

June 12, 2006



UNIVERSITÉ
YORK
UNIVERSITY

FACULTY OF ARTS

4700 KEELE STREET • TORONTO • ONTARIO • CANADA • M3J 1P3

Harriet Lewis
Office of the Counsel
York University

Dear Harriet,

I have your letter of June 8 which, together with this response, I am sharing with others, as you requested. I address each of your points in turn.

(1) The Court of Appeal argued that "the office of the President of York University is clearly a statutory office" and that "although the President of York University is not subject to government control, she is in other respects subject to the regime of public law." The Court rejected York's claim that she does not hold public office and thus could not be liable to the tort of misfeasance of public office, and argued instead, in the negative, that it is not plain and obvious that she is not open to the tort of misfeasance in public office.

(2) I know that both York's and Marsden's relationship with Manulife predated Marsden's arrival at York, which only highlights the problem here. Marsden must have been aware of the potential conflict involved in taking the York position, which entailed responsibility for executing deals with Manulife. She might simply have resigned from the Manulife board or asked York to switch to, say, Pacific Life, or some other insurance provider, but apparently did neither. (As you know I have filed a FIPPA request for all documents in York's possession pertaining to the Manulife relationship.)

(3) Rather than in any way exonerating her, the fact that, as you state, "consent" was "given to her continuing in that capacity" only implicates your office and the Board of Governors in Marsden's conflict of interest.

(4) The personal benefit Marsden receives from her considerable financial holdings in Manulife derives presumably from the profits generated from all of Manulife's business activities, including its affinity arrangements.

(5) The affinity mailing process I describe was provided by Manulife. York's Alumni Association maintains that it uses a third-party intermediary, the direct-marketing company Bassett, in its dealings with Manulife. Aside from the privacy issues this raises, especially now that FIPPA is in effect, the use of Bassett would be immaterial were it not for the fact that in January, 2000 Bassett, and, presumably, the arrangement with York, was acquired by Optus, a firm then run by Jon Hantho, the son of the then chairman of the York University Board of Governors Charles Hantho. Optus was a unit of MDC, a corporation run by York benefactor and advisor Miles S. Nadal.

I trust this letter adequately addresses any alleged inaccuracies and misunderstandings.

Sincerely,



David F. Noble
Professor

cc. John Houlden, Melissa Nixon, selected media