



COMMISSION ON CONFLICT OF INTEREST

ANNUAL REPORT 1990-91

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**Commission on Conflict of Interest
Commission sur les conflits d'intérêts**

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June 17, 1991

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

Dear Mr. Warner:

It is an honour and a pleasure to present the Annual Report of the Commission on Conflict of Interest for the period January 1, 1990 to March 31, 1991.

This Report is submitted pursuant to section 11 of the *Members' Conflict of Interest Act, 1988*.

Yours very truly,

A handwritten signature in cursive script, reading 'Gregory T. Evans'.

TABLE OF CONTENTS

	Page
COMMISSIONER'S REMARKS	1
OVERVIEW OF PAST FIFTEEN MONTHS	
A. Interest of Other Jurisdictions	3
B. Former Members of Executive Council	3
C. Disclosure Statements	3
D. Conflict of Interest Guidelines	4
STATISTICAL INFORMATION	
A. Inquiries	5
B. Referred Questions	5
C. Other Inquiries	5
SUMMARY OF SELECTED INQUIRIES	
A. Conflict Decisions	6
B. No Conflict Decisions	8
FINANCIAL INFORMATION	
A. 1989/90 Budget	11
B. 1990/91 Budget	11
C. 1991/92 Budget	11
APPENDICES	
A. Premier's Guidelines With Respect to Conflict of Interest	
B. Memorandum Dated February 12, 1991 From Premier Rae to Cabinet Ministers, Parliamentary Assistants and Caucus Members	

COMMISSIONER'S REMARKS

In the Commission's second Annual Report, covering the period January 1, 1990 to March 31, 1991, I wish to express my appreciation to the members of the Legislature and particularly to the new members for their cooperation in generally complying with the requirements of the Members' Conflict of Interest Act, 1988.

I am also grateful to my Executive Assistant, Lynn Harris, for her competence, reliability and dedication to her numerous responsibilities. With the assistance of part-time secretarial help, we have been able to discharge the interesting and, at times, unusual functions associated with this office. I remain satisfied that confidentiality can be best maintained by employing a small staff who appreciates that discretion and integrity are essential.

My primary duties are to assist the members of the Legislature in dealing with situations which may give rise to a conflict of interest; to give advice with respect to the legislation; to investigate complaints; to interview all members with respect to the assets, income, financial interests and liabilities, of members, spouses, minor children and private companies controlled by them, and to prepare from such information a Public Disclosure Statement which is filed with the Clerk of the Legislative Assembly.

The disclosure process is an invasion of the right to personal privacy of the member and the member's immediate family. That important right and the competing consideration of public accountability and the public's interest in those who represent them in public office must be kept in proper balance and perspective. In order for the process to function properly, there must be mutual respect and confidence between the members and the office of the Commissioner.

In any system of government, members elected to public office must have the trust and confidence of the public if they are to carry out their responsibilities in an effective manner. That trust and confidence is acquired and maintained when legislators demonstrate the highest standard of ethical conduct in their public and private lives.

Many governments are struggling with the problem. News reports indicate that the American Congress is waist-deep in ethical problems including lobbying, conflict of interest and misuse of government money and power. The Federal Parliament and some Provincial Legislatures have had similar experiences. Even municipal governments have not escaped the stigma of corruption and political favoritism.

The impact of the American media on Canadian thinking is considerable. The misconduct in office of former President Nixon and more recently of James Wright, the deposed Speaker of the House of Representatives, and the five senators involved in the Savings and Loan scandal, is widely disseminated and by continued repetition has cast a mantle of suspicion over all legislators, the great majority of whom are honest and sincere people, dedicated to public service.

American political campaigns frequently neglect the important issues which should be debated and instead indulge in personal vilification of one's opponents. Unsubstantiated assertions are clothed in passionate rhetoric and repeated so often by the mindless media, ever-eager for a hint of scandal, that fact becomes so enmeshed in fiction that the public is confused and bewildered by journalistic fervor and political partisanship.

Politicians, like the rest of mankind, will commit errors in judgment. If the impropriety has been committed by one party, the other parties outrageously overstate its magnitude and characterize it as an unprecedented horrendous offense. If the situation is reversed, efforts are made to minimize the offense claiming "everybody does it" and pointing out that the legislation on ethical conduct is unclear and uncertain in these matters.

Harsh criticism and a deep seated feeling of cynicism and betrayal pervade the climate of public opinion. Anyone who changes a position on an issue is accused of doing so for reasons of base expediency rather than because he was persuaded by reason of changed circumstances. No one is credited with doing something good because he or she wants to do what is right; some will claim it was for some unworthy, self-serving purpose.

Leaders of government at all levels are aware of this ever-increasing problem and have sought to remedy it by the imposition of guidelines, the enactment of legislation or a combination of both. The degree to which they have been successful depends to a large extent on the integrity of the individual members and their cooperation with the agency charged with the responsibility of monitoring the legislation and guidelines.

The experience acquired since the proclamation of the present Act in Ontario indicates that some substantive and procedural changes should be considered by the Legislature to remedy problems which have arisen during implementation of the Act and to better reflect the purpose and objective of the legislation which is to enhance public confidence in the integrity of the Executive and members of the Ontario Legislature. To this end, in December, 1990, the Premier introduced Guidelines for Ministers and Parliamentary Assistants and subsequently asked the Standing Committee on the Administration of Justice to conduct a comprehensive review of the legislation and the Guidelines.

The main issue in any legislative measure to regulate the conduct of elected representatives is how far legislators can go in serving their constituents, a tradition which is as old as the democratic system of government. Did the legislator provide any special favor or benefit to an individual which the legislator would not do for any other citizen? Legislators are expected to provide a service to their constituents and it is equally ridiculous to suggest that they cannot help supporters who may not be their constituents. The key question for resolution of a particular factual situation is "Did the legislator's effort clothe the supporter with an aura of political influence to promote and foster his or her own personal agenda?"

Public feelings of cynicism about the ethical conduct of legislators, if not corrected, will become a matter of public outrage. Some legislators have difficulty in recognizing that the public views the too cozy relationship between politicians and influence seekers, who try to buy political favors with gifts and vacation trips, as corrupt and detrimental to good government. Tighter ethical rules are needed to reduce opportunities for influence seekers to offer and

elected officials to accept what amount, in reality, to unspoken bribes.

Many legislators, but not all, appreciate that until the public perception is erased, that government favors are not for sale to the highest bidder, then public mistrust of elected officials will be widespread and public support for increased taxation and spending, even to solve legitimate problems, will be eliminated or drastically curtailed.

Anything more than a token gift of minor value should be banned if it comes from individuals or organizations doing business with government, or dependent upon favorable decisions of a government agency.

The frequently suggested standard is 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". 'Perception of impropriety' is an individual subjective viewpoint which I doubt many would accept as a proper criteria for measuring the behaviour of legislators.

Good government and good ethics are inseparably intertwined. Only the most irresponsible legislator can fail to be impressed by the importance of ensuring that each individual member is accountable to the public for his or her actions. Upon the integrity of the member depends the integrity of the legislature and the trust and confidence of the electors.

OVERVIEW OF PAST FIFTEEN MONTHS

A. INTEREST OF OTHER JURISDICTIONS

Over the past fifteen months, we have met with a number of representatives from other jurisdictions to discuss the conflict of interest legislation in Ontario and learn of policies in their jurisdictions. These meetings included a meeting with a representative of the Saskatchewan Department of Justice, the Chairman of the Trinidad Integrity Commission, the Counsel to the British Columbia Commissioner and the Alberta Attorney General and Deputy Attorney General.

B. FORMER MEMBERS OF EXECUTIVE COUNCIL

With the Ontario election on September 6, 1990, the Liberal Government was defeated by the New Democratic Party. In order to ensure compliance with s.18 of the Act, a letter was forwarded to all former Liberal Ministers, whether re-elected or defeated, reminding them of the provisions of s.18, which are as follows:

"(1) A former member of the Executive Council shall not, unless twelve months have expired after the date when he or she ceased to hold office,

(a) accept a contract or benefit that is awarded, approved or granted by the Executive Council, a member of the Executive Council or an employee of a ministry (other than an employee of an agency, board or commission);

(b) make representations on his or her own behalf with respect to such a contract or benefit;

(c) make representations on another person's behalf with respect to such a contract or benefit.

(2) Clauses (1)(a) and (b) do not apply to contracts or benefits in respect of further duties in the service of the Crown.

(3) Clauses (1)(a), (b) and (c) do not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.

(4) A person who contravenes subsection (1) is guilty of an offence and liable, on conviction, to a fine of not more than \$5,000."

Subsequent to the appointment of the Cabinet on October 1, 1991, an N.D.P. Minister was relieved of his duties. A similar letter was sent to the Minister. It is now a Commission policy to forward this letter to all Ministers who cease to hold office, and request that they acknowledge receipt by returning a signed copy of the letter.

C. DISCLOSURE STATEMENTS

On February 14, 1991, the Commission filed with the Clerk of the Legislative Assembly, Public Disclosure Statements containing information as of September 19, 1990 for all members of the Legislative Assembly.

There is one persistent problem the Commission encounters each year with regard to the filing of Private Disclosure Statements -- the failure of a number of members to meet the filing deadline imposed.

The Commission does not make the law, but it does have the responsibility for its administration. The Act provides that every member shall file a disclosure statement with the Commissioner within sixty days of election and thereafter annually. Section 17(1) provides:

"Where the Commissioner...finds that the member...has refused to file a disclosure statement within the time provided by section 12, the Commissioner may recommend in the report that is laid before the Assembly,

(a) that the member be reprimanded,
(b) that the member's seat be declared vacant until an election is held in the member's electoral district."

In the past, I have used my discretion in permitting extensions for filing; however, this year, I took a firmer approach. At the same time, it is acknowledged that the request for the completion of the most recent disclosure statement came immediately after the election on September 6, 1990, a time which proved to be extremely busy for all members under a new government. For the first time in the short history of this office, one case of failure by a member of the third party to file was reported to the Speaker pursuant to s. 17 of the Act; however, I made no recommendation, and the member's statement was filed shortly thereafter.

D. CONFLICT OF INTEREST GUIDELINES

In the Speech from the Throne on November 20, 1990, The Honourable Lincoln M. Alexander, Lieutenant Governor of the Province of Ontario, stated:

"My government's first challenge is to earn the trust and respect of the people of Ontario. My government's integrity will be measured by the way this government is run and our relations with the people we serve. Our task is to guard against institutional arrogance and the abuse of power wherever they exist.

We will set clear standards of behaviour for the conduct of Ministers, members of the Legislature and senior government officials..."

On December 19, 1990, the Premier introduced "Guidelines" for members of his Executive Council and Parliamentary Assistants. These Guidelines, which are set out as Appendix "A", are in addition to the restrictions contained in the present legislation. They require a major divestiture of assets and financial interests by the Ministers and Parliamentary Assistants, subject to the right of the Premier to exempt in cases of undue hardship. In his announcement, the Premier stated:

"In my view, these Guidelines are only part of a process we must continue. The Guidelines are limited to those matters which do not require legislative implementation. We

are recommending that a comprehensive review of the Members' Conflict of Interest Act be conducted in consultation with the other parties. It is my hope that this review can begin in the new year. We believe that many of the standards we are adopting today could be applied to all members of the Legislative Assembly.

As committed as I am to the establishment of guidelines, codes and legislation on ethics in government, I realize all too well that nothing we commit to writing can substitute for common sense and a well-developed sense of public duty."

Subsequently, on February 12, 1991, the Premier issued a memorandum to his Cabinet Ministers, Parliamentary Assistants and Caucus Members regarding conflict of interest. This memorandum is reproduced as Appendix "B".

On February 18, 1991, the Commissioner appeared before the Administration of Justice Committee with respect to the Premier's Guidelines and the Members' Conflict of Interest Act, 1988. At the time of writing this Report, the Committee is meeting and preparing its Report to the Legislative Assembly.

STATISTICAL INFORMATION

A. INQUIRIES

As at December 31, 1989, one inquiry remained outstanding. In order to avoid a parallel investigation, the inquiry had been put on hold pending a police investigation. The member was subsequently defeated in the election held in September, 1990 and the inquiry has now been considered as abandoned.

During the reporting period of this Annual Report, the Commission received 49 formal inquiries under section 14 of the *Act*. The breakdown as to the source of these inquiries and the findings is as follows:

<u>Received From</u>	<u>No. Received</u>	<u>No Conflict</u>	<u>No Conflict</u>	<u>Inquiries Outstanding</u>
Member	40	7	33	0
Spouse	5	1	4	0
Trustee	0	0	0	0
Caucus	0	0	0	0
Cabinet	1	0	1	0
Former Member	<u>3</u>	<u>0</u>	<u>3</u>	<u>0</u>
	<u>49</u>	<u>8</u>	<u>41</u>	<u>0</u>

These inquiries are confidential, however, a selection of case summaries have been anonymized and produced under "Summary of Selected Inquiries" to illustrate the varied issues that come before the Commission.

B. REFERRED QUESTIONS

Once again, the Commission is pleased to report that as of March 31, 1991, no questions have

been received or inquiries conducted under section 15 of the *Act*.

My experience as a judge for over 25 years has convinced me that many court actions and appeals are totally without merit. Armed with such knowledge, I approached the leaders of the three parties and suggested to them that they consider the appointment of a member of their caucus to review any proposed complaint by their members against another member of the Legislature before a formal complaint was lodged. My purpose was three-fold:

(a) to avoid frivolous complaints which when dismissed would reflect badly on the complainant and the party with which he or she was affiliated;

(b) to avoid unfair adverse publicity to the party complained of and his or her family;

(c) more importantly, to protect the integrity of the Legislature. Unfounded scurrilous attacks upon the honesty and integrity of another member create public distrust and cynicism and degrade our democratic system of government.

C. OTHER INQUIRIES

Many inquiries have been made to this office by private citizens with respect to alleged conflicts of interest by municipal officials and government employees. We have refrained from giving any advice on these inquiries and have referred them to the appropriate authorities.

SUMMARY OF SELECTED INQUIRIES

September, 1989 to March, 1991

A. CONFLICT DECISIONS

INQUIRY NO. 1

A Parliamentary Assistant was interested in assisting his father, a constituent, in a legal matter before another Ministry. The father was represented by legal counsel, however, the father apparently did not understand the advice given by his counsel. The member, therefore, attended at the Ministry to receive a more complete explanation. The member inquired of the Commissioner as to whether he was in conflict acting for his father.

Decision:

As the member, prior to this inquiry, had already discussed the matter of his father's affairs with the appropriate Ministry officials, it was the Commissioner's recommendation that the member leave the matter with his father's lawyer for completion as any further involvement by the member may well be considered a conflict.

INQUIRY NO. 2

A Minister inquired as to whether he could maintain his partnership in a law firm and whether he could remain a member of the Law Society of Upper Canada.

Decision:

Section 8 of the Act prohibits a member of the Executive Council from engaging in the practice of a profession, therefore, the member was required to divest himself of any interest in the firm. He is, however, entitled to maintain his membership in the Law Society of Upper Canada.

INQUIRY NO. 3

A Parliamentary Assistant's spouse was seeking advice as to the implications of providing consulting services which could bring the spouse before various agencies under the member's Ministry.

Decision:

The Act applies to members with respect to a conflict of interest rather than to spouses. Section 2 of the Act defines a conflict of interest while s.9 defines the procedure to be followed by the member when the member believes, on reasonable grounds, that a conflict exists. However, it was the Commissioner's opinion that the "private interest" referred to in sections 2 and 3 includes the member and the member's spouse. As a result, the member's appointment as a Parliamentary Assistant may well preclude the spouse from engaging in consulting work involving contentious issues which come before government agencies; however, the Commissioner was unable to advise conclusively without knowledge of the specific work to be undertaken. Subsequently, the spouse terminated the employment referred to.

INQUIRY NO. 4

The member was offered a complimentary membership in the local Yacht Club.

Decision:

The member was advised the acceptance of a gift of membership in the Yacht Club contravenes s.6 of the Act.

INQUIRY NO. 5

A Parliamentary Assistant was asked to act as an Honourary Board Member of an organization which applies for and receives provincial funding for a variety of its projects.

Decision:

The Commissioner recommended that the appointment not be accepted as the presence of the member on the Board may create an embarrassment for the Ministry to whom applications for funding are made.

INQUIRY NO. 6

A Minister was requested by an acquaintance to provide a written character reference in a criminal matter before the courts.

Decision:

It was the Commissioner's opinion that if the Minister was required to give character evidence in court, it would be appropriate; however, the Minister should not write to or speak with anyone with respect to the case, other than the acquaintance's lawyer to indicate a willingness to testify, if required to do so, and what the Minister's evidence would be.

INQUIRY NO. 7

A Minister inquired as to whether there was a conflict in owning warrants in a company which controlled an organization receiving funding from the Minister's ministry. These warrants formed a part of a self-directed Registered Retirement Savings Plan which was in a discretionary trading account with an independent investment company, upon the condition that the company exercise its discretion without control by the Minister

Decision:

The owning of these warrants could be construed as a conflict and the Minister was advised to dispose of the warrants immediately.

INQUIRY NO. 8

The Minister owns a 1/3 interest in a company, the interest being held in a trust. One of the Trustees was seeking advice as to the procedure to be followed in the event of a threatened or actual take-over attempt of the company, either from one of the current shareholders or from someone not presently connected with the company. What direction or advice can a trustee seek from the Minister?

Decision:

The Trustee is at liberty to report to the Minister on the status quo of any asset in the trust, including what might result from a potential

takeover proposal. However, if there is an actual proposal, the Commissioner suggested the trustee advise him prior to contacting the Minister, at which time the Commissioner and the trustee and Minister would endeavour to work out a procedure to resolve any potential conflict problem.

INQUIRY NO. 9

A Minister has an adult family member who is involved with various organizations that seek financial assistance from the Minister's ministry as well as other ministries.

Decision:

The Commissioner suggested that the family member could be seen as soliciting the Minister's cooperation and support, thus placing the Minister in an embarrassing and possible conflict situation. It was recommended that the Minister advise the family member to refrain from contacting the Minister with respect to any matters involving the Ontario Government.

INQUIRY NO. 10

Minister A attended a meeting of Municipal Councillors with respect to a project in the constituency, and undertook to transmit to Minister B concerns expressed about the Province's processing of approvals for specific initiatives. Prior to speaking with Minister B, Minister A became aware of a personal financial interest in one of the initiatives.

Decision:

Minister A was in a position of conflict of interest. He wrote a letter to Minister B advising with respect to the constituency concerns, however, he also advised that due to his financial interest, it would be inappropriate to make any submissions with respect to the Province's handling of that particular matter and he would no longer be involved in discussions with Minister B, ministry officials, Cabinet or Cabinet Committee discussions on matters pertaining to this issue. In addition, the Minister wrote to the Mayor of the municipality advising of the conflict of interest and stated that he would no longer be

involved with providing assistance to the Council in advancing its views on the issue involving the government. Having set out his position in letters to the various parties, it was the Commissioner's opinion the Minister had taken all the steps possible to rectify the situation and to comply with the Act.

INQUIRY NO. 11

A Parliamentary Assistant operates a business which was in a contractual relationship with his particular Ministry.

Decision:

Section 8 of the Act provides that Ministers are not permitted to engage in employment or in the practice of a profession or carry on a business. Although this section does not refer to Parliamentary Assistants, the Premier directed that Parliamentary Assistants comply with the same provisions as Ministers, and the Member must, therefore, divest himself of all interest in the business.

INQUIRY NO. 12

A Member, aware of Directive No. 1 with respect to airline bonus points, inquired as to whether it was permissible to accept bonus points if, on the same trip, the Member purchased the ticket for a spouse or child.

Decision:

A spouse or child can use airline bonus points earned on tickets in their names only, whether the tickets are purchased by them or the member. Bonus points on tickets paid by the government can only be used for government business. Any other use would be contrary to s.6 of the Act.

B. NO CONFLICT DECISIONS

INQUIRY NO. 13

A Minister was assisted by a former business associate in the preparation of the disclosure statement required under the Act. The associate provided general advice pertaining to compliance with the Act. No fees were paid. The member inquired as to his status under s.6 of the Act.

Decision:

There was no violation of section 6 of the Act in obtaining the advice without charge from a former associate. Even if it could be considered a "gift", it would not exceed the limit of \$200 as provided by the Act, and a gift form would not be required.

INQUIRY NO. 14

A Minister's spouse advised he had been contacted by the Government to present a workshop on behalf of several agencies. The spouse was seeking the Commissioner's opinion as to whether the contract posed a conflict of interest situation on the part of any of the parties involved.

Decision:

The Commissioner was provided with a copy of the Ministry's documentation on the contract which indicated that two other consultants had been contacted and as there was some urgency to the matter, the applicants were assessed mainly on their availability. The other consultants were not available and the Minister's spouse was offered the contract which amounted to \$3,500. As a result, the Commissioner was satisfied there was no conflict of interest in the existing circumstances.

INQUIRY NO. 15

A member is a teacher on full-time leave of absence. The member inquired as to whether there was a conflict of interest on matters relating to the Teacher's Superannuation Plan when

proposals for change are presented to the Legislature.

Decision:

Section 1 of the Act defines "private interest" as not including an interest in a decision that affects a member as one of a broad class of electors. The member is a member of a broad class of electors--teachers--and no conflict arises.

INQUIRY NO. 16

The member's spouse has been hired by an agency to coordinate an outreach program for organizations and groups in the community. The agency receives a substantial portion of its funding from the Provincial Government. There are no fund-raising responsibilities involved in the position. The agency belongs to a larger association which conducts a one day lobby at Queen's Park and the member is expected to attend a meeting between the government caucus and the group. Should the member attend? If the member is approached by this agency to follow through on a problem in dealing with the Ministry or for assistance in setting up a meeting with representatives of the government, is he restricted in this activity?

Decision:

The Commissioner determined that in accordance with s.5 of the Act, the member could attend the government caucus meeting with the group as he would be appearing on behalf of his constituents. With respect to the second question, the member can introduce his constituents to Ministry representatives. If a policy decision involves all or a large number of organizations similar to the agency, there is no conflict, however, if the agency alone is involved and the member is a member of the Committee involved in the decision, he should not participate in accordance with s.9 of the Act.

INQUIRY NO. 17

The member was invited to participate in a Multi-Regional Project on U.S. Trade Protectionism in the United States. Limited expenses were provided and the member would be taking part in

seminars and discussions along with participants from 15 other countries, and inquired as to whether his attendance would contravene the Act.

Decision:

The Commissioner reviewed a copy of the project summary and determined there was no conflict of interest involved.

INQUIRY NO. 18

The member, together with a number of other dignitaries, was invited to attend the opening of a mine and provided with a charter airline ticket. Is this a conflict?

Decision:

The member was asked to attend the opening of a mine in his constituency and was not, therefore, in conflict with the Act. However, in accordance with s.6 of the Act, the member was required to complete the Form 2 reporting receipt of the airline ticket valued at \$600.

INQUIRY NO. 19

The daughter of a Parliamentary Assistant had been asked by her law firm to act for a branch of another Ministry and the member was inquiring as to how the Act may affect him.

Decision:

The Commissioner determined there was no conflict in this situation; however, there may well be a contravention of the Act if the daughter were asked to act for a branch of the Parliamentary Assistant's Ministry.

INQUIRY NO. 20

The Minister's son is a part-time consultant and will be part of a company team applying for entry into the government contract tendering process. The son has no financial interest in the company other than fees received for services rendered. The company has a standing order contract with one government agency and is writing a script for another government agency.

Decision:

The Commissioner found that if the anticipated business is on a competitive bidding arrangement, there would be no conflict of interest; however, if a contract was obtained, the Commissioner requested notification and if necessary, the matter would be reviewed.

INQUIRY NO. 21

A caucus chairman wrote advising several members of the caucus had been invited to be observers at the Lithuanian election. Room and board expenses were to be paid for by one of the parties in the election and travel costs would be paid by the Ontario Lithuanian Community. The caucus chairman inquired as to whether there would be "any real or perceived conflict to the Members".

Decision:

The normal responsibilities of the members of the Legislature do not include acting as 'observers' in an election held in a foreign country and in the absence of a special mandate from the Government of Ontario, members cannot participate in the contemplated exercise as representatives of the Ontario Legislature. Any member who attends must do so as a private citizen and not as a person appointed as an official 'observer' representing the Government of Ontario. It is the responsibility of the individual attending to make certain that the co-sponsors are made aware of this restriction. In the opinion of the Commissioner, a member of the Executive Council, and possibly a Parliamentary Assistant, may not satisfy these requirements.

Based on the information provided and subject to the above qualifications, it was the Commissioner's opinion that a private member would not violate the provisions of the Members' Conflict of Interest Act by accepting the invitation and the offer of travel and accommodation expenses. This is a private arrangement, not connected directly or indirectly with the performance of the members' duties of office and not involving participation in a decision relating thereto, and it is not necessary to file the Gift Form under s.6 of the Act.

INQUIRY NO. 22

The member inquired as to whether he should have cancelled points accumulated with respect to recent business travel with a major airline, or whether they could be used as a credit towards future government-related travel.

Decision:

All airline bonus points accumulated through travel on government business can be used only as a credit towards future government-related travel.

INQUIRY NO. 23

A Parliamentary Assistant requested an opinion as to whether 'business interests' as set out in the Premier's Guidelines of December 13, 1990 includes the ownership of leased properties.

Decision:

The Commissioner's opinion was restricted to the member's obligations under the Act and the ownership of these particular leased properties is not in conflict with the provisions of the Act. However, it was suggested any interpretation of the Guidelines be discussed with the Premier's Office.

INQUIRY NO. 24

A Minister received gifts from colleagues of his former employment in recognition of his services. The gifts had a total value of over \$200 and the member was concerned whether he was in violation of the Members' Conflict of Interest Act.

Decision:

The acceptance of gifts in the situation described does not violate s.6 of the Act as they are not connected directly or indirectly with the performance of the member's duties as a member, but represent an acknowledgement of past services in another capacity.

FINANCIAL INFORMATION

1989/90 BUDGET

	<u>Annual Budget</u>	<u>Expended</u>
Salaries, Wages and Benefits	\$ 86,100.00	\$ 58,645.54
Transportation and communication	5,000.00	1,826.24
Services	273,300.00	158,878.27
Supplies and Equipment	<u>41,700.00</u>	<u>38,682.82</u>
	<u>\$406,100.00</u>	<u>\$258,032.87</u>

1990/91 BUDGET

	<u>Annual Budget</u>	<u>Expended</u>
Salaries, Wages and Benefits	\$ 77,800.00	\$ 68,999.37
Transportation and communication	5,000.00	1,056.57
Services	226,000.00	127,236.97
Supplies and Equipment	<u>52,500.00</u>	<u>10,266.24</u>
	<u>\$361,200.00</u>	<u>\$207,559.15</u>

1991/92 BUDGET

	<u>Annual Budget</u>
Salaries, Wages and Benefits	\$ 78,600.00
Transportation and communication	5,300.00
Services	242,000.00
Supplies and Equipment	<u>26,000.00</u>
	<u>\$351,900.00</u>

It should be noted that all budget estimates to date have been based on an estimate of the number of formal inquiries which may be held in any given year. As no formal inquiries have been held to date, our lack of experience with the process causes us to be more speculative than usual.

APPENDICES

APPENDIX 'A'

Premier's Guidelines With Respect to Conflict of Interest

APPENDIX 'B'

Memorandum dated February 12, 1991 from Premier Rae
to Cabinet Ministers, Parliamentary Assistants and Caucus
Members

ADDITIONAL DISCLOSURE RULES

10. For the purposes of s.12 of the Members' Conflict of Interest Act (Disclosure Statements) the disclosure of an interest in a private company shall also disclose such information as the minister can obtain upon reasonable inquiry concerning the activities of the company and its sources of income.

11. Disclosure of a financial interest derived from a contract with the government shall disclose the contract, its subject and its nature.

12. All bids for tendered contracts between the government and entities in which the minister, the minister's spouse or their minor children have a financial interest, and of which the minister is or ought to be aware, shall be disclosed to the Premier at the time at which the bid is made. All contracts which follow on such bids and all contracts which have arisen without bid shall be similarly disclosed. The Premier will make these disclosures available to the public after the contracts bid upon or entered into have been awarded.

13. Ministers shall disclose to the Premier any material changes in assets, liabilities and financial interests. The Premier will publicly disclose the material changes and will make the disclosure available to the Conflicts Commissioner.

14. Where a minister makes a declaration of conflict of interest at a cabinet meeting, the Secretary of the Cabinet shall, after the cabinet decision has been made and implemented, publicly disclose the declaration.

DIVESTMENT

15. Ministers are required to divest themselves of,

- (a) any assets, liability or financial interest which causes or could appear to cause a conflict of interest; and
- (b) all business interests

except where the minister satisfies the Premier that the interest has been fully disclosed, that undue hardship would be created by divestment, that retaining the interest is not inconsistent with the public interest and that the minister has given appropriate undertakings to avoid a conflict in respect of the interest.

Where an interest is retained in accordance with this paragraph, the Premier will publicly disclose the decision and the reasons for it.

16. Business interests permitted by the Premier to be retained under the above paragraph shall be placed in a trust under s.8 of the Members' Conflict of Interest Act.

17. A minister shall divest himself or herself of interests under paragraph 15 only to persons who are at arm's length with the minister.

GIFTS AND BENEFITS

18. For the purposes of subsection 6(3) of the Members' Conflict of Interest Act (reporting gifts and benefits to the Commissioner) ministers shall make disclosure where the amount of the gift or benefit (including hospitality) exceeds \$100.

COMMUNICATION IN ADMINISTRATION OF JUSTICE

19. Ministers (except the Attorney General in the exercise of official duties) shall not communicate with members of the judiciary concerning any matter pending before the court.

20. Ministers shall seek the advice of the Attorney General before communicating,

(a) with any prosecutor concerning a prosecution in which the prosecutor may be involved (other than in the exercise of official duties with a prosecutor acting on behalf of their own ministry)

(b) with a police officer concerning the decision to lay a charge (unless the Minister is the Solicitor General in the execution of his or her duty).

COMMUNICATION WITH TRIBUNALS AND MINISTRIES

21. In any adjudicative process before a provincially appointed body or ministry ministers shall not appear on behalf of any private party.

22. In any adjudicative or investigative process by, or application for a benefit from, a provincially appointed tribunal or ministry, ministers shall not communicate on behalf of a private party in any manner in which his or her position as minister could reasonably be perceived as influencing a decision.

23. Provided that there is no attempt to affect the outcome of a pending adjudication investigation or benefit application,

(a) Ministers may refer policy questions or recommendations from a private party to the minister responsible for that policy area, and

(b) Ministers responsible for tribunals may refer policy questions or recommendations from a private party to the relevant tribunal where appropriate.

24. Where a minister's constituency office undertakes activities in which members normally engage on behalf of constituents, ministers shall take all reasonable steps to ensure that their office as minister is not used to further the interests of the constituent.

ADDITIONAL RESTRICTIONS

25. Ministers shall not acquire directly or indirectly an interest in land in Ontario except for personal residential or recreational use or, where there is an existing farm, additional working farm land and shall not acquire an interest in a private company developing land.

26. Any minister charged with a federal, provincial or municipal offence (other than a minor parking violation), and any minister who is the subject of a disciplinary proceeding in respect of his or her profession or trade, or is a party to any proceeding in which his or her character is in issue, shall immediately advise the Premier and abide by his advice.

27. The Premier will make available to the Conflicts Commissioner such confidential Cabinet documents as may be appropriate to the Commissioner's investigation of an alleged conflict of interest.

28. Where the Commissioner has recommended a course of action to a minister in relation to an actual or potential conflict of interest, the minister shall immediately advise the Premier of the situation and the Commissioner's advice.

29. Upon appointment to the Executive Council or upon an assignment of new responsibilities within the Executive Council, ministers shall request an opinion of the Conflicts Commissioner under s.14 of the Members' Conflict of Interest Act.

ADHERENCE TO OTHER RULES

30. Ministers shall faithfully and fully adhere to the spirit and letter of the Members' Conflict of Interest Act, the Legislative Assembly Act, the Election Finances Act, the relevant provisions of the Criminal Code and all other Acts, Rules (e.g. Standing Orders of the Legislative Assembly) and guidelines (e.g. Manual of Administration of the Management Board of Cabinet) relevant to their conduct as public officials.

PARLIAMENTARY ASSISTANTS

31. In addition to these guidelines, parliamentary assistants are subject to the following obligations of the Members' Conflict of Interest Act: s.8 (carrying on business, etc.), s.9 (procedure on conflict of interest) and s.18 (1)-(3) (post-employment activities).

APPENDIX 'B'

MEMORANDUM DATED FEBRUARY 12, 1991 FROM PREMIER RAE TO CABINET MINISTERS, PARLIAMENTARY ASSISTANTS AND CAUCUS MEMBERS

As you know, in December I released Conflict of Interest Guidelines for Ministers and Parliamentary Assistants. These Guidelines will be considered by the Members' Services Committee starting February 18, 1991.

Because of the number of members who are in fact in the process of divesting themselves of interests, I want to let you know that the date for compliance with the Guidelines will be March 31, 1991.

The Guidelines are tougher than the legislation, and as such I have been considering how the specific rules that we have agreed on will be applied in specific cases.

My office will be in touch with affected individuals, but I wanted to let you know of these general rules that will, I hope, clarify some of the guidelines.

In terms of financial and business interests, the main areas of interest fall into three categories: ownership of rental property, financial investments and RRSPs.

Rental Property

I do not consider rental of rooms or apartments in owner-occupied property a conflict of interest. However, ownership of rental property does pose the potential for conflict.

I am aware that market prices have fallen substantially and that to force divestment at this time would create hardships for many members.

I will, then, allow to be held as assets property consisting of a single-family dwelling, condominium or other such dwelling in addition to an owner-occupied dwelling.

This in no way affects the prohibition of members acquiring an interest in land in Ontario except for personal residential or recreational use or, where there is an existing farm, additional working farm land.

Financial Investments

Investments in specific companies, including debentures and stock, must be divested. Mutual funds administered by an arm's length financial institution are permitted.

RRSPS

Self-administered RRSPs are prohibited, and must be converted to other forms of RRSP investment.

Other Financial Interests

I do not consider genuine non-profit enterprises or shares in co-operatives that are bought as a condition of membership to be conflicts.

Exceptions and Exemptions

There is provision for an exception to the divestment rule where I can be satisfied that the interest has been fully disclosed, that undue hardship would be created by divestment, that retaining the interest would not be inconsistent with the public interest and that the minister has given appropriate undertakings to avoid a conflict of interest.

These decisions, where made, will be made public.