



Legislative Assembly of Ontario

COMMISSION ON CONFLICT OF INTEREST

ANNUAL REPORT 1993 - 94

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ISSN #1180-0550 - Price \$2.50



Commission
on
Conflict of Interest
(Ontario)



Commission
sur les
conflits d'intérêts
(Ontario)

The Honourable Gregory T. Evans
Q.C., B.A., LL.D., Ph.D., K.C.S.G.
Commissioner

L'honorable Gregory T. Evans
C.R., B.A., LL.D., Ph.D., K.C.S.G.
Commissaire

June 16, 1994

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 April 1, 1993 to March 31, 1994.

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

Yours very truly,

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COMMISSIONER'S REMARKS



The Honourable Gregory T. Evans

The Fifth Annual Report of the Commission covers the period April 1, 1993 to March 31, 1994.

The members of the Ontario Legislature have come to accept that while the conflict of interest legislation is an invasion of their personal privacy, a burden to which other citizens of the province are not subjected, it is a necessary inconvenience if the public's sustained anxiety about integrity in government is to be alleviated.

Ms. Harris, my Executive Assistant, and I are appreciative of the cooperation and courtesy which we have received from members and their staff as we carry out our responsibilities mandated by the legislation. We believe that the office has achieved a good, harmonious relationship with the Legislature as we carry out our respective duties and obligations.

There is a great need of ethical awareness in our society. Ethical problems in government, at all levels, have increased in the past two or three decades because of the increasing complexity of government. The widespread negative image of public officials has contributed substantially to

public concern but much public attention has been directed also to business, journalism, sports, the legal and medical professions and many other areas of Canadian society.

Corruption in government or business is not an exclusive characteristic of any particular country or region. It can be seen in many developed nations to varying degrees. It is a way of life for politicians in Japan and has affected Russia and mainland China. News reports indicate that it has reached pathological levels in the countries of Southeast Asia and South America. It is neither a genetic nor a cultural heritage, but flourishes when a society fails to maintain a high standard of personal conduct.

I recently read an article by Richard F. Schubert, a former president of Bethlehem Steel and of the American Red Cross, who is currently president and chief executive officer of the Points of Light Foundation. It was printed in a publication entitled "Ethics Awareness", published by the Indiana State Ethics Commission, and since it encompassed many of the views which I have expressed in previous Reports, I requested and received his permission to publish it in this Report.

"POSITIVE APPROACHES TO IMPROVING ETHICAL CONDUCT

In essence, the underlying concept is that public office is a public trust, that those who are chosen to exercise government authority are its servants with the duty to be worthy of that trust. The principle of public service, as it's denominated, defines the essential ethical obligations of serving in public office and there are five components.

First, the primacy of the public interest. Government officials are empowered and obligated to exercise the authority of office only to advance public interest.

Second, public officials should employ independent professional judgment in performing the duties of office and exercise the powers and prerogative (sic) of positions fairly and without favoritism.

Third is accountability. Our democratic theory argues that public power must be

exercised in the open or be subject to subsequent scrutiny so the citizenry may hold government officials accountable for what they do and do not do. In addition, public officials are accountable for exercising vigil and oversight with respect to delegated authority and agency action.

Fourth is good citizenship. Persons in government service should set a positive example of good citizenship by scrupulously observing the letter and spirit of laws and rules.

Finally, honor and respect. Public officials should strive to always be worthy of honor and respect so as to safeguard public confidence in government. It seems to me that there are three ways to get the job done. And by "the job," I'm referring to upgrading the practice of ethical behavior in government.

One, we have to raise consciousness and sensitivity. I believe that there are many, in fact a vast majority, who want to do right, in the sense of fulfilling public trust. They do not on many occasions, however, see the ethical connotations of what they do. The phrase, "I never thought about it that way," is genuine at least as often as it is a copout.

Two, we have to provide a framework for decisionmaking with principles and methodology of application. And three, we have to provide motivation to do the right thing.

...Finally, we need to provide rewards and punishments. Rewards in the sense of, "Blessed art thou good and faithful servant. This is the stuff of which excellence is made. Walk ye in it." And we must do it from the president...down, and across and in every level in every unit of government. And we need to encourage people to challenge up when perception indicates that we are really not walking the way we are talking.

And finally, we need to punish, in deed and word, making it absolutely clear that deviations or aberrations are simply not acceptable. I believe we can make a difference. We can turn things around and we

simply have to, because the stakes are so incredibly high. We have no choice if we want to preserve the kind of society that we have come to enjoy."

Lobbying is a continuing source of problems for politicians at every level of government and for the high echelon bureaucrats who are involved in policy-making and decision-making. Lobbyists are highly paid professionals, representing single interest groups, seeking to curry favour with government in the awarding of contracts or in the enactment of legislation which will benefit their clients. Lobbying has been described as the linchpin of the corrosive, corrupting process of influence peddling. Those who engage in it trade on their proximity to political power by providing gifts and other benefits to accommodating politicians and public servants. The acceptance of benefits may run from out and out bribery to the receipt of gifts of nominal value.

Our legislation provides for the acceptance by members of the Legislature of gifts as an incident of the protocol or social obligations that normally accompany the responsibilities of office. If the gift exceeds the amount of \$200, or the total value received, directly or indirectly, from one source in any twelve-month period exceeds \$200, the recipient is required to file with the Commission, a Gift Form declaration indicating the nature of the gift or benefit, its source and the circumstances under which it was given and accepted.

Assuming that the information provided to the Commission is correct and complete, and there are no rumours or facts to indicate otherwise, the Ontario Government is not an attractive field for paid lobbyists. Some municipalities and the former federal administration appear to have attracted the most attention.

Leaving aside those activities which are classified as criminal offences to be dealt with in the courts, and those which are exempt under the Act, there is a wide field in which the lobbyists operate. Many of the gifts and benefits which they provide are thinly disguised bribes intended to benefit their clients and which result in increased cost to the government.

Ideally, anything more than a token gift of minor value should be prohibited if it comes from any

person doing business with any government agency when a favourable decision will accrue to that person's benefit or to the public detriment. A ban on such activities will help restore trust in public life. While this solution has the virtue of simplicity, I believe it is sensible and feasible.

Recently, an American firm with substantial business interests in the Far East sought to deduct as a business expense, monies admittedly paid as a bribe to certain unnamed politicians. It sought to justify the exemption on the basis that bribery was a cost of doing business in that country and if it did not contribute, their competitors had an advantage. The Internal Revenue Department was not impressed with the argument and levied a tax on the bribe money.

Lobbying has become so ingrained in our political system that it may not be easily eliminated, but efforts should be made to control it by bringing it into public view through registration and other restrictive measures. In so doing, it will help to eliminate the more corrupt practice of influence peddling in which political decision-makers solicit benefits in exchange for a favourable decision.

OVERVIEW

A. DISCLOSURE STATEMENTS

On February 21, 1994, 129 Public Disclosure Statements containing information as of September 1, 1993, were filed with the Clerk of the Legislative Assembly pursuant to s.13(6) of the *Act*. As at the date of filing, there was one vacancy created by the resignation of the member from Victoria-Haliburton. An election to fill this vacancy was called for March 17, 1994.

All members of the Legislative Assembly have complied with the requirements of the legislation.

B. AMENDMENTS TO LEGISLATION

The Commission's goal to submit proposed amendments to the Ontario legislation to the Legislature by the fall of 1993 was not realized, however, the indepth review of the legislation continues.

C. CANADIAN CONFLICT OF INTEREST NETWORK (CCOIN)

CCOIN met in St. Paul, Minnesota in September, 1993 and Commissions from British Columbia, Alberta, Ontario, Northwest Territories and Newfoundland were represented at the meeting. Also in attendance were the Assistant Deputy Registrar General of Canada and the Director of the Ethics and Incentives Group for Treasury Board of Canada Secretariat. Since that time, the new Conflicts Commissioner from Saskatchewan has been invited to join the Network.

The next meeting of CCOIN will be held in Ottawa later this year.

STATISTICAL INFORMATION

A. INQUIRIES

Received From	No. Received	Conflict	No Conflict	Outstanding
Member	108	23	83	2
Spouse	2	0	2	0
Trustee	0	0	0	0
Caucus	1	0	1	0
Cabinet	0	0	0	0
Committee	1	0	1	0
Former Minister	0	0	0	0
Total	112	23	87	2

Summaries of a number of inquiries received under s.14 of the *Act* throughout the past year have been anonymized and produced under "Summary of Selected Inquiries and Opinions". These examples are neither exhaustive nor cover every type of conflict of interest situation and members and their staff are encouraged to contact the Commissioner for an opinion if they have any doubts.

B. REFERRED QUESTIONS

The Commission is pleased to report that as of March 31, 1994, no questions have been received or inquiries conducted under s.15 of the *Act*.

SUMMARY OF SELECTED INQUIRIES AND OPINIONS

April 1, 1993 to March 31, 1994

A. CONFLICT OPINIONS

INQUIRY NO. 1

Issue:

A constituent is in the process of purchasing property in receivership through the Ontario Development Corporation (ODC). There is a lien on the property which the ODC has refused to pay. The constituent, represented by counsel, has asked the member to seek a reconsideration by the ODC.

Opinion:

As the constituent has retained a lawyer, it would be inappropriate for the member to become involved. It is presumed that the lawyer has identified all encumbrances on the property and has requested the vendor to provide the necessary discharges on or before closing in order that the purchaser may have clear title.

INQUIRY NO. 2

Issue:

Would it be appropriate for a minister to write a letter of support on behalf of a constituent for a grant which falls under the minister's jurisdiction?

Opinion:

As the letter of support would be sent to the minister's ministry, compliance with the minister's wishes may be anticipated by those in the ministry reviewing the support letters. It would, therefore, be inappropriate for the minister to write the letter. The minister was referred to Inquiry No. 6 of the Commission's 1991-92 Annual Report.

INQUIRY NO. 3

Issue:

A number of constituents who lease property from the Province have been advised that the lease payment would be increased significantly. The leaseholders have formed a coalition, represented by a lawyer, and are requesting intervention by a member at a "Hearing of Application".

Opinion:

The lawyer has the responsibility of representing the members of the coalition at the hearing. It would be inappropriate for the member to intervene in any way.

INQUIRY NO. 4

Issue:

A member has provided assistance to a constituent and his family for a couple of years with respect to dealings with the Ontario Government. The constituent has now filed complaints with the Ontario Human Rights Commission against a number of ministries of the Ontario Government, the Police Complaints Commission and the member personally for failure to represent disability issues.

Opinion:

Based on the constituent's most recent action taken against the member, the member should refrain from any further representation on behalf of the constituent as such representation may place the member in a conflict of interest situation.

INQUIRY NO. 5

Issue:

A constituent has requested a member to contact the Metropolitan Toronto Police on his behalf with respect to a possible classification that he has been designated as "could be violent".

Opinion:

As this is confidential information, a request of this nature by the member would be inappropriate. It was suggested that the

constituent personally apply directly to the Chief of Police.

INQUIRY NO. 6

Issue:

Two constituents requested a member's assistance with respect to two local municipal councillors who might be in a position of conflict of interest. The member explained the *Municipal Conflict of Interest Act* to the constituents and recommended that they obtain legal advice. After receiving the legal advice, the constituents continued to request the member's advice as to how they should proceed.

Opinion:

The constituents are in possession of a legal opinion and the options available to them. Under the *Municipal Conflict of Interest Act*, there is a process before the courts and as a result, there is nothing further the member should do to assist. The constituents should be advised to follow the advice of their lawyer.

INQUIRY NO. 7

Issue:

A member/minister was asked by a local Citizens Action Group (CAG) to investigate the reason why their contract with jobsOntario was terminated. Counsel representing the CAG had filed a Notice of Intended Action against jobsOntario.

Opinion:

The CAG is represented by counsel, and the Notice of Intended Action is considered to be the commencement of legal proceedings. All aspects of the granting of the contract and subsequent termination will be reviewed during the court proceedings.

It would be inappropriate for the member/minister to make any comments with respect to the termination of the contract or to have any further involvement with the CAG in this regard. To do otherwise could be considered an attempt to influence or interfere with the judicial process.

INQUIRY NO. 8

Issue:

A member has been asked to provide a letter of reference to Correctional Services of Canada with respect to the son of a constituent who is eligible to apply for a review of his 25 year period of parole ineligibility. The member is acquainted with the constituent, however, the son is not known personally to the member.

Opinion:

It is inappropriate for the member to write a letter of reference for someone unknown to him.

INQUIRY NO. 9

Issue:

A constituent received a ticket for failing to produce proof of valid auto insurance. Subsequently, the constituent attended upon the issuing officer and produced proof. However, she was advised that as the ticket had been issued it would be necessary for the constituent to challenge the matter in court. The constituent was seeking the assistance of a member.

Opinion:

It was suggested that the member may contact a Supervisor at the police station to inquire as to the policy regarding issues of this nature. If the police officer in question has an option to either withdraw the ticket or allow it to take its normal course through the court, it would appear he has made that decision and that decision must stand. There is nothing further the member can do to assist the constituent, otherwise the member may be seen as attempting to influence police officials.

INQUIRY NO. 10

Issue:

A constituent sought the assistance of a member with respect to an appeal before a government agency. When neither the constituent nor his lawyer were able to ascertain the status of the appeal, the member wrote to the agency. Six months later, no response was received. In addition, the constituent wrote directly to the

minister responsible for the agency and three months later, no response was received.

Can a member inquire as to the status of a case?
Can a member question the policies and procedures of the government agency with respect to a particular case?
Can a member write a letter on behalf of a constituent explaining the constituent's complaint?
Can a member ask the minister about the status of a ministerial response to a letter?

Opinion:

Any member or member's staff may request information as to the status of a matter, or inquire as to policies and/or procedures, including the writing of a follow-up letter inquiring as to the delay. Those inquiries can be directed to a government agency or minister.

It is often preferable that the constituent put the issues in a letter which can be forwarded to the appropriate minister by the member. However, this does not preclude the member from writing a letter on behalf of the constituent provided the facts are accurate.

INQUIRY NO. 11

Issue:

A constituent seeks the assistance of a member to ensure that he receives a legal aid certificate after all appeal processes at Legal Aid had been exhausted. The constituent found a lawyer who stated there are legal grounds for the case to proceed and the lawyer was prepared to accept the case on a legal aid certificate.

Opinion:

As all appeal processes have been exhausted, there is nothing further the member can do to assist the constituent.

INQUIRY NO. 12

Issue:

The parents of a member/parliamentary assistant have recently been successful in a law suit and

the member is interested in expediting the payment of the judgment to the parents.

Opinion:

There is a period of time after judgment in which an appeal can be filed and monies will not be paid out until that appeal period has expired and no appeal has been filed. The appeal period has not expired. The parents are represented by counsel and it was recommended that payment of the judgment should be left to counsel to monitor. Any action by the member may be seen as an attempt to interfere with the judicial process.

INQUIRY NO. 13

Issue:

A constituent involved in a police investigation and pending fraud case before the courts regarding the forgery of a Regional Social Assistance benefits cheque, asked a member to determine:

- (1) Under what authority does the Regional Social Services have a right to withdraw funds from a personal bank account?
- (2) What can the member do to assist in having the funds returned to the constituent's personal account?

Opinion:

The member can contact the Regional Social Services office to inquire as to the authority used in withdrawing funds, however, beyond that, there is nothing further the member can do while there is an on-going police investigation or if the matter is before the courts. Such actions could be considered as an attempt to influence or interfere with the investigation.

INQUIRY NO. 14

Issue:

A Township Council received an Order from the Information and Privacy Commission which, if left unchallenged, they felt would have serious implications throughout the province. The Council sought the assistance of a member/minister in having the Order overturned.

Counsel for the Township is seeking a Judicial Review.

Opinion:

The Township is represented by counsel and the appropriate channels have been followed to appeal an Order of the Information and Privacy Commission, i.e. a Judicial Review. As a result, there is nothing further the member/minister can do to assist the Township. To do otherwise may be seen as an attempt to interfere with the judicial process.

B. NO CONFLICT OPINIONS

INQUIRY NO. 15

Issue:

The assistance of a member was sought with respect to an alleged police assault complaint. The member suggested that the Police Complaints Commission be contacted with the appropriate information. Upon receiving instructions from the Commission that the complaint be put in writing, the member was asked by the constituent to draft a written description of the events because of the latter's poor literacy skills.

Opinion:

As the constituent has weak literacy skills, assistance in preparing the written complaint is an activity which falls under s.5 of the *Act*. However, the member should refrain from making any personal comments in the letter to the Commission.

INQUIRY NO. 16

Issue:

A member's spouse is a teacher and the local Board of Education is considering strike action. Would any public statements made by the member put the member in a conflict of interest situation?

Opinion:

The spouse is one of a broad class which is not considered a 'private interest' under the *Act*. Under those circumstances, the member is entitled to make statements with respect to issues affecting the public interest generally without being in a conflict of interest situation. Should a more specific issue arise, the member should consult with the Commissioner further.

INQUIRY NO. 17

Issue:

The spouse of a member of the minister's staff works for a company which contracts with the minister's ministry. In order to ensure that a

conflict of interest situation does not arise, the company has agreed that the spouse will not be involved with any files that directly involve the ministry. The minister has been kept apprised of the situation.

Opinion:

The steps taken by the company to ensure that a conflict of interest does not arise are adequate. Although not essential, it was suggested a letter from the company documenting this position would make all those concerned more comfortable.

Should a matter come before the Executive Council involving the company, the minister should exercise considerable discretion to make certain that no conflict arises. No doubt the spouse and her employers will take the necessary steps to avoid any problems, however, the final responsibility rests with the minister.

INQUIRY NO. 18

Issue:

A public company has offered the services of an employee to a member to conduct research on a specific project being undertaken by the member's political party. This initiative will consist of professionals, business people and consumers. The secondment would enable the employee to experience the legislative process and issues surrounding the development of public policy and assist in party policy development in the specific area. The company would continue to pay the employee's salary and benefits for the period of the secondment.

Opinion:

Acceptance of the company's offer does not place the member in a conflict of interest position provided that care is taken that no confidential information with respect to proposed government policy is made available to the seconded employee or through him to the employer, that is not generally available to the public.

INQUIRY NO. 19

Issue:

A minister is interested in hiring as a constituency assistant an individual who sits on a number of boards of community organizations and has a part-time business.

Opinion:

The individual may be hired and may continue to sit on the boards of community organizations as long as they do not receive funding from the minister's ministry.

In addition, the part-time business may be continued on the condition that:

- (a) it is not conducted during normal business hours of the member's constituency office;
- (b) the business is not conducted in the member's constituency office at any time;
- (c) the business does not interfere with his work as a constituency assistant; and
- (d) the business should not involve the provincial government.

It was also suggested that the minister contact the Premier's office to ensure compliance with the Premier's Guidelines.

INQUIRY NO. 20

Issue:

Does the declaration of personal bankruptcy change the status of a member or put the member in a conflict of interest situation?

Opinion:

Declaration of personal bankruptcy does not contravene the *Act*. Although not provided by the *Act*, the Commissioner has requested that throughout the year all members keep the Commissioner advised as to any material changes in their financial situation. This would include the declaration of bankruptcy.

INQUIRY NO. 21

Issue:

A constituent, a small businessman represented by a lawyer, is involved in legal proceedings with a bank. The bank's actions are threatening the constituent's livelihood and reputation within the community. Given the economy, the high failure rate of small businesses, and the government's attempts to help small businesses, the constituent is seeking assistance from the member.

Opinion:

Although the constituent is represented by counsel, there is no reason why the member cannot discuss the general situation with the bank officials. As the local member, and pursuant to s.5 of the *Act*, the member is in a position to explain the impact on the community of the legal proceedings. However, the legal issues should remain with the lawyers for settlement.

INQUIRY NO. 22

Issue:

A member is an equity owner of a business which may be adversely affected by intended actions of the Ministry of Transportation. There is a possibility that litigation will ensue between interested parties and ministries of the Ontario Government. Can the member enter into discussions with officials from the Ontario Government?

Opinion:

A member of the Legislative Assembly is not prohibited by the *Act* from participating in discussions with the provincial ministries with respect to the impact on the member's business of activity proposed by the Ministry of Transportation.

INQUIRY NO. 23

Issue:

A constituent is having difficulty obtaining funding from the Hospital Training and Adjustment Panel (Panel) and is seeking the assistance of the member. Could the member's

attendance before the Panel be construed as intervention in a "Board" matter?

Opinion:

As the member is not a minister, an appearance at a Panel meeting with the constituent is not inappropriate as it falls within s.5 of the *Act*. In that respect, the member is entitled to make representations on behalf of the constituent.

INQUIRY NO. 24

Issue:

A constituent has had a case before the Human Rights Commission for a number of years and is seeking the assistance of the member to determine the status of the investigation. Can the member assist?

Opinion:

Writing a letter to the Human Rights Commission requesting the status of an investigation does not place the member in a conflict of interest position, and is considered an activity which falls under s.5 of the *Act*.

INQUIRY NO. 25

Issue:

A community non-profit agency has requested a letter of reference from their member in support of a housing project. The member is a minister. Can the minister write the letter?

Opinion:

As the minister is not the minister of housing, a letter of reference supporting the application does not place the member in a conflict of interest situation, as this would be considered an activity under s.5 of the *Act*. However, the letter should be written on constituency letterhead and not ministerial letterhead.

INQUIRY NO. 26

Issue:

A community-based group, a sub-broker for jobsOntario, has offered its member four summer students to work in the constituency office.

Opinion:

As jobsOntario/Youth grants are open to all employers in the Province of Ontario, including the Ontario government, hiring four summer students to work in the constituency office with financial assistance from jobsOntario does not place the member in a conflict of interest situation.

INQUIRY NO. 27

Issue:

The Standing Committee on Resources Development is considering an Act that provides for Farm Registration and Funding for Farm Organizations that provide Education and Analysis of Farming Issues on behalf of farmers. Concerns have been raised around a section of the Bill which lists the three groups to represent farmers. Because some members of the Assembly belong to one or more of these organizations, there are concerns that such members would be in a conflict situation if they voted on the Bill.

Opinion:

Section 2 of the Act states:

"For the purposes of this Act, a member has a conflict of interest when the member makes a decision or participates in making a decision in the execution of his or her office and at the same time knows that in the making of the decision, there is the opportunity to further his or her private interest."

The definition of "private interest" is set out in s.1 of the Act as follows:

"'private interest' does not include an interest in a decision,

- (a) that is of general public application,*
- (b) that affects a member as one of a broad class of electors, or*

(c) that concerns the remuneration and benefits of a member or an officer or an employee of the Legislative Assembly;"

A member, who belongs to one or more of the accredited organizations, is only one of a broad class of electors affected by the Bill. Therefore, members of the Standing Committee and members of the Assembly who are members of one or more of the organizations listed in the Bill, can take part in discussions and vote on the Bill and would not be in a conflict of interest situation.

It would be preferable that members of the Standing Committee who belong to these organizations, would disclose their membership at the commencement of the Committee hearings.

INQUIRY NO. 28

Issue:

A lawyer has accused a constituency assistant of being in a conflict of interest in a matter before the Ontario Labour Relations Board on the basis that he works for a minister and a letter signed by the constituency assistant adopts a formal position on behalf of the Government of Ontario. The letter was written on constituency letterhead.

Opinion:

The Ontario Labour Relations Board members are appointed by the Lieutenant-Governor-in-Council and each member takes an oath to impartially execute and perform the duties of his or her office to the best of his or her skill, ability and judgment. The Board is a neutral quasi-judicial tribunal, independent of the Provincial Government with jurisdiction over certain labour relation matters. It administers the *Labour Relations Act*, and is an agency of the Ministry of Labour.

It is an accepted practice or convention that ministers and their staffs do not appear on contentious issues before agencies, boards or commissions which report to their ministry.

The constituency assistant works for a minister, but not the Minister of Labour. In addition, the letter signed by the constituency assistant was written on the minister's constituency letterhead,

not ministerial letterhead, and therefore, does not adopt a formal position on behalf of the Government of Ontario.

Letters of this nature are considered an activity which members normally engage on behalf of their constituents as set out in s.5 of the *Act*. Therefore, representation by the constituency assistant before the Ontario Labour Relations Board does not constitute a conflict of interest.

INQUIRY NO. 29

Issue:

A minister has expressed an interest in becoming a member of an organization, but not a member of its board of directors. Although the organization does not presently receive provincial funding, there is a possibility such a request for funding will be made in the future.

Opinion:

The member can become a member of the organization, however, while holding the position of minister, he should refrain from personally making representations, either privately or publicly, for or against any provincial government policy or program involving the organization.

In addition, as the organization may receive funding from the provincial government in future, care must be taken to avoid any conflict of interest situation from arising. When attending meetings of the organization, the minister must withdraw from discussions pertaining to any financial assistance which the provincial government might provide. In the discharge of official duties and responsibilities as a minister and a member of the Cabinet, the minister must withdraw from any discussion or decision-making process which involves this organization.

The minister should not participate in the management, organization, or administration of any fundraising campaign nor solicit funds personally from entities or persons with whom the minister has or might have dealings on behalf of the government. Moreover, the minister should not be made aware of contributors unless such information is made public.

INQUIRY NO. 30

Issue:

A community organization which receives some funding from the provincial government has a board of directors. A provincial government employee has been informed by his supervisor that it would be a conflict of interest for the employee to meet in his capacity as a board member with the local M.P.P. who happens to be a Cabinet minister. The member's constituency office is assisting the organization to obtain funding and services.

The member feels that it is the democratic right of the board member to meet with the local M.P.P. on behalf of the community agency that he represents and the fact that the member is a Cabinet minister should be irrelevant to the work as M.P.P. servicing the community.

Opinion:

The *Members' Conflict of Interest Act, 1988* is an Act respecting conflicts of interest of Members of the Assembly and the Executive Council, and as such the Commissioner has no jurisdiction over public employees. A meeting between the minister and/or staff and the public employee does not contravene the *Act*. As the *Act* does not provide for public employees, no opinion was expressed by the Commissioner, however, it was suggested that the public employees may be required to abide by rules imposed by his/her supervisor.

Should the meeting take place, the minister and staff must withdraw from any discussions pertaining to financial assistance which the provincial government might provide, however, participation in discussions regarding alternative community support programs is acceptable.

INQUIRY NO. 31

Issue:

A member's spouse is interested in applying for a New Ventures grant from the provincial government.

Opinion:

The member is not a minister and New Ventures grants are available to all members of the public

who qualify. The spouse's application for such a grant would not place the member in a conflict of interest situation.

INQUIRY NO. 32

Issue:

A constituent has been waiting for judgment in a case before the Ontario Courts of Justice for two years and is seeking the assistance of the member in determining when a decision may be received.

Opinion:

The member may write a letter of inquiry to the Chief Justice of the Ontario Courts of Justice requesting the status of the decision only.

INQUIRY NO. 33

Issue:

A member/minister would like to attend and address a meeting of the Land Use Committee in support of a constituent business.

Opinion:

Appearing before the Land Use Committee on behalf of a constituent is an activity which falls under s.5 of the *Act*. The minister can, therefore, appear before the Committee, however, the Premier's Guideline No. 24 was brought to the minister's attention:

"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."

INQUIRY NO. 34

Issue:

A member has been asked to serve as Honourary Consul General of a small country. There is no remuneration associated with the position, the main responsibility of which is to issue visas to Canadians desirous of visiting the country and to

provide information and assistance to its citizens in Canada.

Opinion:

The appointment as Honourary Consul General and the responsibilities associated with the appointment do not contravene the *Act*.

INQUIRY NO. 35

Issue:

A constituency assistant is interested in running for office in a municipal election. Does this place the member in a conflict of interest position?

Opinion:

If the member/parliamentary assistant is aware of the constituency assistant's activities and the activities surrounding the election do not interfere with the work of the constituency assistant, the fact that the constituency assistant runs for municipal office does not create a conflict situation for the member.

It was also suggested that the constituency assistant contact the Premier's Office to ensure compliance with the Premier's Guidelines.

C. TAKE TIME TO REFLECT

From the anonymized inquiries included in this report and from others referred to the Commission, it would appear that considerable misunderstandings still remain with respect to activities which may be carried on by ministers, parliamentary assistants and their staff with regard to courts, quasi-judicial bodies, agencies, boards and commissions.

The Ontario political system is based on the Westminster model of parliament--a cabinet government with its accompanying constitutional conventions of,

- (1) ministerial responsibility;
- (2) political neutrality; and
- (3) public service anonymity.

These conventions provide the framework for relations between politicians and public servants, and between government officials and the public.

Although not specifically set out in the *Members' Conflict of Interest Act, 1988*, which constitutes a minimum standard of conduct, Canadian parliamentary convention prohibits ministers from appearing personally before, or having communication on behalf of a private party with any agency, board or commission which falls under the jurisdiction of the minister's portfolio.

In addition, it is the Commissioner's opinion that parliamentary assistants and ministerial and parliamentary assistants' staff should not appear before or have communication with any agency, board or commission which falls under the jurisdiction of the minister or parliamentary assistant, when attempting to assist a private party.

Contact with respect to supervisory administration of departments under their jurisdiction is, of course, permitted.

This does not preclude ministers, parliamentary assistants and their staff from making inquiries of agencies, boards or commissions under other ministries when that inquiry is limited to the status of a matter, the policies and/or procedures of the agencies, nor does this preclude the staff from representing constituents and appearing before those agencies, boards or commissions.

The Premier may establish more restrictive standards of conduct which can only apply to his caucus. In this respect, Premier Rae issued Conflict of Interest Guidelines in December, 1990 (reproduced in the Commission's Annual Report 1990-91) which specifically dealt with communication with tribunals and ministries. Sections 21 to 24 inclusive state:

"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."

Ministers always wear the cloak of ministerial responsibility. There is no way that their actions, whether verbal or written, and whether in the member's position as an elected member of the Legislature or as a minister, can be considered by the recipient as other than actions by a minister, and thus could reasonably be considered as attempting to influence a decision contrary to s.4 of the Act.

FINANCIAL INFORMATION

1993/94 BUDGET

	<u>Annual Budget</u>	<u>Expended</u>
Salaries, Wages and Benefits	\$ 82,800.00	\$ 71,847.21
Transportation and Communication	7,000.00	3,278.64
Services	190,000.00	111,998.98
Supplies and Equipment	<u>16,000.00</u>	<u>8,942.34</u>
	<u>\$295,200.00</u>	<u>\$196,067.17</u>

1994/95 BUDGET

Salaries, Wages and Benefits	\$ 83,000.00
Transportation and Communication	7,000.00
Services	190,000.00
Supplies and Equipment	<u>16,000.00</u>
	<u>\$296,000.00</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.

