a signalized intersection for a number of years. The primary concerns of the Town were safety and the successful development of the Cornwall





Business Park. The concerns of the Town were of general application to the motoring public and the citizens of Cornwall. The Minister's decision was motivated by the same concerns.

January 9, 2008

Neil Robinson
Commissioner



Legend

-  Provincial Right Of Way
-  Property Line
-  Traffic Lane Paint Line
-  Traffic Signal

245936

See Also Enlarged View Annex "B"

566273

491274

246884

245944

Keri Drive

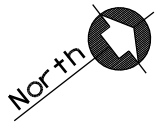
Madison Avenue

Jessie Street

W.B. MacPhail Drive

Trans Canada Highway

Cornwall Business Park



246884

566273

491274

245944





Trans Canada Highway

Edge Of Pavement

W.B. McPHERRILL Drive

Cornwall Business Park

Legend

-  Provincial Right Of Way
-  Property Line
-  Traffic Lane & Edge Of Pavement
-  Traffic Signal

