



Legislative Assembly of Ontario

COMMISSION ON CONFLICT OF INTEREST

ANNUAL REPORT 1994 - 1995

June 21, 1995

**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, 1994 to March 31,
1995.**

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

Yours very truly,

COMMISSIONER'S **REMARKS**

The Honourable Gregory T. Evans

In the Sixth Annual Report of the Commission covering the period April 1, 1994 to March 31, 1995, I wish to express my appreciation to the members of the Ontario Legislature for their continued cooperation.

My Executive Assistant, Ms. Lynn Harris, has continued to discharge her myriad responsibilities with her usual competence and dedication. Her accessibility to political and constituency staff has been an important factor in avoiding situations which might cause embarrassment to the members.

Ms. Heather MacDonald has recently been employed as an assistant engaged in general office work as well as assisting in research into conflict of interest legislation.

The *Members' Integrity Act, 1994* received Royal Assent on December 9, 1994, however, at the time of writing this Report, the *Act* has not been proclaimed. Upon proclamation, this *Act* will replace the *Members' Conflict of Interest Act, 1988*, and it is appropriate that some explanation for the change and the manner in which it was accomplished be provided.

Why the change from the *Members' Conflict of Interest Act* to the *Members' Integrity Act*?

The word "integrity" is more extensive than "conflict of interest", which in practical application is generally limited to financial matters. The introduction of conflict of interest legislation is relatively recent, although the issue of integrity in public affairs has existed since the dawn of recorded history.

The fostering of personal interests in a socially acceptable manner is a perfectly natural right which an individual is entitled to exercise. The problem arises when the right of one individual impinges on the right of another. The competing rights create a confrontation which in every day life is either settled by mutual agreement of the parties or by consensual arbitration or by judicial decision. This is not a conflict of interest situation in the accepted sense, because there is no ethical issue involved and no question of morality arises. However, when a person is elected to public office, that person becomes a trustee for the interest of others and their interest may conflict with the private interest of the member.

When this situation arises, the ethical member will resolve it in a manner favourable to the public interest, not because there is legislation, but for the reason that his/her conscience, shaped by training, education and life experience, will direct the member to do that which is morally correct. No administrative rules or legislated codes of conduct are required to monitor the conduct of a honourable member, nor will they restrict the misbehavior of the member who lacks the requisite moral integrity.

The primary purpose of integrity legislation is not to promote high ethical standards among members, all of whom we expect, having chosen to aspire to public office, possess the necessary moral qualities which entitles them to be referred to as the "Honourable Member" in the Legislature. Rather, it is a standard against which an ever-increasingly cynical and

suspicious press and public may measure their behavior in office. It may not appease the more rabid critics, but it will serve as a source of satisfaction to the member whose conduct is under attack to know that it meets the standard by which his peers are also judged.

There are instances of impropriety by members that do not involve issues in which there is a conflict between personal and public interests, however they do affect public trust and confidence. Some of these situations we have characterized as Ontario parliamentary conventions, because they recognize and support those accepted democratic principles of fairness, impartiality, justice and due process, of which the Legislature has signified its approval.

It is an accepted fact that integrity is not the exclusive prerogative of any particular political party and the *Members' Integrity Act* resulted from an all-party approach in which representatives appointed by the party leaders met with me and my staff. After many months of consultation, a consensus was reached and with the unanimous approval of the Assembly, Bill 209 was passed on December 8, 1994, and received Royal Assent on December 9, 1994.

We believe the new legislation will remove some of the previous restrictive provisions which may have made membership in the Legislature financially unattractive to those engaged in family enterprises or small businesses. The new legislation may not require placement of these businesses in a management trust. It provides discretion to the Commissioner to extend the time periods for certain obligations under the *Act*, and makes the public disclosure provisions more realistic and at the same time, more informative to the public.

The preamble to the new *Act* should obviate the necessity for additional guidelines for members.

The Canadian problem is not corruption of public

servants, but the increasing public cynicism of our political system and those who serve in it. Corruption can be adequately handled by resorting to the Criminal Code and our judicial system. Cynicism is an insidious attitude embraced by a substantial segment of the public which attacks and undermines the very fabric of our democratic system of government.

I question the accuracy of the frequent media statements that the public perception of integrity among members is at an increasingly low ebb. Minor misdeeds of a member are exploited by the media, creating a negative image of the group as a whole. Perhaps there is a possibility that we are being influenced by the American mass media who are less than charitable in their comments about legislatures as an institution and politicians who are elected to them. We can all recall Richard Nixon, the only President in the history of the United States who was forced to resign from office in disgrace. For years he was demonized by the media, however the many effusive, if undeserved, eulogies at his death have fostered a frenzy of media support for virtual deification. The iconoclastic journalists who were unrelenting in attacking the former President have adopted an attitude inconsistent with their previous position.

The Canadian media, while somewhat more restrained, has become increasingly negative. Whether it only expresses public opinion or is instrumental in forming it, the result is that we are left with the view that a number of our politicians are lazy, incompetent and dishonest. The continuous personal attacks to which members are subjected lower the prestige of the position and discourage responsible people from seeking public office and also destroys our faith in the political process. Unquestionably, there are a few who have demonstrated their unfitness to hold public office, but those isolated instances should not becloud the reputations of the many men and women who work diligently and honestly in government for a compensation that

is generally disgracefully inadequate. The integrity of politics as a honourable and respected profession depends upon a continuous supply of persons who are prepared to provide the high quality of service which the public demands, and for which they must be prepared to pay.

Public sector ethics are much more than conflicts of interest. They include a sense of loyalty and a respect for public accountability. Public sector ethics is an evolving discipline defined to some extent by the continuing evolution of community ethical standards. Despite recent polls indicating that ethics in government have improved in the last decade, there still exists a view that there has been an erosion of the standards of political conduct.

Ethics has been described as the moral strength to do what we know is right and to not do what we know is wrong. There may be occasions when a person acts through lack of knowledge or lack of attention, however, that 'insistent, quiet voice of conscience', inherent in each of us, sings in harmony on the vast majority of moral issues.

Waste and inefficiency at any level of government create public anger and distrust and every exposé of maladministration withdraws another portion of that diminishing reservoir of respect accorded to our elected representatives.

The comment of Mark Twain may be appropriate, "Always do right. This will gratify some people and astonish the rest."

OVERVIEW

A. DISCLOSURE STATEMENTS

On January 25, 1995, 127 Public Disclosure Statements containing information as of September 1, 1994, were filed with the Clerk of

the Legislative Assembly pursuant to s.13(5) of the *Act*. As at the date of filing, there were three vacancies created by the resignations of the members from the ridings of St. Andrew-St. Patrick, Markham, and Kitchener.

All members of the Legislative Assembly have complied with the requirements of the *Members' Conflict of Interest Act, 1988* as of September 1, 1994.

B. CANADIAN CONFLICT OF INTEREST NETWORK (CCOIN)

CCOIN held its annual meeting in Ottawa in September, 1994 and the meeting was chaired by the new Ethics Counsellor, Mr. Howard Wilson, formerly the Assistant Deputy Registrar General of Canada. Also in attendance were the Commissioners from across Canada, The Honourable Ted Hughes (British Columbia), Mr. Robert Clark, (Alberta), Mr. Darril McLeod (Saskatchewan), The Honourable Gregory T. Evans (Ontario), Mr. Joel Fournier (Northwest Territories), The Honourable Alexander MacIntosh (Nova Scotia), The Honourable Mr. Justice William L. M. Creaghan (New Brunswick) and Mr. Wayne Mitchell (Newfoundland), together with the Director of the Ethics and Incentives Group for Treasury Board of Canada Secretariat, Mr. Michael Vaughan.

It was agreed the 1995 annual meeting of CCOIN would once again be held in Ottawa.

C. MEMBERS' INTEGRITY ACT, 1994

The following represents a short synopsis of the proposed *Members' Integrity Act, 1994*. Any inquiries regarding the *Act* should be directed to the Commission, telephone (416) 314-8983 or fax (416) 314-8987.

The preamble to the *Act* sets out certain principles defining in a general way the purposes and objectives of the legislation; that is, to encourage citizens from a wide spectrum of society to seek public office in the Legislature and through their knowledge and experience contribute to the maintenance of public confidence in the Assembly and its members by performing their duties of office and arranging their private affairs in a manner demonstrating integrity and impartiality which will bear the closest scrutiny.

The provisions of the *Act* apply to all members of the Assembly with specific additional provisions applicable to members and former members of the Executive Council.

Conflict of Interest (Sections 3, 4 and 5)

A conflict of interest issue arises frequently in the discharge of a member's duties as a member of the Executive or as a private member in day to day legislative activities. The questions to be resolved are, "Am I taking advantage of my position as a legislator to participate in the making of a decision, or to improperly influence another to make a decision, which will benefit my private interest or improperly benefit the interest of another?" "Am I using insider information not available to the general public for a similar purpose?" If the answer is "yes", you are in violation of either s.2, 3, or 4, unless the "private interest" falls within the exception in s.1.

Gifts and Benefits (Section 6)

A member shall not accept a fee, gift or personal benefit for performing his/her duty as a member except when the gift or benefit is received as an incident of protocol, custom, or normal social obligations.

If a gift or a number of gifts from the same source exceeds \$200 within a 12 month period, a Gift

Form must be filed with the Commissioner's office within 30 days.

Contracts by Members with the Government (Section 7)

A member shall not benefit from a contract with the provincial government as an individual, a partner, or a shareholder in a private company unless his or her interest falls within the exceptions set out in this section.

Procedure on Conflict of Interest (Section 8)

A member who has reasonable grounds to believe that he/she has a conflict in a matter being considered by the Assembly or the Executive Council or a committee of either, shall disclose the nature of the conflict and withdraw from the meeting without voting or participating in the discussion.

Private Member's Right to Outside Employment (Section 9)

A member, who is not a member of the Executive Council, is entitled to practice a profession, engage in employment or carry on such business activities as set out in s.9 of the *Act*.

Executive Council Outside Activities (Sections 10 to 16)

Section 10 defines the outside activities in which a member of the Executive Council shall not engage.

Section 11 provides that a member of the Executive Council shall not hold or trade in marketable securities unless such assets are

placed in a management trust as defined in s.11(3).

Section 12 provides that a member of the Executive Council shall not carry on business as a sole proprietor or in a partnership unless the business or the partnership interest is placed in a management trust as defined in s.12(2).

Section 13 provides for an approved exemption on specific terms and conditions for an activity prohibited in s.10, 11 and 12.

Section 14 provides a 60 day time limit for members of the Executive to comply with s.11, 12 and 13.

Section 15 restricts the acquisition of land or an interest therein by members of the Executive Council subject to certain specific exceptions.

Section 16 sets out the procedure to be followed when a member of the Executive Council has reasonable grounds to believe that he/she has a conflict of interest in a matter which requires that Minister's decision.

Former Members of the Executive Council (Sections 17 and 18)

These sections apply to contracts with the government involving former members of the Executive Council and awarded or approved by the Executive Council. A 12 month time restriction applies and there are certain exemptions to the restrictions.

Parliamentary Assistants (Section 19)

Current or former Parliamentary Assistants are not subject to the restrictions in s.10 to 18.

Private and Public Disclosure Statements (Sections 20 to 22)

Members are required on an annual basis to file with the Commissioner a private disclosure statement. Section 20 sets out the information required to be disclosed. After a meeting with the member, the Commissioner prepares a public disclosure statement based on information provided in the private disclosure statement, and in accordance with the provisions in s.21.

It is recognized that disclosure as required in s.20 and s.21 is an invasion of the member's right to privacy. However, in view of the current public demand for openness in government, it is a necessary invasion.

The Commissioner's office over the years has developed a good rapport with the members of the Assembly who appreciate that the information which is received by our office is held in strict confidence, apart from the information which is required to be disclosed in the public disclosure statement.

The disclosure requirements are not onerous and with the members' co-operation and with the exercise of such discretion available to the Commissioner, no member should feel embarrassed, or unduly inconvenienced in complying with the respective responsibilities. Failure to fully complete the necessary forms provided in a timely manner creates unnecessary problems for the Commission office. It is the responsibility of the member to obtain and provide the information necessary to properly complete the disclosure forms.

Section 22 provides for the destruction of records.

Integrity Commissioner (Sections 23 to 27)

Sections 23 to 26 provide for the appointment of the Commissioner, the Annual Report, and the

personal liability of the Commissioner and Commission's employees.

Section 27 permits a discretion to the Commissioner to grant an extension of time for compliance by a member on certain terms.

Opinions (Sections 28 and 29)

Section 28 states, "*A member of the Assembly may request that the Commissioner give an opinion and recommendations on any matter respecting the members' obligations under this Act and under Ontario parliamentary convention.*"

The request and the reply must be in writing, are confidential and subject to being released only by the member or with the member's consent or as may be required by law.

Enforcement (Sections 30 to 34)

Sections 30 to 34 deal with complaints referred to the Commissioner by a member, the Executive Council or the Assembly relative to another member's breach of the *Act*, the procedure to be followed on the respective complaints and the Commissioner's recommendations as to the penalty which the Assembly may approve or reject.

The words "*Ontario parliamentary convention*" are new in legislation of this nature. They apply to certain activities previously carried out by Ontario Parliamentarians which are now accepted by them as being inimical to the proper administration of government in our democratic society. Parliamentary conventions result from practices and customs and may not be the same in every jurisdiction. Section 6(5) in the *Members' Integrity Act, 1994* dealing with the use of promotional awards is one example of such a convention.

However, a much more important convention is the restriction requiring Ministers, their Parliamentary Assistants, together with their respective staffs, not to intervene in the decision-making process of any agency, board or commission within the ambit of the Minister's jurisdiction.

An even more fundamental convention is breached when members fail to appreciate that the judiciary is a separate and independent branch of government and that any attempt to interfere with the judicial or quasi-judicial process at any level is strictly prohibited.

STATISTICAL INFORMATION

A. INQUIRIES

Received From	No. Received	No Conflict	No Conflict	Outstanding
Member	138	41	94	3
Spouse	1	0	1	0
Trustee	0	0	0	0
Caucus	1	0	1	0
Cabinet	0	0	0	0
Committee	0	0	0	0
Former Minister	0	0	0	0
TOTAL	140	41	96	3

A summary of selected inquiries received under s.14 of the *Members' Conflict of Interest Act, 1988* through the past year has been anonymized and produced in this Report under "Summary of Selected Inquiries, Opinions and Violation". These examples are neither exhaustive nor do they cover every type of conflict of interest situation. Members and their staff are encouraged to contact the Commissioner for an opinion if they have any questions.

B. REFERRED QUESTIONS

The Commission is pleased to report that as of March 31, 1995, no questions have been received or inquiries conducted under s.15 of the *Act*.

C. VIOLATION OF THE ACT

For the first time under the *Members' Conflict of Interest Act, 1988*, the Commissioner found it necessary to proceed under s.17. A member failed

to file a portion of his Private Disclosure Statement within the time provided by s.12 of the *Act*. A summary of the Commissioner's Report is produced in this Report under "Summary of Selected Inquiries, Opinions and Violation".

SUMMARY OF SELECTED INQUIRIES, OPINIONS AND VIOLATIONS

April 1, 1994 to March 31, 1995

A. CONFLICT OPINIONS

INQUIRY NO. 1

Issue:

During negotiations between workers and a union, a member is asked to state in writing that as a result of potential lack of savings from the Social Contract, the union would not have money available for payment before lieu days in 1996.

Opinion:

The member, not being fully apprised of all the facts, is being asked to speculate with respect to the effect of the Social Contract. It is inappropriate for an elected official to submit such a letter to be used in union negotiations.

INQUIRY NO. 2

Issue:

A stakeholder group under a Ministry has invited the Parliamentary Assistant and spouse

to attend a social event out of town. Meals and transportation will be complimentary.

Opinion:

Under s.6(1) of the *Act*, the invitation is a personal benefit that is connected indirectly with the performance of the duties of the Parliamentary Assistant. However, it is not one that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of that office as set out in s.6(2) of the *Act*. It would, therefore, be inappropriate to accept the invitation.

INQUIRY NO. 3

Issue:

A constituent feels he has been harassed by his government agency employer to accept 70% disability and he is not satisfied with his treatment by the union. The member recommended the constituent call the Human Rights Commission, however, the constituent insists the member call the government agency.

Opinion:

The member's advice was appropriate. The Commission and the union have processes in place to deal with these issues. It would be inappropriate for the member to contact the government agency employer, as it may be interpreted as an attempt to influence or interfere with these processes.

INQUIRY NO. 4

Issue:

A Parliamentary Assistant has been asked by a constituent to write a letter of support for funding from the member's Ministry.

Opinion:

Such a letter of support would be inappropriate as the Parliamentary Assistant's wishes may be

considered as an attempt to influence a decision by those in the Ministry reviewing the letter. Reference was made to Inquiry No. 6 of the 1991-92 Annual Report.

INQUIRY NO. 5

Issue:

The member/Minister has received complimentary passes from the Metro Toronto and Region Conservation Authority and the Canadian National Exhibition.

Opinion:

Accepting the pass to the Canadian National Exhibition is contrary to s.6 of the *Act* as it is not a benefit related to the responsibilities of his office either as a Minister or an M.P.P.

Acceptance of the pass from the Metro Toronto and Region Conservation Authority is acceptable under s.6 of the *Act* only on the condition that the conservation area is within the constituency. It is not appropriate to accept the pass in his capacity as a Minister, as it is not a benefit related to the responsibilities of that office.

If the pass is accepted, and it is determined the value is over \$200, a Gift Form must be filed with the Commissioner. The member/Minister was reminded of the Premier's Guidelines which state a Gift Form must be filed if the value of the benefit exceeds \$100.

INQUIRY NO. 6

Issue:

A member wished to distribute a publication to the constituency prepared by the constituency office. The title of "Minister" was printed at the top of the publication.

Opinion:

Including the title of Minister at the top of the publication is inappropriate. Reference was made to Inquiry No. 7 of the 1991-92 Annual Report which stated:

"The business a member conducts in a constituency office should not in any way be mixed with the business conducted either as a Parliamentary Assistant or as a member of a government committee."

This policy would also apply to Ministers.

INQUIRY NO. 7

Issue:

A federal member of Parliament asked a provincial member to look into a matter which had been dealt with "unreasonably" by the Ontario courts and to "...ensure that justice prevails".

Opinion:

The accused was represented by counsel during a request for an adjournment which was refused. The trial proceeded in the accused's absence and he was convicted. If the accused does not agree with the court's decision, his lawyer can instruct him as to the appeal provisions of the *Provincial Offences Act*. There is nothing the member can do to assist. To do otherwise may be seen as an attempt to interfere with the judicial process.

INQUIRY NO. 8

Issue:

A member has been asked by a local establishment to assist in having its liquor licence reinstated by the Liquor Licence Board. A Notice of Proposal had been received and the owner has 15 days in which to respond. The member attempted to have a meeting with the liquor inspector, however, LLBO legal counsel advised the inspector not to discuss the matter with the

member, and indicated the Chair should be contacted.

Opinion:

The LLBO has a process in place and the owner should respond to the Notice of Proposal. Although it is not a conflict for the member to represent the licensee at a hearing, it would be inappropriate to pursue the matter with the Chair of the LLBO until all appeal processes have been exhausted.

INQUIRY NO. 9

Issue:

A Parliamentary Assistant had prepared a letter of reference, addressed to and on behalf of a constituent who is required to appear in court for sentencing. The member was seeking the Commissioner's approval of the letter.

Opinion:

When members are requested to provide character evidence, such evidence should generally be provided verbally in court. However, a letter addressed to the court would not be improper provided the member knows the individual and is fully aware of the circumstances surrounding the conviction. The letter should not be addressed to the accused.

INQUIRY NO. 10

Issue:

A member has been asked to sign a Petition to a School Board which has dismissed a teacher.

Opinion:

The School Board has the responsibility to deal with matters which fall within its jurisdiction. The teacher's complaint has been dealt with by the Director of Education. The Petition is a demand to reverse the decision of the Director. As there are other remedies available to the

teacher, the member should not become involved and sign the Petition, as it may be seen as an attempt to interfere with a decision of the Director.

INQUIRY NO. 11

Issue:

A Parliamentary Assistant is interested in becoming either a member at large or a Board Member of a Foundation.

Opinion:

Section 8 of the *Act* prohibits members of the Executive Council from holding an office or directorship other than in social clubs, religious organizations or political parties. Under the *Act* the Parliamentary Assistant is not prohibited from becoming a member at large or a Board member. However, as part of its mandate, this particular Foundation challenges certain legislation in Ontario. It was the Commissioner's opinion in this case that it would be inappropriate for the Parliamentary Assistant to become a Board Member. In addition, reference was made to the Premier's Guideline #22 and the member was advised to consult with the Premier's Office.

INQUIRY NO. 12

Issue:

A constituent was involved in a dispute which had been appealed to the Supreme Court of Canada and denied. The constituent is presently before the Federal Farm Debt Review Board where it is hoped the matter can be settled before a Writ of Seizure and Sale is issued for the constituent's farm.

The constituent is asking the member to write on his behalf to the Attorney General, Minister of Consumer and Commercial Relations and the Minister of Agriculture, Food and Rural Affairs.

Opinion:

There is nothing further the member can do to assist the constituent with respect to the Attorney General as all appeal processes have been exhausted. However, writing to the Minister of Consumer and Commercial Relations and the Minister of Agriculture, Food and Rural Affairs is considered an activity which falls under s.5 of the *Act*.

INQUIRY NO. 13

Issue:

A constituent Association was filing an application for provincial funding and the member/Minister had prepared a letter of support addressed to the Association. The member was not the Minister of the Ministry which was providing the funding.

Opinion:

Writing a letter of support to the Association is inappropriate. If the letter were forwarded by the Association to the public servant responsible for the awarding of such assistance, the public servant may feel the member/Minister was exerting undue influence. It is more appropriate to write the letter of support directly to the Minister responsible for the funding and advise the Association that the letter has been sent.

INQUIRY NO. 14

Issue:

A constituent has asked his member to write a letter of support with respect to his appointment to a provincial government body.

Opinion:

As the member is a member of the Standing Committee on Government Agencies which oversees appointments to all government agencies, boards and commissions, it would be inappropriate to write a letter of support which

would be placed before that Committee, as it would place the member in a conflict of interest position.

INQUIRY NO. 15

Issue:

A constituent has asked a member to "use his legislative office to try and pressure" a supplier company to settle a dispute with the constituent.

Opinion:

There is nothing the member can do to assist the constituent as it would be inappropriate to use his position as an M.P.P. to put "pressure" on the company.

INQUIRY NO. 16

Issue:

Parents of a student felt the student was unfairly suspended from school and they were seeking the member's assistance regarding the school administration's manner of handling the situation.

Opinion:

An appeal of the Board's decision is pending, and an elected school trustee is assisting the parents with the hearing. The member may only contact the Board of Education to inquire as to the policies and procedures of the Board regarding student suspensions and the status of this matter. To take any further action would be inappropriate and may be seen as an attempt to interfere with or influence the appeal process.

INQUIRY NO. 17

Issue:

A member of a Government Standing Committee was advised by a constituent of the existence of a confidential Ministry memorandum that would clarify a controversial issue which was before the

Committee. A request for the particular memorandum was made to the Ministry's Freedom of Information and Privacy Branch. While the request was pending, the constituent provided the member with a full copy of the memorandum. Shortly thereafter, the Ministry Information Officer responded that the vast majority of information requested "would reveal advice or recommendations of a public servant" or "contained recommendations prepared or submitted to Cabinet". Essentially, access to all but a few items was denied. Does disclosure to the Standing Committee of the full memorandum constitute a conflict of interest?

Opinion:

It would appear that the full memorandum in the possession of the member may have been obtained by the constituent either illegally or improperly.

Release of the memorandum in full to the Standing Committee does not constitute a conflict of interest under the *Members' Conflict of Interest Act, 1988*, however, in view of the Information Officer's finding, it would be indiscreet to provide a copy to the Committee, and the member should not participate in any furtherance of such disclosure. A partial disclosure of the memorandum to the Committee as set out by the Ministry's Information and Privacy Branch is not a conflict and would be appropriate.

INQUIRY NO. 18

Issue:

A constituent developer requested the assistance of a member regarding the resolution of a problem he was experiencing with the Ministry of Transportation. The member wrote to a Ministry Director requesting a resolution of the matter. Ministry officials met with the parties and a decision by the Ministry was pending. Subsequently, the member received a request

from a Regional Councillor requesting the member's intervention to request a favourable ruling from the official working on the project. The member forwarded the request to the Regional Director at the Ministry for review. The Regional Councillor disagreed with the member's approach to the matter and felt that "As elected representatives, I believe we have a role as facilitators in this situation to foster and not impede economic development". Did the member act properly?

Opinion:

The member took the appropriate steps and acted properly in bringing the matter to the attention of a Director. Contacting the Ministry official working on the case directly may be interpreted by that individual as an attempt to influence his or her decision. It would appear the Regional Councillor was asking the member to use his influence as an MPP to improperly further the developer's interest, which may not be in the best interest of the public.

INQUIRY NO. 19

Issue:

An inmate is experiencing difficulties in being placed in a half way house. His lawyer has written a lengthy explanatory letter to the member asking the member to contact an official of the Ministry of Correctional Services to request an immediate review of the inmate's application to a Community Resource Centre and if warranted to immediately initiate that placement.

Opinion:

The inmate had participated successfully in programs for alcohol and drug abuse, however, these programs necessitated the inmate's transfer to various facilities. While participating in one of the programs, he has charged and convicted for being unlawfully at large. The inmate has just been transferred to a new facility, and was refused

a transfer to a half way house on the basis he was not a suitable security risk.

The proper appeal processes were followed. For the member to contact an official of the Ministry of Correctional Services is inappropriate. Such action as an MPP may be considered an attempt to influence or interfere with the decisions made to date and the appeal processes established by the Ministry. The member may forward a copy of the lawyer's letter to the Minister for review.

INQUIRY NO. 20

Issue:

A member received an invitation to participate in a program panel which is part of a District Health Council Committee. The member is concerned accepting the invitation would be a conflict.

Opinion:

The *Legislative Assembly Act* precludes a member of the Legislative Assembly from participating on the panel if there is any salary, fee, wage, allowance, emolument or profit of any kind attached to the appointment or an Order-in-Council is required.

If an Order-in-Council is not required for this appointment, and no payments received, there is no violation of the *Members' Conflict of Interest Act, 1988*, however, as the panel reports to a committee which falls under an agency of the Ministry of Health, it was the Commissioner's opinion that it would be inappropriate for the member as an M.P.P. to serve on the panel.

B. NO CONFLICT OPINIONS

INQUIRY NO. 21

Issue:

A constituent has a case pending before the Ontario Human Rights Commission, with a number of months before the hearing. In the interim, he will be forced to apply for social assistance benefits. Can the member assist his constituent by writing the Commission requesting an expedited hearing?

Opinion:

Writing such a letter is an activity which members normally engage on behalf of constituents as described under s.5 of the *Act*.

INQUIRY NO. 22

Issue:

A member is seeking advice as to what degree she may advocate on behalf of a constituent before the Ontario Human Rights Commission. The constituent has had an appeal before the Commission for two years and has now been offered a meeting with senior officials of the Commission who advised the constituent should bring his lawyer. The constituent cannot afford legal representation.

Opinion:

The member is not a Minister, and with the constituent's authorization, the member is entitled to attend the scheduled meeting with senior officials and represent the constituent not only in the meeting but in any hearing which may be held. This is an activity which falls within s.5 of the *Act*.

INQUIRY NO. 23

Issue:

A constituent who had been charged and subsequently acquitted, wrote a long letter to the member setting out the circumstances surrounding the allegations and complaining about various events which occurred. The member forwarded the letter to the Attorney General's office which

in turn passed it on to their Criminal Law Division for a response.

The constituent is insisting on a meeting with the member.

Opinion:

The member has taken the appropriate steps to date, however, there is no indication as to whether the Attorney General responded to the constituent's letter. If no response has been received, under s.5 of the *Act*, the member may contact the Attorney General's office to inquire as to the status of the matter and it would be advisable to delay meeting with the constituent until that time.

If a response has been received by the constituent, it will be necessary for the constituent to follow the information or advice contained in the response. Any further actions by the member may be considered an attempt to influence or interfere with the process at the Attorney General's office.

INQUIRY NO. 24

Issue:

Constituents have asked the member to advocate on their behalf with respect to a dispute with a hospital regarding an unpaid hospital bill for the constituents' now deceased mother. The mother was visiting Canada when she suffered a stroke and died in hospital. Private insurance did not cover the full cost of her treatment and before obtaining a special Minister's immigration permit, allowing application to OHIP, she died. The member asked the Minister of Health to assist, however, the member was advised that only the hospital can reduce or write off the bill. Can the member advocate with the hospital?

Opinion:

As the hospital has not commenced legal proceedings against the constituents, advocating

on behalf of the constituents does not cause a conflict of interest as it would be considered an activity under s.5 of the *Act*.

INQUIRY NO. 25

Issue:

On behalf of a constituent, the member wrote a letter to the Ministry of Health setting out the circumstances leading to the constituent's complaint against certain hospital nurses. Some time later, the member was advised by the constituent that she was considering a formal complaint to the College of Nurses and was seeking a copy of the original letter which the member sent to the Minister of Health. In light of the constituent's actions and comments, should the member release to the constituent a copy of the letter sent to the Minister?

Opinion:

As the member has received approval from the Ministry's Freedom of Information Officer that the letter does not violate Freedom of Information legislation, release of the letter to the constituent does not violate the *Act*.

INQUIRY NO. 26

Issue:

An opposition member has an opportunity to purchase surplus land abutting his property. To what extent is the member restricted in dealing with land use and acquisition issues?

Opinion:

The *Act* does not prevent an opposition member from participating in any discussions dealing with the zoning of the surplus land or acquiring the land on the condition the bidding process is open to the public.

INQUIRY NO. 27

Issue:

A member has been asked to employ a young person who meets the criteria of the Futures Program, funded by the provincial government under the Ontario Training and Adjustment Board.

Opinion:

The Futures Program under the Ontario Training and Adjustment Board does not preclude members of the Provincial Parliament from applying if the employment is in the best interest of the youth. To apply for such a program does not place the member in a conflict situation.

INQUIRY NO. 28

Issue:

A member received a call from a constituent regarding vacant Ontario government-owned property.

The constituent is concerned that the government be alerted not to inadvertently dispose of the lands pending the completion of a discussion of a major new economic development which may require all or part of the lands. The constituent is asking the member to advise the Deputy Minister in order that the matter be brought to the attention of the relevant government authorities.

Opinion:

Advising the Deputy Minister in this regard is considered an activity under s.5 of the *Act*, and it would not be a conflict of interest.

INQUIRY NO. 29

Issue:

A Parliamentary Assistant is interested in becoming a member of a community organization which receives partial funding from the Provincial Government.

Opinion:

The Parliamentary Assistant may become a member of the organization as the funding is not received from the member's Ministry. However, the Parliamentary Assistant should refrain from participating in any representation on behalf of the organization to the Ontario Government and withdraw from discussions pertaining to any financial assistance which the Ontario government might provide. Any public or private statements or comments involving the Ontario government should be made by others in the organization.

In the Parliamentary Assistant's position as a member, there should be withdrawal from any discussion or decision-making process which could affect the organization.

It was also recommended the Parliamentary Assistant contact the Premier's office to ensure compliance with the Premier's Guidelines.

INQUIRY NO. 30

Issue:

A Parliamentary Assistant has received a subpoena from the defence with respect to a criminal matter which his particular Ministry is looking into. The member is seeking guidance.

Opinion:

The law requires that the member comply with the subpoena. However, should the defendant attend the constituency office regarding the matter, in order to avoid any misunderstanding as to the evidence, he should be advised the member has been called as a witness and anything he has to say will be said in court.

INQUIRY NO. 31

Issue:

A constituent has made threatening remarks with respect to the Workers' Compensation Board to a member. Can the member notify the Workers' Compensation Board?

Opinion:

The member should immediately notify an official at the offices of the Workers' Compensation Board. This activity would not place the member in a conflict of interest situation.

INQUIRY NO. 32

Issue:

A member has asked whether it is appropriate to write a letter to the Executive Council of Ontario on behalf of a local ratepayers' group with respect to the appeal of a matter. The member is not a Minister or Parliamentary Assistant.

Opinion:

The Executive Council allows submissions from anyone who was a party to the original hearing. In this case, the local ratepayers' group was a party to the hearing. If the member wishes to represent the ratepayers' group, he may make a submission, as this is considered an activity which falls under s.5 of the *Act*.

INQUIRY NO. 33

Issue:

Does a part-time constituency assistant place a member in a conflict of interest situation by accepting a trustee position on a community board?

Opinion:

Accepting the trustee position does not place the member in a conflict of interest on the following conditions:

- (1) The member is fully aware of the assistant's position;
- (2) No board business is conducted by the assistant during office hours;
- (3) The constituency office is not used for anything other than constituency business.

C. VIOLATION OF THE ACT

RE: MEMBER FROM ETOBICOKE WEST

Issue:

In August, 1994, in accordance with s. 12(1) of the *Members' Conflict of Interest Act, 1988*, all members of the Ontario Legislative Assembly were asked to complete and file a Private Disclosure Statement by October 3, 1994.

After two reminders, and the granting of extensions for filing, the member from Etobicoke West filed his disclosure form on October 13th. The member met with the Commissioner on November 17th to review the statement and on December 8th, during the preparation of the member's Public Disclosure Statement, it came to the Commission's attention that the Private Company Disclosure Statement was incomplete. A blank copy of the Private Company Disclosure Statement was forwarded to the member with the request that he complete and file the form by December 19th.

After two reminders and the granting of extensions for filing, the form was not received.

Opinion:

On numerous occasions, the member from Etobicoke West was granted extensions for filing the necessary information and despite attempts to have him comply, he failed to cooperate fully by failing to file a Private Company Disclosure Statement, contrary to s.17 of the *Act*. The

Commissioner quoted from the Commission's Annual Report, 1990-91,

"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."

The Commissioner also stated:

"One of the purposes of the Act is to restore and maintain public confidence in the integrity of our elected representatives to the Ontario Legislature. To continue to tolerate Mr. Stockwell's disregard of this legislation is tantamount to a breach of my duty as the Conflict of Interest Commissioner."

Recommendation:

Pursuant to s.17(1)(a) of the *Members' Conflict of Interest Act, 1988*, the Commissioner recommended that the member from Etobicoke West be reprimanded for failure to comply with s.12 of the *Act*.

Section 17(2) of the *Act* provides,

"The Assembly shall consider the Commissioner's report and respond to it as subsection (3) provides within six months of the day the report is laid before the Assembly."

Subsequent to the filing of the Commissioner's Report, the member from Etobicoke West filed the Private Company Disclosure Statement, thus fulfilling his obligations under the *Act*.

TAKE TIME TO REFLECT

Under the Conflict of Interest and Integrity legislation, the Commissioner is an Officer of the Legislative Assembly and I believe that gives me the status to comment on matters and procedures which will improve the image of the members.

The advent of television in the Legislative Chamber provides an opportunity to educate people on the proceedings in the Chamber and the manner in which the business of government is carried out. My previous experience as a judge conducting judicial business in a courtroom where a certain decorum is demanded and a sense of dignity prevails, did not prepare me for the raucous behavior in the Legislature which through the medium of television invades private living rooms.

After viewing a particularly noisy and rebellious Question Period, I expressed my opinion to a former member of the Executive Council that such conduct did not do much for the public image of the Legislature. His reply was that it was an opportunity to 'let off some steam' and to embarrass the government members. He assured me that the present day sessions were more like a prayer meeting compared to conduct in his day when threats of physical violence were not uncommon. He stated it's just like a 'game'. I did not agree with his characterization of the serious business of government as a 'game'. Subsequently, I learned that others, including teachers whose students occasionally viewed the sessions, shared my opinion.

Intelligent answers to reasonable questions directed to Ministers were frequently inaudible. The responses did not survive the interruptions and the racket created by a few members while the majority silently observed the spectacle and the harried occupant of the Speaker's Chair valiantly endeavored to maintain some semblance of order. Most observers would welcome some flashes of wit and humour, some overheated

rhetoric, and verbal jousting, if they were not carried to the extent that it interfered with the business of the Assembly and created a false impression of the competence and dedication of the members. Why provide a fertile field for the critics and the cynics?

CONCLUSION

In this past year, it has become quite apparent that the present legislation itself had to be more comprehensive. In turn, this prompted two purposes for this year's Annual Report, the first being a generation of insight into legislative ethics, both in the legislatures and in those institutions that support the foundation of Canadian politics and most importantly Canadian society. In particular, we concentrate on those journalists who should struggle to obtain a consistent and informative understanding of legislative life and the ethical dilemmas it poses. This way, the public will have a thorough understanding of politics with the help of the media industry, rather than the usual non educating amplifications of scandal and sensationalism to which the public is subjected.

The second purpose of this report is to focus on ministerial protocol and whether the Ministers are following through with all responsibilities expected of them as members of the Executive Council. In previous reports we have discussed this issue extensively and it would be frivolous of me to overlook the lack of good judgment and overall responsibility of some Ministers. My own observations, comments and constructive criticisms have convinced me that there exist demonstrated inconsistencies in which certain government policies and procedures are carried out by various Ministries. The resolution of this problem requires that the Executive Council Members demonstrate a commonality of

purpose and direction within their respective Ministries.

It seems only natural for ministerial protocol and legislative ethics to go hand in hand and the high expectations of this collaboration must be achieved, otherwise the definite lack of understanding of the political process will continue. However, I believe that by identifying these flaws, we will aid the uninformed and created a more productive democratic society.

FINANCIAL INFORMATION

1994/95 BUDGET

	<u>Annual Budget</u>	<u>Expended</u>
Salaries, Wages and Benefits	\$ 83,000.00	\$ 80,504.87
Transportation and Communication	7,000.00	3,070.60
Services	190,000.00	120,322.05
Supplies and Equipment	<u>16,000.00</u>	<u>16,905.09</u>
	<u>\$296,000.00</u>	<u>\$220,802.61</u>

1995/96 BUDGET

Salaries, Wages and Benefits	\$ 97,600.00
Transportation and Communication	7,000.00
Services	170,000.00
Supplies and Equipment	<u>16,000.00</u>
	<u>\$290,600.00</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.