

ANNUAL REPORT



Legislative Assembly of Ontario

OFFICE OF THE INTEGRITY COMMISSIONER

1995-1996

Office of the
Integrity Commissioner



Bureau du
commissaire à l'intégrité

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

L'honorable Gregory T. Evans
C.R., LL.D., Ch.O.S.G.
Commissaire

June 19, 1996

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

Dear Mr. Speaker:

It is an honour and a pleasure to present the Annual Report of the Office of the Integrity Commissioner for the period April 1, 1995 to March 31, 1996.

This Report is submitted pursuant to section 24 of the *Members' Integrity Act*, 1994.

Yours very truly,

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The Honourable Gregory T. Evans

COMMISSIONER'S REMARKS

The 7th Annual Report of the Commission for the period April 1, 1995 to March 31, 1996 covers a year of considerable change for this office and the cooperation of the members of the Ontario Legislature and their staff during this transition is much appreciated.

My Executive Assistant, Ms. Lynn Harris, responsible for the efficient operation of our office, is always willing to assist the members and their political and constituency staffs. Within the constraints of a limited budget and a small staff she continues to discharge her ever increasing responsibilities with competence and discretion. I am satisfied that a small office must be maintained to achieve the high degree of confidentiality that members are entitled to expect.

Ms. Heather MacDonald, in her second year of employment as an administrative assistant has assumed much of the office work load and has contributed greatly to the efficiency of our office.

A new government was elected on June 6, 1995 and the *Members' Integrity Act, 1994*, was proclaimed on October 6, 1995, replacing the *Members' Conflict of Interest Act, 1988*. The new Act increased the jurisdiction of the Commissioner and provided a discretion which permits me to grant exemptions in individual cases, from restrictions which in many cases would preclude some members from accepting appointment to the Executive Council. The exemptions conform with the first principle stated in the Preamble to the legislation as follows:

The Assembly as a whole can represent the people of Ontario most effectively if its members have experience and knowledge in relation to many aspects of life in Ontario and if they can continue to be active in their own communities, whether in business, in the practice of a profession or otherwise.

The change of name to *Members' Integrity Act* was motivated by a desire to accentuate the positive and replace "conflict of interest", which had acquired a negative connotation. A further reason was to better express the purpose of the Act. Conflict of interest is generally viewed as a concern for a member's honesty, when private interests of a member and their official duties are in conflict. While honesty is a virtue which should be practised in public life, it is not the same as the virtue of integrity. The latter is much more comprehensive and includes honesty, together with worthiness, respect and an expectation that a promise made will be kept, absent some factor or circumstance beyond the control of the promiser. In political life, as in everyday life, integrity and self interest frequently coincide and no problem arises in making a decision or in taking some action. But, when they intersect and are in conflict their paths diverge and that is when our personal integrity is really tested.

What is integrity? It may be considered a state of mind based on a person's intrinsic values which have been inculcated from a long process of family nurturing, education, life experience and learning from the example set by others. Whether different societies have different levels of integrity may be a debatable issue, but what is certain in any society is that when wrongdoing is consistently overlooked or even condoned by persons in authority or when the institutions set up to enforce accountability remain non-functional, then the whole fabric of integrity begins to unravel and the culture of "anything goes" gains wider acceptance.

As an example, Britain has become increasingly concerned with the conduct of Members of Parliament and in 1994, established "The Committee of Standards in Public Life", under the chairmanship of Lord Nolan. The members were appointed for a 3 year term and the Report states in part:

The findings of the Nolan Committee in relation to the outside interests of MPs clearly reflected public concerns about their conduct. It believed that the activities of MPs, particularly in the fields of lobbying, advocacy and consultancy, had undermined respect for the House of Commons, its authority and the ability of MPs to discharge their functions, as they should, free from conflicts of interest, according to their own judgement and in the interests of their constituents and the general public.

The root of the problem according to the Committee was that MPs were not aware what standards of conduct were expected of them. The Report recommended a new Code of Conduct for members and promised to review the matter in a year in the expectation that the House of Commons would take the action necessary to implement the "Seven Principles of Public Life", which it described as selflessness, integrity, objectivity, accountability, openness, honesty, and leadership.

In Ontario, the new Act refers to Ontario parliamentary conventions. These are recognized customs and procedures which have developed over the years in the Ontario Legislature and have been adopted by it as precedents. Examples include the prohibition by members of the Executive Council from appearing as advocates or supporters before any provincial agency, board or commission, which falls within that particular Minister's jurisdiction. The purpose of the restriction was to permit the members of the agencies, boards and commissions to carry out their responsibilities without influence by members of the Executive Council upon their decisions. However, the members of the Executive Council are not excluded from inquiring whether a particular agency, board or commission has followed established policies and procedures or ascertaining the present status of a matter before that tribunal. In addition, all members and their staffs are prohibited from communicating with members of the judiciary with respect to matters before the courts and from contacting court and police officials relative to matters involving the discharge of their official duties. The issue of parliamentary convention has been discussed further under Inquiry No. 23 which follows under Inquiries and in the Cunningham Report summarized under Referred Questions.

A widespread and deep seated feeling of cynicism and betrayal has created a climate of public opinion which is rapidly, if unfairly, destroying the trust which the electorate should have in their representatives. The public has become so confused and bewildered by allegations of political partisanship and the media repetition of unsubstantiated rumors of corruption in government that I do not believe the public will be satisfied with a politician sitting in judgment of another politician's activities or behavior. Good government and good ethics are inseparably intertwined with the latter being the foundation which supports the former.

There is a new wave of ethical awareness sweeping across our nation involving, among other institutions, our political institutions. The public demands higher ethical standards in elected representatives. It no longer accepts the level of corruption which existed in government in the early part of this century. The increased interest in present-day society about conflict of interest and

ethics has been stimulated by the realization that those in public service are faced with more opportunities to benefit personally. Government's increased involvement in business is an open door to dishonesty in those lacking in character and motivation. People are as disenchanted with the traditional opposition parties, as with government, because the former, instead of contributing to the improvement of government have frequently adopted a position of protest as their primary vocation.

The waste and inefficiency of government create public anger, distrust, and cynicism while every new exposé of corruption and maladministration withdraws another portion of the diminishing reservoir of respect accorded our elected representatives whether in the municipal, provincial or federal field. Daily newspaper stories bear testimony to the erosion of public standards of morality and ethics, which are reflections of the private morality of the community. Laws cannot create integrity in any group or society. It will not exist in government unless our political leaders demonstrate their commitment to maintain it. Adopting such a course of action will enhance the reputation of the politicians and add prestige to the institution of government in which they serve.

There exists in our society today an intense feeling of insecurity; a sense of lost direction and an attitude that destroys ambition and fosters the development of characteristics and behavioral patterns which are inimical to our normal way of life. Canada is a wonderful country and the only people who fail to appreciate the richness of its natural resources and its many cultural advantages are those fortunate enough to live within our borders. The vital force which animated our forefathers to carve a nation out of a wilderness seems to have lost its drive and become dormant. Something has happened to youthful enthusiasm to seek new opportunities; to challenge a declining work ethic and to fully utilize the superior education and skill training which they possess. Governments should not be expected to provide support for all contingencies in life, however, citizens are entitled to receive from those whom they elect to office honest and efficient government coupled with strong leadership which will channel our natural and human resources in a direction which will benefit our country. Anyone can become a politician but the mantle of statesmanship is reserved for that rare individual who combines intelligence, integrity, and vision with a sense of purpose and commitment to do that which is necessary to enable our province and our country to grow and prosper. The position is always open to the proper candidate.



OVERVIEW

A. *Disclosure Statements*

At the time of the last election in June, 1995, the Members were subject to the *Members' Conflict of Interest Act, 1988* and Private Disclosure Statements were completed in accordance with that Act. On October 6th, the *Members' Integrity Act, 1994* was proclaimed and pursuant to s.20, Public Disclosure Statements were prepared. On February 26, 1996, 130 Public Disclosure Statements were filed with the Clerk of the Legislative Assembly in accordance with s.21(6) of the *Members' Integrity Act, 1994* and all members are in compliance.

B. *Continuing Education*

My experience indicates that an annual continuing educational program should be carried out to keep members and their staffs informed on the contents of the Act and the interpretation which has been placed on the various sections. As part of the dialogue, input should be received from members and staffs with respect to present problems and suggested improvements to the legislation. This office is available on reasonable notice to meet with any group. In the past, the party in power has taken advantage of our offer, however, it is seldom taken up by opposition parties. I need not point out that today's opposition member may be a member of the Executive Council after the next election.

George Thomson, formerly a deputy minister in Ontario and presently a deputy minister in the Federal Department of Justice, in referring to ethics in government in an essay Personal Morality in a Professional Context states, "... a first principle of professional morality is that being accountable to others does not make you any less accountable to yourself. The vitality of government is partly dependent on how well we understand and respect this principle of personal ethics." In any educational activity prepared for members and their staffs, Mr. Thomson's advice is worthy of continuous repetition in discussing ethical dilemmas, which may arise between politicians and public servants in the daily business of government.

C. *Prospective Candidates*

The Commission is also anxious to meet with prospective candidates prior to an election in order to acquaint them with the *Members' Integrity Act* and how it will impact on them in the event that they are elected. Party Leaders are aware of our interest in pre-election education of candidates. In the past, a few candidates attended this office seeking advice, but in general, the newly elected member's first exposure to the Act is when interviews for private disclosure take place. A few express considerable surprise that the public has a right to have even limited knowledge of their personal lives. No responsible person would seek employment without making inquiries as to the terms and conditions of employment. Why should it be otherwise when a candidate seeks election to the Legislature? If the prospective candidate decides that election to public office will place too many restrictions on his/her private life, then withdrawal should be considered. In fact, the conditions are not onerous for most people, but before seeking a nomination everyone should be aware of the restrictions and obligations which accompany success at the polling booth.

D. Mandatory Legislative Review

Legislation of this nature is relatively recent and in the day to day implementation of the Act, deficiencies will surface which require remedial action. In order that the Act remain relevant and consistent with present day conditions and public attitudes it should be reviewed every five years. While such a proposal for a statutory provision would make certain that a mandatory review is provided, it does not prevent revisions and amendments whenever deemed necessary.

E. Proceedings in the Legislative Assembly

I have previously remarked on the unseemly conduct too often displayed in legislative debates. Most probably, it is no worse than in years past, perhaps it is better--however the entrance of television cameras into the Legislature has provided a wider audience and a live presentation as opposed to a newspaper item the day following the event.

Most members of the electorate never appear personally in the public galleries of the Legislative Assembly and their knowledge of the manner in which proceedings in the Assembly are conducted is obtained through television. In some areas teachers used the program in conjunction with political science education. Without disputing the overall merit of the program, that portion dealing with question period, too frequently, gives a distorted view of the democratic process. Members of the public and some members of the Assembly, are unhappy with the lack of civility and courtesy displayed when a member asks a question which deserves an informative reply and the response is drowned out by irrelevant and abusive comments.

The role and prestige of the Office of the Speaker is demeaned and degraded when his efforts to curtail unruly conduct is disregarded. If educated adults, occupying the prestigious position of a member of the Legislature, are not amenable to the rules of the Legislature, what chance does a teacher have of requiring students to conform with an acceptable standard of conduct in the classroom? I appreciate that Question Period occupies a very small period of a member's daily work schedule and that it is unfair to attribute to the majority the misconduct of a few, however, what the individual sees on television may form the basis for his/her opinion. It is frequently stated that in politics perception is more important than reality when a member's competence and integrity are being assessed by the electorate.

F. Senior Staff and Order-in-Council Appointments

A common complaint of members who are not members of the Executive Council, is that they are required to file disclosure statements while deputy ministers, senior staff and Order-in-Council appointments are not required to do the same. The argument is that these bureaucrats assist in formulating policies in their ministries and are frequently the discretionary decision makers in the awarding of government contracts but the public has no opportunity to review the nature of their assets and liabilities. The same submission is made with respect to the chairpersons and senior officers of the many government agencies, boards and commissions. The members' argument that restrictions have been placed on them which are not made applicable to others in government is not without merit and may well be a matter for government consideration.

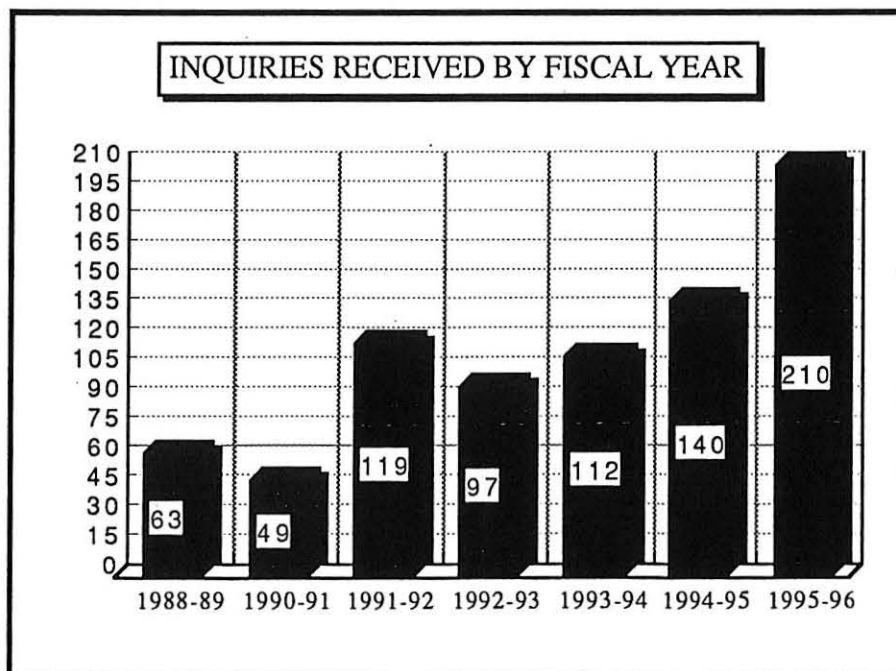


INQUIRIES

A. Statistics

INQUIRIES RECEIVED APRIL 1, 1995 TO MARCH 31, 1996				
Received From	Number Received	Conflict	No Conflict	Outstanding
Member	196	60	134	2
Spouse	2	0	2	0
Trustee	8	7	1	0
Caucus	2	0	2	0
Cabinet	0	0	0	0
Committee	0	0	0	0
Former Minister	2	1	1	0
TOTAL	210	68	140	2

Inquiries received under s.14 of the *Members' Conflict of Interest Act, 1988* and subsequently s.30 of the *Members' Integrity Act, 1994* have increased once again in the 1995/96 fiscal year. The 50% increase this year is due, in part, to the election of 73 new members who bring with them constituency and Queen's Park staffs, many of whom are unfamiliar with the legislation. In addition, some new members who come from the business community required the establishment of management trusts while others required clarification of their public and professional responsibilities. Below is a graphic illustration of the steady increase over the past few years, and we welcome the opportunity to be of assistance to the members and their staffs.



What follows is a summary of selected anonymized inquiries which were received in the past year. Although the new legislation is based on the same principles as those contained in the *Members' Conflict of Interest Act, 1988*, the following inquiries have been summarized in accordance with the Act under which the opinion was given. These examples are not exhaustive and they do not represent every type of issue which may arise in a member's day-to-day activities. In addition, some more complicated inquiries are not reported in order to maintain anonymity.

B. Members' Conflict of Interest Act, 1988

INQUIRY NO. 1

Issue:

A constituent involved in a custody dispute has written a letter to the member complaining about the Canadian legal system and requesting the member's comments in this regard.

Opinion:

In view of the fact that the constituent has retained counsel, it would be inappropriate for the member to comment on the constituent's assessment of disputed facts or on the applicable law. The advice of counsel should be obtained.

INQUIRY NO. 2

Issue:

A member inquired as to the appropriateness of assisting a constituent with his attempts to have a previous criminal record deleted and to have the matter expedited.

Opinion:

As the application for a Pardon is a matter which falls under the Federal jurisdiction, the member may write a letter on behalf of the constituent. This is considered an activity which falls under s.5 of the Act.

INQUIRY NO. 3

Issue:

A member's spouse was interested in purchasing shares of a company which had received capital funding from the provincial government. There was also an agreement with the provincial government with respect to tax incentives.

Opinion:

The shares of this company are available to the general public and the purchase of shares by the member's spouse does not violate the Act.

INQUIRY NO. 4

Issue:

A member has been asked to write a letter of recommendation on behalf of a constituent personally known to the member, who is applying for a position as a Justice of the Peace.

Opinion:

The member may write a letter of recommendation, however, the letter should be written on personal letterhead.

INQUIRY NO. 5

Issue:

A constituent charged by the police has a number of complaints with respect to the incident and is requesting the member meet with the arresting officers.

Opinion:

The member may wish to refer the constituent to the Police Complaints Commissioner. Once charges have been laid, a meeting with the police officers may be seen as an attempt to interfere with the criminal process.

INQUIRY NO. 6

Issue:

Can a constituency assistant advocate on behalf of a constituent, an adult student, who is a relative living independently, to obtain social assistance?

Opinion:

As long as the member is not a Minister or Parliamentary Assistant in the Ministry having jurisdiction over social assistance, the constituency assistant may represent the relative without placing the member in violation of the Act.

INQUIRY NO. 7

Issue:

Can a Member of Provincial Parliament or a political party appeal an adoption ruling by a Family Court Judge, to which the MPP is not a party?

Opinion:

An adoption proceeding is a civil matter and the Commissioner was not aware of any procedure which would entitle an MPP, or a political party, to obtain status except by Court Order. However, if status were acquired, no conflict of interest would result.

INQUIRY NO. 8

Issue:

A constituency assistant was approached to assist a constituent with a matter which fell under the member/Minister's jurisdiction.

The constituency assistant advised that they were unable to assist because the matter fell under the member/Minister's jurisdiction and legal proceedings had been commenced against the constituent. By letter, the constituent denied any legal action and demanded an apology. By the time the letter had been received by the constituency office, the assistant had taken a leave of absence.

Opinion:

Whether an apology is owing to the constituent is a matter which the constituency office must determine once all facts are known. If it is determined that no apology is necessary, the original letter should stand. Should it be determined that an apology is necessary, a letter may be written, however, it must be written by someone from the constituency office other than the assistant who is on a leave of absence. If the assistant who is on leave wishes to write a letter of apology, it must be done on his own letterhead and not that of the constituency office, while he is on leave.

INQUIRY NO. 9

Issue:

A member inquired as to the appropriateness of writing non-partisan letters of thanks to the

constituents who supported him in the recent election on stationery from the Queen's Park office.

Opinion:

Although the letters may not be partisan in nature, it is inappropriate to use Legislative Assembly letterhead and other government resources. The letters are as a result of an election campaign and activities related to the campaign must be kept separate from the Queen's Park and constituency offices.

INQUIRY NO. 10

Issue:

A Canada Customs officials at the local United States crossing requested from a member a copy of the electoral list for that jurisdiction, compiled by Elections Ontario, for purposes of law enforcement.

Opinion:

Section 84 of the *Election Act* provides for the return to the Chief Election Officer of all envelopes, and "...all documents, papers, and materials [...] relating to the conduct of the election but excluding those related to enumeration which shall be destroyed." The Commissioner advised that the release of the electoral list would be inappropriate.

INQUIRY NO. 11

Issue:

A former Minister and now member, inquired as to whether it would be appropriate to accept a position with a local community board.

Opinion:

As a former member of the Executive Council, Section 18 of the Act places certain restrictions on the former Minister's activities with the provincial government for a period of 12 months. The member may become a board member, however, he may not make representations to the provincial government for funding for the board unless the "conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled."

INQUIRY NO. 12

Issue:

A Minister received a silver pass to Ontario Place and inquired as to its appropriateness.

Opinion:

All members of the Legislative Assembly received similar passes. The rights and privileges of members include access to a variety of institutions funded by the provincial government. As a result, the pass is considered a marketing tool as opposed to lobbying, and may be retained by the Minister.

If the value of the benefit received exceeds \$200, a Gift Form must be filed with the Commissioner.

INQUIRY NO. 13

Issue:

A Parliamentary Assistant was invited by a corporate constituent to fly to a facility in the United States to observe their operations. Although the company does not do business directly with the Province of Ontario, their product is sold to the Province through wholesalers and retailers. Can the member accept the invitation?

Opinion:

Although the operation may fall within the responsibilities of the Parliamentary Assistant, it would be inappropriate to accept the complimentary plane trip. There are a number of Ontario companies that have an interest in this particular issue and as Parliamentary Assistant, it is important that benefits are not accepted that other interested parties do not or are not willing to provide. To ensure fair and equitable treatment of all parties, if the Ministry approves the attendance in the United States, all expenses should be paid by the Ministry.

INQUIRY NO. 14

Issue:

A member was invited by a corporate constituent to a Skybox to observe the Toronto Blue Jays. The guest list included local business people and a number of provincial and municipal politicians for the purposes of a discussion on local and provincial issues in a social setting.

Opinion:

Discussion of public issues with electors and fellow politicians is a duty which flows from one's election to office, however, these duties are more appropriately performed at one's legislative or constituency office. The acceptance of a box seat ticket is a personal benefit that is contrary to s.6 of the Act, as it is not connected directly or indirectly with the performance of one's duties of office and is not considered a social obligation that normally accompanies the responsibility of office.

INQUIRY NO. 15

Issue:

A constituent construction company and the Mayor were demanding a meeting with the local member but were not prepared to provide a detailed agenda other than to discuss real estate development matters. As development issues can be controversial, the member/Parliamentary Assistant was concerned as to the appropriateness of the meeting without more information being provided prior to the meeting.

Opinion:

Particular care should be exercised when agreeing to meet business people who do not demonstrate some degree of professionalism. Members have a very busy schedule and there are many sensitive areas in which constituents may request a member's involvement. Requesting further details and an itemized agenda allows a member to become better informed on the matter to be discussed and to determine whether it falls within the member's jurisdiction and to avoid a possible conflict of interest.

INQUIRY NO. 16

Issue:

A member assisted a constituent file objections with the Liquor Licence Board of Ontario and has been named as a respondent in the appeal of the decision by the Liquor Licence Board of Ontario. The matter is now before the Divisional Court on appeal and the member inquired as to whether it would be a conflict of interest to take an active interest in the appeal hearing.

Opinion:

It is assumed the respondents are represented by independent counsel or counsel for the LLBO. In either case, as the member is a party to the appeal hearing, she is entitled to participate in the appeal. In the Divisional Court, lawyers usually appear, but a party can argue personally.

INQUIRY NO. 17

Issue:

Pursuant to provisions of the Canadian National Exhibition Association Act, a number of Ministers were appointed by Order-In-Council to sit as members of the Canadian National Exhibition Association. Subsequently, a pass for a car and two persons was received by each Minister appointed.

Opinion:

The Ministers were appointed by the Executive Council to represent their Ministries and to discharge certain duties. Acceptance of the complimentary pass is not a violation of the Act as the Minister will require access as part of those duties.

INQUIRY NO. 18

Issue:

A Minister received a VIP pass admitting a car and two persons to the Canadian National Exhibition.

Opinion:

The Minister was not one of the Ministers appointed by the Executive Council referred to in Inquiry No. 17 above. The pass should, therefore, be returned as it is a benefit which is not connected directly or indirectly with the performance of his duties of office, and is contrary to s.6 of the Act.

INQUIRY NO. 19

Issue:

A member received a floral arrangement, however, the staff were only able to ascertain the name of the advertising firm which sent it.

Opinion:

In the absence of some explanation as to the reason for the gift, it must be considered as inappropriate and in violation of section 6 of the Act. However, the arrival of a floral arrangement at the office without any advance notice may be difficult to refuse. If convenient, the gift should be refused on delivery or returned to the sender. In this situation, since the address has been ascertained, it would be appropriate to acknowledge the gift and to advise the sender that acceptance of gifts is contrary to the Act.

INQUIRY NO. 20

Issue:

A developer, a Mayor and a ratepayer requested a meeting with the member/Minister with respect to a proposed amendment of the Official Plan which was going before the Ontario Municipal Board for a hearing. The constituents also wanted the member to intercede with the two ministries involved to obtain approval without the delay and expense of an OMB hearing.

Opinion:

Further inquiries revealed this matter had been on-going for approximately six years and the reasons for the positions adopted by the ministries had been made known to the public. There is no reason why the member cannot meet with these individuals once he has fully apprised himself of the issue. However, the proposal that the member/Minister use his influence as a member of the Executive Council to influence a decision made by staff of the two other ministries, in an attempt to avoid a public hearing, would be a violation of s.4 of the Act.

If the member/Minister attempts to communicate with the ministry staff, this may be seen as an

attempt to interfere. The member may communicate to the two Ministers involved, the concerns of the parties with whom he met.

INQUIRY NO. 21

Issue:

Can a member act as a Commissioner for taking affidavits and as a Notary Public?

Opinion:

Section 1 of the *Commissioners for Taking Affidavits Act* specifically provides that by virtue of the office of a member of the Legislative Assembly, the member is a commissioner for taking affidavits.

A member may become a Notary Public upon application and if the member fulfills the criteria provided for in the *Notaries Act*.

INQUIRY NO. 22

Issue:

A special assistant to a member/Parliamentary Assistant holds a number of positions with community organizations and requested clarification if these positions place him in a conflict of interest. These organizations do not receive funding from the Ministry to which the Parliamentary Assistant is attached.

Opinion:

The legislation covers the responsibilities of the elected members of the Legislature, and not staff members, however, some outside activities of staff members may affect the member. The Special Assistant does not place the member in a conflict under the Act if the following conditions are respected:

- (1) The member is fully aware of the Special Assistant's involvement with these organizations and approves.
- (2) The business of these activities does not interfere with the Special Assistant's work either in the constituency office or at Queen's Park.
- (3) The business of these activities is not conducted in the constituency office or Queen's Park office at any time.
- (4) The Special Assistant should refrain from participating in any representation on behalf of the organizations to the Government of Ontario and should withdraw from discussions pertaining to any financial assistance which the government might provide.

INQUIRY NO. 23

Issue:

Is it a conflict of interest for a member or their staff to attend a Worker's Compensation Board of Ontario hearing as an advocate?

What is the responsibility of an MPP towards a constituent who has chosen to be represented by a private consultant?

Can a member's office make inquiries to the hearings branch of the Ministry of Labour regarding the investigation of a constituent?

Opinion:

It is not a conflict of interest for a member or their staff to attend a Worker's Compensation Board of Ontario hearing on behalf of a constituent unless the member is the Minister or the Parliamentary Assistant to the Minister of Labour.

However, parliamentary convention prohibits all Ministers from personally appearing or advocating on behalf of a private party with any agency, board or commission. In addition, parliamentary convention prohibits Parliamentary Assistants, Ministerial staff and Parliamentary Assistant staff from appearing or advocating on behalf of a private party with any agency, board or commission which falls under the jurisdiction of the Minister's or Parliamentary Assistant's portfolio. Ministers always wear the cloak of ministerial responsibility. There is no way that their actions, or those of their staff, whether verbal or written, and whether in the member's position as an elected member of the Legislature or as a Minister or Parliamentary Assistant, can be considered by the recipient as other than actions by a Minister or Parliamentary Assistant, and thus could reasonably be considered as attempting to influence a decision.

If a constituent is represented by a private consultant, the member should not become involved in the matter. Otherwise any action taken by the member may be seen as an attempt to interfere with the process.

Any member, including a Minister or Parliamentary Assistant, or staff person, is entitled to make inquiries of any government agency, board, commission or department for information with respect to the status of a matter, and the policies and procedures of that agency, board or commission.

The member should obtain as much information and documentation as possible from the constituent and then make inquiries as to the status of the matter, the policies and procedures. This does not place the member in a conflict under the Act.

INQUIRY NO. 24

Issue:

As a lawyer, may a backbencher sue a non-profit corporation funded by the government?

Opinion:

Ministers are not permitted under the Act to carry on the practice of law, however, Parliamentary Assistants and backbenchers are not subject to this restriction. As this member is a backbencher he may, in his capacity as a legal practitioner, sue a non-profit corporation funded by the government.

INQUIRY NO. 25

Issue:

A member inquired as to the appropriateness of being employed by a development company to direct development applications through the municipal, regional and local council levels of government with a possibility of appearing at council committee meetings, public council hearings and meeting with bureaucrats and local politicians. The member has undertaken not to appear or consult on any application which may be before any provincial board, agency, or commission.

Opinion:

The preamble of the *Members' Integrity Act, 1994* provides:

Members are expected to perform their duties of office and arrange their private affairs in a manner that promotes public confidence in the integrity of each member, maintains the Assembly's dignity and justifies the respect in which society holds the Assembly and its members.

As the proclamation of the new Act was imminent, this section was brought to the member's attention. Although the preamble is not an operative part of the Act, it is a declaration by the Legislature of the reasons for passage of the statute and is helpful in the interpretation of any ambiguities in the legislation.

Involvement in land development has been a graveyard for many politicians. The area to which the member's proposed consulting work is to be restricted would not appear to be contrary to the Act, however, it is not possible to speculate on the many hypothetical situations which may arise and to provide an opinion to cover all situations. It is recommended the member request the Commissioner's opinion if there are any specific situations which are of concern.

INQUIRY NO. 26

Issue:

A member/Minister printed constituency letterhead and business cards referring to the member as "The Honourable..." In addition, the sign outside the constituency office stated "Honourable".

Opinion:

The sign, letterhead and business cards are inappropriate. The business a member conducts in a constituency office should not in any way be mixed with the business conducted as a Minister, Parliamentary Assistant, or as a member of a government committee.

INQUIRY NO. 27

Issue:

A member has been asked to place an advertisement in a pamphlet being produced for a hockey game organized by a local community fundraising organization. Although best wishes notices and greetings have been placed in local brochures and newspapers for various charitable and non-profit events in the past, the member has concerns with the high cost of the advertising and the receipt of hockey tickets for the ad. A request was made to withhold the hockey tickets and reduce the ad cost. In response, the organization suggested that the 'free' tickets be passed on to a volunteer or children's organization, "as other MPPs do".

Opinion:

The member is not obligated to place an ad in the pamphlet, however, if he wishes to proceed, s.6 of the Act, precludes the acceptance of the hockey tickets as a result of placing an ad paid for by the Legislative Assembly. The tickets are not received as an incident of protocol, custom or social obligation that normally accompanies the responsibility of the member's office. Passing the tickets on to any individual or organization does not avoid violation of the Act.

C. Members' Integrity Act, 1994

INQUIRY NO. 28

Issue:

A member was considering organizing a 'community event' at the Queen's Park office or the constituency office, and the use of goods such as food products and non alcoholic beverages, obtained through donations or solicitations, came into question.

Opinion:

Assorted food products or non alcohol beverages donated on a voluntary basis from local businesses for a community event such as the opening of the constituency office, are considered gifts or benefits received as an incident of social obligation, and are acceptable under s.6(2) of the

Act, however the solicitation of donated goods is improper as the member is exercising influence upon the proposed donor.

INQUIRY NO. 29

Issue:

A Minister inquired as to the appropriateness of writing a letter of support on behalf of an applicant for the Order of Ontario.

Opinion:

As all recipients of the Order of Ontario must be approved by Cabinet, it is inappropriate for a Minister to write a letter of support either as a Minister or an MPP.

INQUIRY NO. 30

Issue:

In light of the decision by the Law Society of Upper Canada to sue the Government of Ontario over the issue of legal aid funding, what is the position to be adopted by government members who are members of the Ontario Bar?

Opinion:

Sections 2, 3 and 4 of the Act state:

2. *A member of the Assembly shall not make a decision or participate in making a decision in the execution of his or her office if the member knows or reasonably should know that in the making of the decision there is an opportunity to further the member's private interest or improperly to further another person's private interest.*

3(1) *A member of the Assembly shall not use information that is obtained in his or her capacity as a member and that is not available to the general public to further or seek to further the member's private interest or improperly to further or seek to further another person's private interest.*

(2) *A member shall not communicate information described in subsection (1) to another person if the member knows or reasonably should know that the information may be used for a purpose described in that subsection.*

4. *A member of the Assembly shall not use his or her office to seek to influence a decision made or to be made by another person so as to further the member's private interest or improperly to further another person's private interest.*

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

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

(a) that is of general application;

(b) that affects a member of the Assembly as one of a broad class of persons, or...

All members of the Legislative Assembly who are members of the Bar of Ontario are entitled to participate in a debate and vote with respect to the issue of legal aid funding, as each of these members is one of a broad class of persons or members of the Bar of Ontario. However, as the issue may go before the courts, the members may wish to consult with their caucuses as to party policy.

INQUIRY NO. 31

Issue:

A Parliamentary Assistant's spouse is employed by a private company which may render services to the Government of Ontario.

Opinion:

Section 7 of the Act provides that

(1) No member of the Assembly shall knowingly be a party to a contract with the Government of Ontario under which the member receives a benefit.

This section does not apply to the member's spouse. The private company is entitled to provide services to the Government of Ontario, however, in order to avoid a conflict of interest situation arising, the spouse should avoid personally performing any services for any agency, board, commission or department which falls under the Parliamentary Assistant's ministry.

INQUIRY NO. 32

Issue:

A lounge card was offered to a Minister by a major Canadian airline with the indication that cards were being offered to all Cabinet Ministers. The Minister inquired as to whether this would place the Minister or staff in a position of conflict.

Opinion:

Receiving the lounge card is not an incident of protocol, custom or social obligation normally accompanying the responsibilities of the Minister's office and acceptance of same would be a violation of s.6 of the Act.

INQUIRY NO. 33

Issue:

After a speaking engagement, a Parliamentary Assistant inquired as to whether it would be appropriate to suggest a small donation to a charity instead of accepting a token gift from the host organization.

Opinion:

Such a suggestion may be made, however, the member/Parliamentary Assistant cannot use the tax receipt which would issue. It may be more appropriate if the donation was made in the name of the host organization.

INQUIRY NO. 34

Issue:

A number of constituents requested that a member look into an investigation conducted by the College of Veterinarians.

Opinion:

The parties involved in the hearing before the College of Veterinarians are represented by counsel and the College's process is being followed. To look into the investigation or to take any further action would be inappropriate as it may be seen as an attempt to interfere with the process.

INQUIRY NO. 35

Issue:

A backbencher/member has been offered an employment contract as a consultant with a private

company.

Opinion:

Subject to the provisions of s.7 of the Act, the member may accept the offer of employment on the following conditions:

- (1) The member does not benefit either directly or indirectly as a result of a contract with the Government of Ontario.
- (2) The company should provide to the member a letter stating that the member will not be engaged in any business activity involving the Government of Ontario and a copy of the letter should be forwarded to the Commissioner.

INQUIRY NO. 36

Issue:

A constituent had been informed by the Registrar of the Department of Motor Vehicle Dealers that he was responsible for obtaining his own criminal record, however, on further inquiries, the member's constituency staff were advised that the usual procedure was that the Registrar performs the standard criminal search. However, it was also revealed that the constituent was wanted by the police for a parole violation and by asking the constituent to get his own police record, the Registrar would no longer be responsible for contacting the police regarding the whereabouts of this individual. This information was relayed to the constituent by the member's office.

The member feels he must uphold the laws of Ontario, not only as a private citizen but also as a member of the Legislature. However, he must also keep confidential information provided by constituents who look to him for assistance. Do these responsibilities conflict?

Opinion:

The Ministry obviously has the information necessary to deal with the constituent's problem and feels no obligation to report the constituent's whereabouts to the police. It was the Commissioner's opinion that an M.P.P. has no higher obligation than any other citizen to report the address of the constituent to the police.

If the member were required to testify in court, then the information would have to be disclosed, but the member would not be subject to prosecution for failure to do so prior to that time.

INQUIRY NO. 37

Issue:

Is a Minister fulfilling his responsibilities as an MPP if he arranges to have another MPP file all petitions, either in support of the government or criticizing the government?

Opinion:

Under Standing Order 36, there is a general practice that Ministers should have the Whip present petitions. When the House is sitting, petitions can be filed with the Clerk or read aloud in the House, however, the act of filing requires a signature from the member.

The Standing Order also states a petition must contain a clear, proper and respectful request that the Parliament of Ontario take some action in regard to a matter which is within the authority of the Parliament of Ontario.

It was the Commissioner's opinion that a member/Minister requesting another member to present a Petition does not violate the Act. The goal of the petitioners is that it be presented to the Legislature and if the Minister arranges to have it presented by another member, the Minister has fulfilled his responsibilities.

INQUIRY NO. 38

Issue:

Legal Aid has granted a constituent a certificate for a maximum of eight hours legal work. The constituent has asked the member to contact the Director of Legal Aid and request an increase.

Opinion:

Legal Aid has made a decision as to what it believes to be the appropriate allocation of funds for the case. However, there is an appeal process and it is important that the member be satisfied that appeal process is being followed. If, in fact the next step in the process is an appeal to the Director of Legal Aid, the member may write on behalf of the constituent requesting a reconsideration. This is an activity which falls under s.5 of the Act.

INQUIRY NO. 39

Issue:

A former minister, a voting member of a non-profit housing corporation, inquired as to the appropriateness of:

- (1) Signing a letter to the Provincial Government as a Board Member requesting funding or requesting that funding not be cut.
- (2) Requesting a meeting with the Minister on behalf of the Board to discuss funding issues.

Opinion:

Section 18 of the Act states:

(1) A former member of the Executive Council shall not knowingly, during the 12 months after the date he or she ceased to hold office,

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

(b) make representations to the Government of Ontario on his or her own behalf or on another person's behalf with respect to such a contract or benefit;

Based on the above section, until such time as 12 months have passed since the member ceased to be a Minister, the former minister should not sign any letters or request any meetings with Ministers with respect to government funding. To do otherwise may be a violation of the Act.

INQUIRY NO. 40

Issue:

A former minister wished to apply for a position with an organization which receives all its monies through fundraising efforts. save approximately 2% of the budget which is received from the provincial government, specifically the Ministry which was under the former minister's jurisdiction.

Opinion:

Section 18 of the Act states:

(1) A former member of the Executive Council shall not knowingly, during the 12 months after the date he or she ceased to hold office,

... (c) accept a contract or benefit from any person who received a contract or benefit from a ministry of which the former member was the minister.

... (3) Subsection (1) does not apply if the conditions on which the contract or benefit

is awarded, approved or granted are the same for all persons similarly entitled.

The Ministry confirmed there was funding to this organization, however, it is one of a number of organizations which are entitled to funding if the necessary criteria are met.

Although s.18 prohibits the former minister from accepting the position, the Commissioner was of the opinion that in accordance with ss.(3), the former minister is entitled to apply for the position, since the organization is one of a large group of organizations similarly entitled to funding. .

INQUIRY NO. 41

Issue:

A constituency assistant has assisted a constituent with an appeal before the Social Assistance Review Board and the constituent now wishes to take the assistant out for dinner.

Opinion:

Section 6 of the Act states:

- (1) A member of the Assembly shall not accept a fee, gift or personal benefit that is connected directly or indirectly with the performance of his or her duties of office.*
- (2) Subsection (1) does not apply to,*
 - (a) compensation authorized by law;*
 - (b) a gift or personal benefit that is received as an incident of the protocol, customs or social obligations that normally accompany their responsibilities of office.*

A constituency assistant represents the member, and as such, the above section should be used as a guideline. The offer of a dinner is considered a benefit which is not an incident of protocol, customs or social obligations that normally accompany the member's responsibilities of office and as such, it would be inappropriate for the constituency assistant to accept the invitation. The assistant is performing a service to which the public is entitled without payment.

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# REFERRED QUESTIONS

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From 1988 to 1995, the Commissioner conducted four inquiries. During the past year, five referred questions were filed with the Commissioner, two of which fell under the *Members' Conflict of Interest Act, 1988*, and three of which fell under the *Members' Integrity Act, 1994*. A summary of those referred questions follows in accordance with the Act under which they were filed. Complete texts are available from the Commissioner's office upon request.

The manner in which requests for an opinion are made by members regarding possible violations of the *Act* by other members is an ever-increasing problem. Section 30 requires that the member requesting the opinion have "reasonable and probable grounds" to believe that a violation has occurred. This presupposes that the member making the allegation has made sufficient inquiries and investigation to satisfy himself/herself that there is credible evidence to support the "reasonable and probable grounds to believe". Because of the publicity which a complaint generates, it should not be frivolous, vexatious or not made in good faith. A complaint is a serious matter, and should not be an unsubstantiated rumour intended solely to embarrass another member.

## A. *Members' Conflict of Interest Act, 1988*

1. 

|                                                                                   |
|-----------------------------------------------------------------------------------|
| Re: Mr. Tony Silipo, M.P.P. Dovercourt, Minister of Community and Social Services |
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In April, 1995, Mr. Tim Murphy, Member from St. George - St. David; requested the Commissioner review the actions of Mr. Tony Silipo, Member from Dovercourt and Minister of Community and Social Services with respect to the Canadian Calabrian Non-Profit Housing Corporation and jobsOntario Homes and jobsOntario - Community Action programs. Attached to his letter were a number of documents and a transcript of a news report alleging interference and improper use of Mr. Silipo's office.

The Commissioner determined that the complaint was not in conformity with subsection 15(1) of the *Members' Conflict of Interest Act, 1988*, and advised Mr. Murphy that he should comply with the Act if he wished to proceed.

An election was pending and Mr. Murphy advised he was unable to revise his complaint until after the election, at which time he would proceed. The election was held, Mr. Murphy was defeated, and took no further action. Accordingly, the Commissioner considered the matter closed.

2. 

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| Re: Mr. Gary Carr, M.P.P., Oakville South, Parliamentary Assistant to the Solicitor General and Mr. Chris Stockwell, M.P.P., Etobicoke West |
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In August, 1995, the jury trial of Mr. Paul Bernardo was in progress. A Crown witness, Ms. Karla Homolka, was previously convicted of manslaughter in a plea bargain agreement arising out of the same fact situation.

Mr. Bob Chiarelli, M.P.P., Ottawa West, filed with the Commission a press report in the Toronto Star in which Mr. Gary Carr and Mr. Chris Stockwell "express opinions and recommend courses

of political action dealing with issues arising out of the criminal jury trial", and requested as follows:

1. *Express an opinion whether the comments, actions, and intended actions of the Members are appropriate in the circumstances, on the grounds that a Parliamentary Assistant and a member of the Legislature cannot by parliamentary convention, interfere with the judicial process, particularly in view of an ongoing criminal jury trial.*
2. *Conduct an inquiry under Section 16.*
3. *If, because of ongoing criminal proceedings in the matter, it is deemed inappropriate to either express the opinion or hold the inquiry, to defer same to an appropriate time in the future under the Members' Conflict of Interest Act or its successor (when proclaimed), The Members' Integrity Act."*

The Commissioner responded by stating that the matter would not be considered until the Bernardo trial was concluded and the *Members' Integrity Act, 1994*, proclaimed.

Shortly after the conclusion of the Bernardo trial and sentencing, the Attorney General ordered an inquiry into the plea bargain agreement for Ms. Homolka. That report is pending. Further consideration of the question before the Commissioner will be delayed until the release of that report.

## **B *Members' Integrity Act, 1994***

3. 

|                                                                                          |
|------------------------------------------------------------------------------------------|
| Re: Ms. Dianne Cunningham, M.P.P., London North, Minister Responsible for Women's Issues |
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In November, 1995, Ms. Marilyn Churley, M.P.P., Riverdale, requested the Commissioner's opinion on whether the Member for London North, Ms. Dianne Cunningham, in her role as Minister Responsible for Women's Issues, had contravened the *Members' Integrity Act* and, more specifically, Ontario parliamentary convention.

Ms. Churley alleged that Ms. Cunningham, in making the following 'threat' abused her position and authority as a member of the Executive:

*Within the context of this government, you need to understand that groups or agencies that are seen not to be working with this government, providing an oppositional voice, [at this point she made reference to Harmony House, an Ottawa second stage housing project which has been strongly voicing opposition to the cuts], will be audited and their funding eliminated.*

When Ms. Cunningham was asked about this statement, she denied having made it. The request for a Committee of the Legislative Assembly to investigate was refused.

In his Report, the Commissioner stated:

*Parliamentary conventions are, in general, practical guidelines or directives concerned with the manner in which members discharge their legislative functions and have been accepted and approved by the Legislature as being procedures which*

*maintain public trust and confidence in the institution of Parliament. They recognize and support the accepted principles of fairness, impartiality, justice and due process upon which our democratic system is based. Probably the most fundamental convention arises when an accusation of impropriety is made by a member against another member in the Legislature and the member against whom the accusation is levied categorically denies the accusation. In such an event, the word of the member must be accepted and the accusation rejected. The issue is dead unless some parliamentary process is invoked to revive it.*

*If the accusation is raised in a forum outside the Assembly, where the question of parliamentary immunity is not involved, the matter is subject to the provisions of civil law.*

*... Parliamentary conventions usually evolve over a period of time. When certain situations continue to arise and the legislators reach a consensus as to their disposition, they are then classified as conventions and serve as precedents which may be adopted to determine future cases of a similar nature.*

The Commissioner was not aware of any precedent approved by the Legislature applicable to the circumstances in this case and pursuant to s.31(5) of the Act, found no grounds to conduct an inquiry.

4. Re: The Honourable John Snobelen, Minister of Education, The Honourable Michael Harris, Premier, and The Honourable Brenda Elliott, Minister of the Environment and Energy

Mr. Dave Cooke, M.P.P., Windsor North, requested the Commissioner's opinion with respect to news reports indicating the Premier's office was involved in the process leading to a reversal of a decision by the Ministry of the Environment and Energy relating to permission to build a garbage transfer station in the City of Toronto. It was alleged the decision had the potential to benefit a company formerly owned by Mr. Snobelen, the Minister of Education and now headed by his wife, which has a contract to haul waste from the transfer station. [In fact, while Mrs. Snobelen was the nominal president of the company, she had no equity in it.]

Subsequently, Mr. Cooke withdrew the complaint against Mr. Snobelen and no further action was taken in this regard. However, he further alleged that the Premier and the Minister of Environment and Energy may have contravened s.2, 3(1) and 4 of the Act, but did not allege that either individual "personally profited or sought to personally profit from a decision. In fact, I don't believe that to be the case." He took the position that,

*For the purposes of the Act, and for the purposes of this request for an opinion, the identity of those private interests is irrelevant.*

The Commissioner disagreed with Mr. Cooke's interpretation of the various sections and stated:

*...a statute attracts strict rules of statutory interpretation and construction. Each section must be read as a whole. The words '...or improperly to further or (seek to) further another person's private interest' form an integral part of the section. Their severance from the complaint together with the withdrawal of any allegation that the Minister of Education and the Minister of Environment and Energy personally profited, leads me to the conclusion the complaint is not before me in the proper form.*



The Commissioner was of the opinion that the request was not in the proper form and accordingly under s.31(5) of the Act, refused to conduct an inquiry.

5. Re: Brenda Elliott, M.P.P., Guelph, Minister of Environment and Energy

In February, 1996, Ms. Marilyn Churley, M.P.P., Riverdale, alleged that, Ms. Brenda Elliott, M.P.P., Guelph, and Minister of Environment and Energy, contravened the Act and/or Ontario parliamentary convention by using her resources as a member of the Assembly and of the Cabinet to raise funds for the Progressive Conservative Party.

Ms. Elliott's office organized a Christmas Wine and Cheese party and did a mass mailing to her constituency. The costs associated with the mailing were borne by the constituency office budget. The invitation indicated it was from The Honourable Brenda Elliott, MPP - Guelph; that there was a \$10 per person charge and there was a notation "Please extend this invitation to anyone who might be interested. Everyone Welcome!!!"

During the course of the evening, there were approximately 127 guests and only one cheque was received in payment of the entrance fee for three individuals. The three individuals admitted they were associated with an organization called The Guelph Coalition Against the Cuts, which had recently staged a demonstration in front of Ms. Elliott's constituency office.

The cheque was made payable to the "Guelph Provincial Progressive Conservative Association". The proceeds of the evening were turned over to the Chief Financial Officer of the Guelph Provincial P. C. Association, who agreed to process the cheque, pay the expenses of the evening and forward any surplus to the United Way.

Ms. Elliott admitted that she used her constituency letterhead, staff and fax in preparing and distributing the invitations with the costs paid from the constituency office budget. The Commissioner found the Christmas Party was not a Progressive Conservative fundraiser, advertised, organized and promoted with funds of the Ontario taxpayers. It was a non-partisan political event and as a result was not an issue which was within the scope of his mandate under the Act. Allegations as to the use and/or abuse of Assembly services should be directed to the Speaker and through him to the Board of Internal Economy.

The Commissioner found that the disposition of the cheque was a convenient manner in which to negotiate it and provide a paper trail of the income, expenses and the charitable donation. The individual who wrote the cheque inquired in advance whether a cheque would be acceptable and was advised that it could be made payable to the Guelph Provincial Progressive Conservative Party. Requesting a receipt at the party was an attempt by the individual who wrote the cheque to provide an evidentiary basis in the hope of embarrassing Ms. Elliott and the Progressive Conservative Party. The Commissioner found there was no merit in the complaint and it was dismissed.

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FINANCIAL INFORMATION

A 1995/96 Budget

	<u>Budget</u>	<u>Expended</u>
Salaries, Wages and Benefits	\$ 97,600.00	\$ 96,567.82
Transportation and Communication	7,000.00	3,181.52
Services	170,000.00	142,256.40
Supplies and Equipment	16,000.00	9,488.13
	<u>\$290,600.00</u>	<u>\$251,493.87</u>

B 1996/97 Budget

Salaries, Wages and Benefits	\$ 97,600.00
Transportation and Communication	5,000.00
Services	148,000.00
Supplies and Equipment	10,000.00
	<u>\$260,600.00</u>

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

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