

ANNUAL REPORT



Legislative Assembly of Ontario

OFFICE OF THE INTEGRITY COMMISSIONER

1996-1997

Office of the
Integrity Commissioner



Bureau du
commissaire à l'intégrité

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

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

June 24, 1997

The Honourable Chris Stockwell
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, 1996 to March 31, 1997.

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

Yours very truly

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COMMISSIONER'S REMARKS

The Honourable Gregory T. Evans

The Eighth Annual Report of the Commissioner covers the period April 1, 1996 to March 31, 1997. It will be my final Report as Commissioner and provides an opportunity for me to express my thanks and appreciation to the many Members and staff whom I have met during the past nine years. It has been an association which I shall long remember with great pleasure.

My retirement has been delayed because of the time period required to put in place a new appointment procedure to select my successor. I anticipate that the new appointee will be installed prior to the publication of this Report and he or she may be assured of my cooperation in the transitional period, and thereafter, if requested.

Much of the success which the office has achieved is the result of the extraordinary contribution which my Executive Administrative Officer, Ms. Lynn Morrison, has made. She has established an excellent rapport, not only with the Members of the Legislature, but also with the many dedicated men and women who serve on the constituency and political staffs. Together with Heather MacDonald, our administrative assistant, the office has provided prompt and efficient service with that high degree of confidentiality which the Members are entitled to expect. I am satisfied that my successor will inherit a competent and conscientious staff whose loyalty may be assumed.

Considerable effort is put into our Annual Report to make it readable and informative. I realize that it will not be included in any best seller list. Perhaps a repetition of the exchange between a difficult English Judge and an exasperated barrister might be appropriate:

Judge: "I have listened to your argument for over an hour and I am no wiser."

Barrister: "Quite so, my Lord, I did not expect that my argument would increase your wisdom, but I hoped it would make you better informed."

One hopes that my comments and the anonymized summaries of inquiries will at least make readers better informed.

In the last Report, I referred to the increasing concern which Britain has with respect to the conduct of members of the House of Commons. I believe the following comments in an interim Report by a Committee under Lord Nolan bear repeating:

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 Report determined that M.P.s were not aware of what standards of conduct were expected of them and set out "Seven Principles of Public Life" which would form the basis of a new code of conduct for Members. The principles were described as selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Our legislation reflects the above principles in regulating the manner in which Members must perform their official duties in order to gain public approval. These core values are to be found in most integrity legislation and appear to satisfy public scrutiny when they are fairly enforced. No such legislation can survive if the Members are not prepared to accept the minor invasion of privacy involved in the disclosure requirements which are basic to an open, honest and accountable leadership.

The world-wide problem of political corruption requires controls if level playing fields are to be provided for those nations involved in international trade. The governments of many developing nations in which democracy has never flourished depend for their political survival on a militarily supported dictatorship whose leaders loot the national treasury to support extravagant lifestyles. The natural resources of their countries are targets for unscrupulous foreign business people who demonstrate a complete lack of business ethics, as they exploit the native people by bribing the leaders to sell their country's assets.

In our modern Canadian society, with its varied cultures and social backgrounds, it cannot be assumed that all citizens share the same ethical and moral traditions. While all civilized people support the moral absolutes, there are differences in the way we approach problems which arise in our daily lives. We are not all fashioned in the same mould. Home training, education, tradition and life experiences to a great extent shape the pattern and direction of our ethical conduct. Each generation is exposed to different media influences which create changes in moral and ethical behaviour, and therefore it becomes necessary to review the framework within which political institutions must operate. The standards of today are not the standards of yesterday, nor will they be the standards of tomorrow. Each must reflect the values espoused by present day society.

Ethics is a personal discipline. Dignity and self-respect should be important factors in reaching a decision on issues in which ethics and integrity are involved. The ethics of excellence are best demonstrated by action rather than speech.

Prior to my appointment as Commissioner under the *Members' Conflict of Interest Act, 1988*, my association with elected politicians was limited to social events at which everyone was on their best behaviour and the common courtesy and civility for which Canadians have become noted was much in evidence. In personal interviews with more than 250 Members from three different political parties, each of which had formed the government during my tenure in office, the same behavioural standards were observed. In the main, they were typically Canadian--pleasant, cooperative and appreciative of the efforts of this office to provide assistance in ethical situations which frequently arose as they strove to deal, in a conscientious manner, with the myriad of problems presented to them by an increasingly demanding and impatient electorate. Some newly-elected members, when required to complete a Private Disclosure Statement for the first time, objected mildly to this undoubted invasion of their privacy. However, whether as a result of my assurance that the disclosure (apart from some information required by law to be publicly disclosed) was held in strict confidence or the normal Canadian desire to comply with the law or the fear of an unlikely by-election, the proper forms were duly completed with a minimum of delay and inconvenience.

After a few months in office, I met a high school teacher who informed me that he and others in his profession were so annoyed by the performance of the legislators, as shown on the parliamentary television channel, that they no longer used it as a teaching aid to demonstrate democracy in action. He said: "How can I be expected to maintain discipline in a classroom of teenagers and contribute to their education when the Speaker of the Assembly has to adjourn the proceedings because a group of adults, elected to represent the people, refuse to obey the Speaker?" I could not respond to his question as my home television did not carry that channel and I was unaware of the problem. Later the office acquired a television and after watching question period on a few occasions, I appreciated the teacher's concern.

On many occasions, the practice seemed to be that an opposition Member asks a question which is met with a volley of interjections from the government side, which makes the question almost inaudible to the Members and the visitors. When the Speaker finally restores order, the government Member starts to reply and is accompanied by much desk thumping by his colleagues and shouts of derision from the Opposition who raised the question. This type of dialogue can hardly be viewed as informed and intelligent debate.

I appreciate that there are many occasions when a more restrained attitude prevails and the business of the Assembly is carried on with dignity and decorum. There are occasions, thankfully few, when civility and respect are absent. These are the events which the media exploits and which an ever-increasingly cynical public remembers.

The comment, frequently made as an apology, is that it has always been like that and besides, it is a respite from the boredom associated with the position. In the present climate of public unrest, I do not believe that explanation meets with public acceptance. Such conduct may have been overlooked in an earlier era, but that was yesterday and today the taxpayer wants value for his/her tax dollar. Question Period has become an unattractive partisan theatrical performance which denigrates the institution of the Assembly and reflects an attitude that is no longer acceptable to a public which demands a more serious approach to current problems.

Society, in general, appears to have moved from a former period when public decorum was the norm to an age when propriety, decency and respect are more noticeable by their absence than by their practice. To reverse this trend, which will lead to the deterioration of our ill-defined, but existing "Canadian character", we require leadership in government, in business and in industry.

Our elected representatives should provide that high standard of commitment to government to which the public is entitled. Their standards could set an example for others in society to abandon the all-consuming financial "bottom line" philosophy in favour of a kinder and more generous appreciation of a more acceptable standard of human action and conduct.



OVERVIEW

A. Disclosure Statements

On December 19, 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 were in compliance.

A provision to ensure continuing compliance by all members throughout the year was included in the *Members' Integrity Act, 1994*, and s.20(4) specifically should be noted by all members:

The member shall file a statement of material change with the Commissioner, in the form provided by the Commissioner, within 30 days after a change in the income, assets or liabilities of the member or his or her spouse and minor children or an event that causes a person to become or to cease to be a member of the member's family, if the change or event would reasonably be expected to have a significant effect on the information previously disclosed.

B. Continuing Education

In last year's Annual Report I suggested that "...an annual continuing educational program should be carried out..." During the past year, I received no such requests from any party or Member. I would now suggest an annual meeting of each caucus with such members of the political and constituency staffs as may be available should be mandatory for a review of the Member's obligations under the *Members' Integrity Act*. Ministers are particularly vulnerable when an over-enthusiastic political staff member encroaches on the jurisdiction of the public service or when a constituency staff member becomes involved in a judicial proceeding. Small group formats are preferable so that an exchange of views is possible and a dialogue can develop on improvements to the legislation. In addition, our relationship with the Member and staff will thus be maintained.

C. Prospective Candidates

Several newly elected Members complained that they were unaware of the *Members' Integrity Act* and the restrictive provisions applicable to them. It has repeatedly been suggested through Annual Reports that prospective candidates should arrange an interview with the Commissioner to ascertain the extent to which the legislation may impact on their private lives. No responsible person should seek public office without making inquiries as to the terms and conditions of employment. Very few candidates accept our offer. Perhaps the party leaders, prior to nomination day, should inform the prospective candidates that this office is available to provide information with respect to the *Members' Integrity Act, 1994*.

D. Senior Staff and Order-in-Council Appointments

Many Members complain when attending the disclosure interviews, that Deputy Ministers, senior staff and Order-in-Council appointees are not subject to disclosure requirements. Their argument is that the bureaucrats assist in policy-making and awarding government contracts, and should be subject to disclosure. I believe their concerns are valid and a matter for which government policy makers should give serious and immediate consideration.

E. Canadian Conflict of Interest Network

The formation of the Canadian Conflict of Interest Network (CCOIN) has proven over the years to be a most valuable resource to the membership, composed of the heads of province-wide or federal government organizations with a major mandate for administering conflict of interest rules in Canada. The membership now consists of twelve members from the Federal Government, Treasury Board of Canada Secretariat, Newfoundland, Nova Scotia, New Brunswick, Quebec, Ontario, Saskatchewan, Alberta, British Columbia, Yukon and Northwest Territories.

The membership meets annually to discuss mutual problems and are in frequent communication with one another with the aim of achieving some consistency in legislation and interpretation. It was my pleasure to host the Annual Meeting this past year and the next Annual Meeting will be held in conjunction with the Annual Meeting of the Council on Governmental Ethics Laws.

F. Interest from Other Jurisdictions

Ontario having been one of the first provinces to enact conflict of interest legislation, has attracted considerable interest as other Canadian jurisdictions proceeded to consider the enactment of similar legislation and our office has cooperated fully with the various provinces which have requested our assistance.

At the request of the Federal Government, I appeared on three occasions before the Special Joint Committee of the Senate and the House of Commons in their search to develop a *Code of Conduct* to assist Federal members in reconciling their official responsibilities with their personal interests.

I have addressed service clubs, high schools, and community college groups, with respect to our legislation. The questions directed to me in the discussions which follow my presentations demonstrate the cynicism existing in the public mind regarding the competence and integrity of our law makers at all levels. The criticism is rarely directed at an individual politician but at the political institutions. People view the political arena as a place where supercharged egos compete for personal advantage to fuel their ambitions for power and influence. Generally, they are unfamiliar with the democratic process, and do not appreciate that the great majority of legislators are honest and conscientious people who make many sacrifices, financial and otherwise, to provide good government for our common benefit.

Foreign jurisdictions have also requested our assistance which gave rise to visits by parliamentarians from Papua New Guinea, Thailand, New South Wales, Korea, Japan, Australia, Latvia and Trinidad and Tobago. At the invitation of the government of Trinidad and Tobago, I participated in a conference which included representation from several Caribbean and South American countries. The interchange of ideas at these visits clearly indicates an appreciation of the problems existing in all countries and the desire to eliminate political corruption and exploitation.

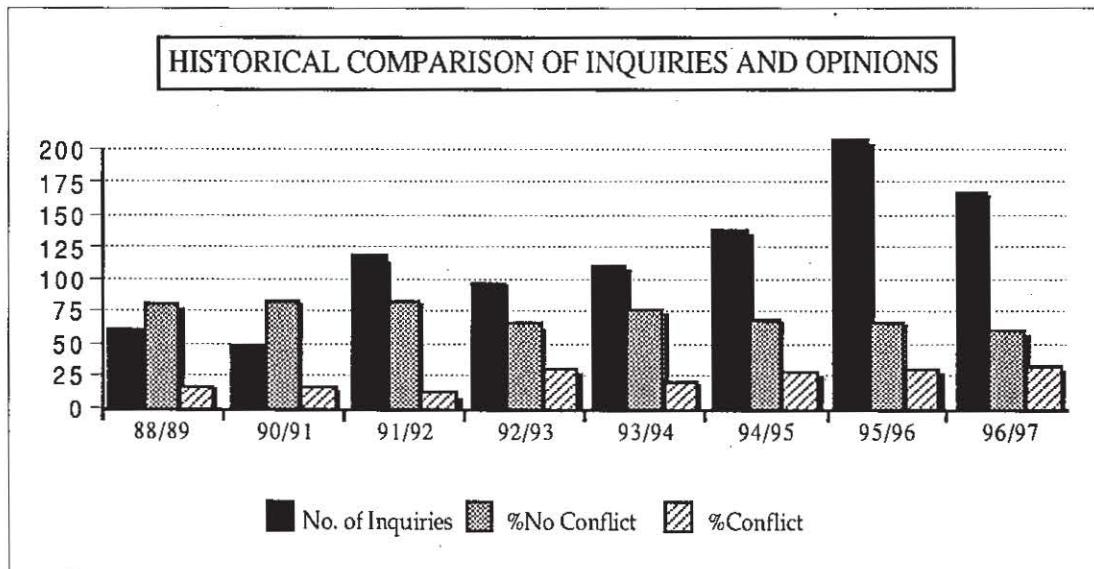


INQUIRIES

A. Statistics

INQUIRIES RECEIVED APRIL 1, 1996 TO MARCH 31, 1997					
Received From	Number Received	Conflict	No Conflict	No Jurisdiction	Outstanding
Member	165	55	105	2	3
Spouse	1	0	1	0	0
Trustee	2	1	0	0	1
Caucus	0	0	0	0	0
Cabinet	0	0	0	0	0
Committee	0	0	0	0	0
Former Minister	0	0	0	0	0
TOTAL	168	56	106	2	4

Inquiries under s.30 of the *Members' Integrity Act, 1994* have continued to follow the steady increase over the years. It should be noted the number of opinions advising Members of a conflict or inappropriate action show an increase, although subtle. The Commissioner encourages all Members and their staff to continue seeking guidance from this office to avoid a violation of the *Act*.



B. Selected Inquiries

In accordance with s.24(2) of the *Act*, the following selected anonymized inquiries were received in the past fiscal year. These examples are not exhaustive and do not represent every type of issue which may arise in a Member's day-to-day activities. The summaries are intended to alert members and staff to possible problems with the expectation that this office will be contacted for advice and guidance. In view of the confidentiality requirements under s.24(2), and space limitations, it should be remembered that each inquiry has its own particular factual situation and the opinion is based on that set of facts.

INQUIRY NO. 1

Issue:

A Member was considering running for the leadership of an Ontario political party and inquired as to the appropriateness of soliciting and collecting contributions to the leadership race.

Opinion:

Section 6 of the *Members' Integrity Act, 1994* 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 the responsibilities of office.*
- (3) Within 30 days of receiving a gift or personal benefit referred to in clause (2)(b) that exceeds \$200 in value, the member shall file with the Commissioner a disclosure statement in the form provided by the Commissioner, indicating the nature of the gift or benefit, its source and the circumstances under which it was given and accepted.*
- (4) Subsection (3) also applies to gifts and benefits if the total value of what is received from one source in any 12-month period exceeds \$200.*
- (5) A member who receives promotional awards or points from airlines, hotels and other commercial enterprises as the result of travel for which he or she is reimbursed by the Government of Ontario shall not use them for personal purposes.*

The prohibition refers to a "fee, gift or personal benefit that is connected directly or indirectly with the performance of his or her duties of office." The Commissioner found that a leadership campaign is not part of an M.P.P.'s duties. It is a personal advancement which the Member is seeking in his/her political life. Accordingly, the matter does not fall within the provisions of the *Members' Integrity Act, 1994*.

The Commissioner found there are no rules governing contributions to prospective leadership candidates until the leadership contest has been officially called. As a registered leadership candidate, all candidates must comply with the *Election Finances Act*, with respect to the manner in which funds are raised, the amounts which may be contributed individually and globally, and benefits which are received. There are also rules with respect to disclosure.

The Commissioner attempted to view the issue in a practical and pragmatic manner. If there are two

prospective aspirants for the leadership position, with one being a sitting Member and the other a non-Member, it would not be reasonable or equitable to have the Member subject to the *Members' Integrity Act, 1994* (if it were applicable), while the non-Member is not. It was suggested that the *Election Finances Act* be used as a guide prior to the official call of the leadership campaign and that that office be contacted for further advice.

In the final analysis, the Member must decide whether acceptance of the contributions, donations or benefits would in any way undermine the confidence of the public in his/her integrity as a Member of the Assembly.

INQUIRY NO. 2

Issue:

The Speaker regularly receives visits from dignitaries from all over the world and during these visits receives gifts. Must these gifts be declared?

Opinion:

The receipt of gifts by the Speaker from dignitaries from around the world is considered an incident of protocol, custom or social obligation, and therefore, falls within s.6(2)(b) of the *Act*. These gifts must, therefore, be reported to the Commissioner in accordance with ss.6(3) and (4).

INQUIRY NO. 3

Issue:

A Member had been asked to accept an appointment as an Honourary Consul General.

Opinion:

The Diplomatic Corps Services provided to the Commissioner an excerpt from *Consular Law and Practice*, s.11.3.3 - Code of Conduct and Conflict of Interest, used by that office as a guideline, which states in part:

"Unless special circumstances exist, a candidate should not hold a consular commission from another country, nor hold any official position in their country of residence... Controversial or politically active persons are to be avoided."

While the acceptance of such a position does not constitute a violation of the *Members' Integrity Act, 1994*, the Member may consider it advisable to communicate with the Protocol Office.

INQUIRY NO. 4

Issue:

A Member/Parliamentary Assistant is seeking registration with the Ontario Securities Commission as an agent to sell mutual funds.

Opinion:

Seeking such registration does not violate the *Act*, however, the Member should obtain the approval of the Minister and proceed on the following conditions:

- (1) the duties as a mutual fund salesperson do not adversely affect the primary duty as an elected Member;
- (2) no business with respect to mutual funds is conducted through the legislative or constituency offices.

INQUIRY NO. 5

Issue:

A constituency assistant inquired as to the appropriateness of running for election in the municipal elections.

Opinion:

The Commissioner advised that the *Act* covers Members only and not constituency assistants and directed the assistant to the Human Resources Branch of the Legislative Assembly and the Ministry of Municipal Affairs and Housing for advice.

However, in order to avoid placing the elected Member to which the constituency assistant reports, in a conflict, if the requirements of the above agencies are satisfied, the constituency assistant must respect the following conditions:

- (1) The Member is made aware of the constituency assistant's plans and approves;
- (2) There is no interference with the constituency assistant's duties;
- (3) No campaigning or electioneering is conducted from the Member's constituency office or Queen's Park office.

INQUIRY NO. 6 ✕

Issue:

A Member received an invitation from Ontario Place, subsidized by the Province of Ontario, to attend a dinner.

Opinion:

Ontario Place is subsidized by the Province and invitations of this nature that are extended to Members are viewed as a marketing project. It is, therefore, not inappropriate to accept the invitation.

INQUIRY NO. 7

Issue:

A constituent is involved in a lawsuit with the Ontario Realty Corporation, claiming the corporation unfairly cancelled a contract and still owes the constituent money. He has asked the Member to look into the Province's tendering process on his behalf.

Opinion:

As the matter is in litigation, during which the tendering process will no doubt be in issue, the Member should not become involved as it may be seen as an attempt to interfere with the legal process.

INQUIRY NO. 8

Issue:

A Member was asked on behalf of a constituent to urge the Attorney General to accept his proposed settlement in a civil suit.

Opinion:

Section 4 of the *Act* states:

"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."

Such action on the part of the Member would be a violation of s.4.

In addition, although the Legislature and the judiciary are both branches of the provincial government, they are separate and independent and any encroachment in either direction is strictly forbidden.

Inquiry No. 6 of the 1992-93 Annual Report states:

*"Our democratic system of government is composed of three branches--Legislative, Executive, and Judicial. Each is supreme within its own jurisdiction. A court case is a judicial proceeding with specific provisions for appeals. Legislators should **never** communicate with a judge or other judicial officer with respect to a matter which is or which has been before the courts.*

An individual who is dissatisfied with a court decision has legal remedies open to him but to solicit a member of the Legislature in the hope that political pressure will be applied on the court is not open to him."

In his 1993-94 Annual Report, Take Time to Reflect, the Commissioner also stated:

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

The *Members' Integrity Act, 1994* includes parliamentary conventions adopted by the Ontario Legislature which would specifically prohibit such conduct.

INQUIRY NO. 9

Issue:

A former Minister, now in opposition, has been asked to provide an affidavit explaining the rationale for a decision of Cabinet while he/she was a Minister. The statement would not exclude anything that was not announced publicly at the time.

Opinion:

As the matter is the subject of a court proceeding, the Commissioner suggested that the Member offer to give evidence at the trial at which time all parties concerned will have an opportunity to question the Member with respect to that evidence.

INQUIRY NO. 10

Issue:

A Member agreed to donate a prize of a dinner in the Legislative Dining Room to a golf tournament being hosted by a provincial party association. The Member would assume the costs personally.

Opinion:

As the Member is personally assuming the costs of the prize, the Member is entitled to donate the prize.

INQUIRY NO. 11

Issue:

A volunteer in a constituency office has been appointed as a Federal Chief Returning Officer for the

next Federal Election.

Opinion:

In order to protect the Member, the volunteer may continue to volunteer in the constituency office on the following conditions:

- (1) The Member approves of the volunteer accepting the appointment and continuing as a volunteer in the constituency office; and
- (2) No Returning Officer business is conducted in the constituency office.

INQUIRY NO. 12 ✕

Issue:

The Deputy Premier participated as a guest of Bell Canada in the pro-am golf tournament associated with the Canadian Open of which Bell Canada is a primary sponsor. The reported cost of the Deputy Premier's participation paid for by Bell Canada was approximately \$3,300. Did such participation violate the *Members' Integrity Act, 1994*?

Opinion:

The Deputy Premier regularly attends events as the official representative of the Government of Ontario. These events include business meetings and conferences as well as cultural and sporting activities which are of substantial benefit to the Province.

All Members of the Executive Council, in addition to their duties as legislators, may be called upon to attend social and cultural functions associated with their particular ministry. The Premier and the Deputy Premier, in view of their positions, are invited to a variety of events as the official representative of the citizens of Ontario. On occasion, the Premier may designate another Member to represent the Government of Ontario at such events. These public appearances must be distinguished from activities associated with the performance of their legislative duties.

The purpose of s.6(1) of the *Act* is to prohibit a Member of the Assembly from accepting a bribe as the price of influencing that Member in the discharge of the Member's legislative duties to take some action which would give to the donor some advantage inconsistent with the public interest and incompatible with the Member's oath of office.

The golf game which arose from the acceptance of the Bell Canada invitation on behalf of the Premier may be a personal benefit, and therefore, falls within s.6(2)(b) of the *Act*, i.e. a social obligation by the Premier or his designate, and acceptance is not a violation of the *Act*. If the regular green fees and other entertainment for the event exceed \$200, a Gift Form must be filed in accordance with s.6(3).

INQUIRY NO. 13

Issue:

A government backbencher inquired as to whether it was appropriate to act as a lawyer assisting in the incorporation of newly-established Community Care Access Centres which report to the Ministry of Health, and providing legal advice to the Centres.

Opinion:

Under s.9(a) of the *Act*, a Member who is not a member of the Executive Council is not prohibited from the practice of a profession. This right is restricted by s.7(1), which prohibits a Member from being a party to a contract with the Government of Ontario. A similar restriction applies to a Member who has an interest in a partnership or a private company which has a contract with the Government of Ontario.

Section 6(1) prohibits a Member from accepting a fee, gift or personal benefit that is connected directly or indirectly with the performance of the Member's duties of office. In this respect, a Member is not entitled to use his or her position as a Member of the Assembly to generate legal business for his or her benefit. The provision with respect to the *Legal Aid Act*, s.9(b), is a specific exemption.

While the legal aid certificate is not a direct contract with the Government of Ontario, it permits a lawyer to receive public money which flows from the Government of Ontario to the lawyer through the Legal Aid Plan. The fact that a specific exemption is provided brings into operation the legal maxim, "*Inclusio unius est exclusio alterius*". This doctrine decrees that where law expressly describes a particular situation to which it shall apply, an irrefutable inference must be drawn that what is omitted or excluded was intended to be omitted or excluded.

Most, if not all, of the money which supports the Community Care Access Centres comes from the Province and payment of legal fees for services rendered to the Access Centres would be a "flow through" of public money. In addition, the Member advised the "Ministry/government will provide an incorporation kit to all centres, and pay for and assist with the incorporation." Based on this information, such service by the Member would not be permitted under the *Act*.

Apart from the question of fees, it would be inappropriate for a Member of the Assembly to act as counsel in labour negotiations for either party when the Ministry of Health is so directly involved. Elected Members have been entrusted by the electors with certain advantages which carry with them certain responsibilities including the duty to act with that degree of impartiality that will withstand the closest public scrutiny.

INQUIRY NO. 14

Issue:

A Member was asked by the local riding association to present bursaries on behalf of the riding association to high school graduates within the riding.

Opinion:

Representation of the local riding association in presenting bursaries to high school graduates is an activity which falls under s.5 of the *Act* and is not inappropriate.

INQUIRY NO. 15

Issue:

A Member/Minister has been asked to spearhead a capital fundraising campaign for a Children's Centre which has been advised that it will receive no funding from the provincial government or the school board.

Opinion:

It is inappropriate for a member of the Executive Council to become involved in directing a fundraising campaign as he could be placed in a conflict of interest situation. The Member could endorse such a campaign as an interested M.P.P. only.

INQUIRY NO. 16

Issue:

Can a Member/Minister accept Honourary Membership in a golf club located in the Member's riding?

Opinion:

Although the golf club is located within the Member's riding, under s.6 of the *Act*, membership in

such a Club is not considered a part of the responsibilities of the office as M.P.P. or responsibilities as Minister and acceptance would, therefore, be inappropriate.

INQUIRY NO. 17

Issue:

A Member/Minister met with a constituent company that wanted to get in touch with a municipal agency and a Minister regarding one of its products. Subsequent to the meeting, the constituency office received a letter thanking the Member for the assistance and included a cheque for \$100 for the Member's "re-election war chest".

Opinion:

The acceptance of the cheque does not fall within any of the exceptions set out in s.6 of the *Members' Integrity Act, 1994*. Facilitating a meeting with government officials is considered an activity in which the Member would normally engage on behalf of constituents and the Member is paid by the Legislative Assembly to perform these duties. The cheque should be returned to the company, as keeping the cheque would be a violation of s.6 of the *Act*.

INQUIRY NO. 18

Issue:

A Member would like to write a letter to the Commissioner of the OPP encouraging him not to strictly enforce a regulation to affix registration numbers to snowmobiles issued by MTO on the basis that they "do not look as nice on the machines as the customized numbers."

Opinion:

The proposed letter asking the Commissioner not to enforce the law is inappropriate. This is a policy question, and would be more appropriately directed to the Solicitor General.

INQUIRY NO. 19

Issue:

May a Member recommend a lawyer to a constituent?

Opinion:

It would be inappropriate for a Member to make such a recommendation. The Lawyer Referral Service of the Law Society of Upper Canada is available for such a recommendation.

INQUIRY NO. 20

Issue:

A marketing company requested a Member/Minister's recommendation of a mutual fund company to sponsor the Ontario Open Golf Championship and requested permission to use the Member's name in a letter to the recommended company.

Opinion:

By recommending a specific company, the Member/Minister is giving an unfair advantage to that company over other individuals or corporations that may be interested in the sponsorship. The marketing company should be able to approach potential sponsors in the community without assistance from the Minister. The use of the Member's name is an inappropriate use of the office as M.P.P. and as a Minister, and the Member may be seen as improperly trying to influence the prospective company.

INQUIRY NO. 21

Issue:

Can a Member/Minister accept an appointment as Honourary Chairperson of a local association campaign to raise funds, and can correspondence relating to that campaign be sent out under the Member's name?

Opinion:

The use of the Member's ministerial status in the fundraising campaign is inappropriate, however, the Commissioner advised it would be appropriate that the Member's name be mentioned in an appeal letter commenting on the Member's endorsement of the association's work and fundraising efforts. This is not spearheading or directing the fundraising campaign.

INQUIRY NO. 22

Issue:

A Member's constituency office was offered, free of charge, an Internet hook-up which would provide E-mail and a Web page on the Internet.

Opinion:

Although the hook-up would provide greater accessibility to the constituency office by residents of the constituency, accepting such an offer would give an unfair advantage to this particular company over other competitors in the area, and would, therefore, be an inappropriate use of the office.

INQUIRY NO. 23

Issue:

Unknown to a Member, a staff member had solicited a business in the constituency for a contribution to the Press Auction which was to be held at Queen's Park, the proceeds of which would go to charity.

Opinion:

The solicitation of a donation (a gift basket) is inappropriate and the Member was referred to Inquiry No. 28, in the 1995/96 Annual Report which states:

"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."

As the gift basket had not been received as yet, a letter should be sent to the business advising the solicitation was made in error.

INQUIRY NO. 24

Issue:

Can a Member mail government information or other constituency-related material to people living in Ontario, but outside the Member's riding boundaries?

Opinion:

The Member wished to distribute constituency newsletters and calendars. The proposed distribution is outside the present constituency boundaries, but within the boundaries of the new constituency which will not be in effect until after the next provincial election.

Part V, Section 1b.(v) of the *Guide to Members' Allowances and Services and Members' Support and Caucus Staff* states:

*" constituency newsletters [householders]
Newsletters sent to private households are a forum for the Member to inform constituents of the workings of the Legislative Assembly. It is implicit that the content of these newsletters be non-partisan and restricted to outlining legislative developments in the House and in committees and the role played by the Member in this legislative process.*

Members may not print or mail, at the expense of the Legislative Assembly, any material of a partisan, political nature."

The above section refers to the constituency boundaries now in effect and it would be inappropriate to distribute material, at the expense of the Legislative Assembly, to an area which is not considered the Member's constituency.

The Member was referred to the Finance Branch of the Legislative Assembly for further clarification.

INQUIRY NO. 25

Issue:

Can the spouse of a government backbencher accept a temporary assignment from a Ministry?

Opinion:

As the Member does not hold a position with the Ministry involved, acceptance of the temporary assignment by the spouse does not place the Member in violation of the *Act*, however, it was recommended that the Minister be made aware of the secondment and that he approve of same.

INQUIRY NO. 26

Issue:

A Member received a call from a Ministry regional office expressing concern with respect to the appropriateness of a request made by another M.P.P.

Opinion:

The employee should be advised to consult with his/her superiors as to the appropriateness of the request and the Member may wish to suggest that the employee advise the M.P.P. to contact the Office of the Integrity Commissioner for further advice.

INQUIRY NO. 27

Issue:

A Member was asked to write a letter of recommendation for a musical group in support of their fundraising efforts and in return the Member was presented with two tickets to a concert.

Opinion:

The letter of recommendation is considered an activity under s.5 of the *Act*, an activity in which Members normally engage on behalf of constituents, as long as the Member is sufficiently familiar with the individual or group. However, it would be inappropriate to accept two tickets to the concert in return for writing such letter, as the letter is considered part of the Member's responsibilities.

INQUIRY NO. 28

Issue:

May a backbencher act as a lawyer advising a developer with respect to dealings with the Ministry of Municipal Affairs and Housing and the Ministry of Natural Resources and meet with ministry officials to discuss the developer's interests?

Opinion:

The backbencher may act as the developer's lawyer, however, he must ensure that his activities as a lawyer are kept separate and apart from his duties as M.P.P.

INQUIRY NO. 29

Issue:

Is a Member prohibited from using the constituency office as a voting location for the Megacity issue if the Member encourages constituents, via mail or other forms of communication, to vote "No"?

Opinion:

The constituency office would be used as a phone bank centre for the purpose of voting "No" to the Megacity issue during business hours for five or six days. A constituency office, paid for by the taxpayers through the Legislative Assembly, is for the purpose of all constituents in the Member's riding. It would be discriminatory and inappropriate to allow the constituency office to be used for the purpose of voting "no" only.

As part of an M.P.P.'s duties, a Member is entitled to verbally communicate a position with respect to issues in his riding or the Province, however, it would be inappropriate to print or mail any material paid for by the Legislative Assembly encouraging a "No" vote, as there are undoubtedly members of the constituency who would vote "Yes". Reference was made to the Guide to Members' Allowances and Services and Members' Support and Caucus Staff, Part V, Members' Services, s.1 in which it states numerous times:

"Members may not print or mail, at the expense of the Legislative Assembly, any material of a partisan, political nature."

INQUIRY NO. 30

Issue:

The Chair of a Legislative Committee inquired as to what statements and interventions can be made outside of the committee about matters currently discussed in committee.

Opinion:

As Chair of the Committee, the Member must be impartial when presiding over the committee hearings. However, when in the Legislature or at public meetings, and when acting as an M.P.P., the Member is free to express opinions as to the merits of proposed legislation.

When the committee report is being discussed in committee, the Member is entitled to participate in the discussion and to either agree or dissent when the Report is submitted to the Legislative Assembly.



REFERRED QUESTIONS

In the 1995-96 Annual Report, the Commissioner referred to the ever-increasing problem with the manner in which requests for an opinion are made by Members regarding possible violations of the Act by other Members. He stated:

"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 unsubstantiated rumour intended solely to embarrass another member."

During the 1996-97 fiscal year, the requests under s.30 continued to generate considerable misunderstanding with some Members. The requests (complaints) received in this office normally state that the Member "has reasonable and probable grounds to believe that Member 'A' has contravened the Act" without setting out the grounds for such belief or the particular section alleged to have been contravened. Section 30(2) requires that the request be in writing and set out the grounds for the belief and the contravention alleged.

Under s.30, there is also a provision for requests that may be made by resolution of the Assembly and by the Executive Council. To date, there have been no inquiries received under this section.

Since the onus of proof of the alleged violation rests upon the Member filing the complaint, it follows that the evidence in support must be relevant, legally admissible and verified by oath or affirmation. The last requirement protects the Member when advancing complaints which later prove to be unsupported by credible evidence.

As all Members, by virtue of their office, are Commissioners for the taking of affidavits in Ontario as are many legislative staff members, the Commissioner directed Members that all future complaints under s.30(1) must be supported by an affidavit.

Upon receipt of the complaint and the supporting evidence, verified by affidavit, with evidence of service upon the Speaker, the Commissioner will proceed as follows:

- (1) Serve the complaint and supporting material upon the Member whose conduct is in question with a request that a written reply to the allegation be filed within ten days.
- (2) Serve a copy of the reply provided upon the complainant with a request for a written response within ten days.
- (3) Upon receipt of the response and based on the material provided, the Commissioner will determine either,
 - (a) that the complaint can be resolved without oral evidence and makes a report; or
 - (b) that a hearing is required in which case he notifies the parties of the

hearing date with a request that any additional material be filed five (5) days prior to the hearing.

- (4) At the hearing, all witnesses shall give evidence on oath or affirmation.
- (5) The parties are entitled to examine and cross-examine any witness, either personally, or by an agent or counsel.
- (6) If the circumstances warrant, the Commissioner may direct that the evidence be recorded.
- (7) The Commissioner may retain counsel to assist in the presentation of evidence and argument.

With respect to further processes, it should be noted s.31(2)(a) provides that:

"the Commissioner may elect to exercise the powers of a commission under Parts I and II of the Public Inquiries Act, in which case those Parts apply to the inquiry as if it were an inquiry under that Act;"

In addition, s.31(5) states:

"If the Commissioner is of the opinion that the referral of a matter to him or her is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an inquiry, the Commissioner shall not conduct an inquiry and shall state the reasons for not doing so in the report." (emphasis added)

It is not intended that the process lack flexibility, however, some complaints may be of such gravity that they affect the political future of a Member and therefore, demand a strict compliance with procedural safeguards.

It is expected that compliance with these provisions would facilitate a timely resolution of Members' complaints against other Members.

Although four Referred Questions under s.30 were received by this office during the past fiscal year, three were received prior to the release of this Directive. Two of the Questions did not comply with the *Act* and the Commissioner did not proceed. However, it was felt that an anonymized summary of the two Questions may assist Members in understanding what is required in order to comply with the *Act*.

1.

Referred Question No. 1

The Commissioner was asked to investigate the conduct and comments of a Minister. In support of the request, the Member included a transcript of excerpts of comments made by the Minister in the Legislative Assembly and in public.

The Member filing the inquiry was advised that the process for filing such complaints was being reviewed and in the interim, the Commissioner requested that material in support of the complaint be in affidavit form signed by someone who has knowledge of the facts stated in the affidavit. In addition, the Member was advised there was no evidence that the inquiry had been filed with the Speaker in accordance with s.30(3) of the *Act*.

Based on the above reasons, the Commissioner found the Member had not complied with the *Act* and until such time, he would be unable to proceed.

A government agency which reported to the same Minister was also investigating the matter, and as a result, an allegation of a perceived conflict of interest was included in the Referred Question, .

In his response to the Member, the Commissioner stated:

"Our legislation is concerned with an actual finding which brings into play the recommendation as to possible penalties. The legislation in some other jurisdictions (e.g. British Columbia) includes "perceived conflict of interest" but it is not part of the present or prior Ontario legislation. Presumably Ontario legislators were of the view that "perception" had a political value with a short term life span. "Perception" is a subjective matter, and as I wrote in the 1990-91 Annual Report:

"The frequently suggested standard is that a legislator should not engage in conduct which would appear to be improper to a reasonable, non-partisan, fully informed person. The problem with such an 'appearance standard' is that there are few, if any, "reasonable, non-partisan, fully informed persons". 'Perception of impropriety' is an individual subjective viewpoint which I doubt many would accept as a proper criteria for measuring the behaviour of legislators."

Whether the alleged conduct of the (minister) was inappropriate or not can be determined only after all the relevant evidence has been presented at an inquiry. ...I do not consider it appropriate for me to embark upon a parallel inquiry until such time as the (agency) has filed its report ..."

If the issue raised by the Member was not dealt with by the above government agency inquiry, the Member was invited to refile the complaint in the proper form once the other inquiry had been completed.

2. Referred Question No. 2

A Minister received a complaint from a Member of the public with respect to a Member's actions, and asked that the complaint be forwarded to the appropriate office. The Minister forwarded the complaint to this office.

The Minister was advised that the Commissioner does not have jurisdiction to accept an inquiry from a member of the public. However, if the Minister wished to pursue the matter further, it would be necessary to comply with s.30(2) by supplying information as to the reasonable and probable grounds for the belief that the Member had contravened the *Act* and the section of the *Act* that is alleged to have been contravened.

3. Re: Mr. Mike Harris, M.P.P., Nipissing, Premier of Ontario

In April, 1996, Ms. Lyn McLeod, M.P.P., Leader of the Official Opposition, and Mr. Dave Cooke, M.P.P., New Democratic Party House Leader, requested an opinion as to whether Mr. Michael Harris, M.P.P., contravened certain provisions of the *Members' Integrity Act, 1994* or Ontario parliamentary convention.

Mr. Cooke alleged violation of s.2, 4 and 6 in the light of principles 3 and 4 of the Preamble to the *Act*, however, no particulars were provided:

"The member for Nipissing has acknowledged that tax-subsidized political contributions have been used to pay for his club memberships, improvements to his Toronto home and other personal expenses that furthered his private interest. These payments were made in 1992, 1993, and 1994, and similar payments may have been made in other years.

These personal benefits were not included in the member's Public Disclosure Statement. Whether Mr. Harris declared these payments as taxable income remains unclear."

Ms. McLeod alleged violations of s.6(1), 6(3), and 20(2) of the Act:

"Did Mike Harris contravene Section (1) of the Act by accepting gifts and personal benefits in the form of a \$1,047 Golf and Country Club Membership which was paid for by donors to the Nipissing Progressive Conservative Riding Association;

Did Mike Harris contravene Section 6(3) of the Act by failing to disclose to the Commissioner gifts and personal benefits over \$200 after he accepted a \$1,047 Golf and Country Club Membership which was paid for by donors to the Progressive Conservative Nipissing Riding Association;

Did Mike Harris contravene Section 6(1) of the Act by accepting gifts and personal benefits in the form of a \$7,260 housing upgrade which was paid for by donors to the Nipissing Progressive Conservative Riding Association;

Did Mike Harris contravene Section 6(3) of the Act by failing to disclose gifts to the Commissioner and personal benefits over \$200 after he accepted a \$7,260 housing upgrade which was paid for by donors to the Progressive Conservative Nipissing Riding Association;

Did Mike Harris contravene Section 20(2)(b) of the Act by failing to disclose to the Integrity Commissioner that he accepted a \$7,260 housing upgrade which was paid for by donors to the Progressive Conservative Nipissing Riding Association;

Did Mike Harris contravene Section 6(1) of the Act by accepting gifts and personal benefits when he allowed a significant portion his current housing costs to be paid for by donors to the Ontario Progressive Conservative Party;

Did Mike Harris contravene Section 6(3) of the Act by failing to disclose to the Commissioner gifts and personal benefits over \$200 after he allowed a significant portion his current housing costs to be paid for by donors to the Ontario Progressive Conservative Party;

Did Mike Harris contravene Section 20(2)(b) of the Act by failing to disclose to the Integrity Commissioner that a significant portion of his current housing costs were being paid for by donors to the Ontario Progressive Conservative Party."

The Preamble to the *Members' Integrity Act, 1994*, similar to others frequently found at the beginning of statutes of this nature, explanatory of the reasons for its enactment and the objects sought to be accomplished, is not an essential part of the Act, and neither enlarges nor conveys powers. They are words of hope and anticipation as distinguished from positive commands or directions and may be helpful in the interpretation of ambiguities in the statute.

Section 2 of the Act is the conflict of interest prohibition, while s.4 is the undue influence prohibition. The first involves a "decision in the execution of his... office" which furthered his

own private interest or improperly furthered another's private interest. The latter is the "use of his... office to seek to influence the decision of another" in order to achieve the same results. In the absence of a specific allegation, it was the Commissioner's opinion that these sections were not applicable except insofar as they may be included in s.6.

The *Elections Finances Act* places a limit on contributions to political parties and constituency associations, and recognizes the right of citizens to support political parties. While it monitors campaign expenses of parties and registered candidates, it does not regulate the disbursement of funds received by riding associations and political parties except during elections. It also supervises the reimbursement from public funds of certain election expenses of candidates who receive at least 15% of the popular vote in their electoral district. Any surplus is paid to the constituency association. A somewhat similar provision applies to each registered political party. The Commission on Election Finances requires the riding associations and the provincial associations to file complete statements of revenue and disbursements.

In addition, the *Income Tax Act* grants a rather generous tax credit to all taxpayers who contribute to registered candidates, constituency associations and parties, encouraging the taxpayer to become involved in political parties and political campaigns, sometimes referred to as an example of "participatory democracy", but irrespective of what it is called, it is a benefit to politicians from the public purse.

The *Members' Integrity Act* is concerned mainly with the manner in which Members perform their duties which flow from their offices and the integrity and impartiality which they demonstrate in their decisions, particularly in those situations in which personal interests and public interests are involved. In theory, once a member is elected a member of the Legislative Assembly of Ontario, the member puts aside his/her duties to the party and becomes the servant of the public, acting in the best interests of the public, while still retaining his or her partisan political identity.

A member, in his or her role as a partisan political activist, is concerned with the interests and advancement of the party and his or her personal success. A strong and active party affiliation is part of our democratic form of government which envisages more than one political party and thereby provides the electorate with a choice at the polling booth.

The roles are separate and distinct.

When interpreting s.6 of the *Act*, the Commissioner took into consideration the member's conduct and whether it was "connected directly or indirectly with the performance of his or her duties of office", i.e. the member's duties as a legislator and not as a partisan political activist. Mr. Harris advised the Commissioner that the contributions made by the Riding Association and the Fund were voluntary either as reimbursements for legitimate expenses incurred by him on behalf of the Riding Association or in the case of the housing lease, a shared accommodation with the Fund for their mutual advantage.

The benefit of the Golf Club Membership, paid for by the Riding Association, was received in his capacity as a party worker who through his election as a member and/or member of the Executive Council has brought honour and recognition to his Riding Association and the Executive Board showed its appreciation. Party funds were spent and recorded with the Commission on Election Finances. It was not received in respect of his duties as a legislator.

The Commissioner similarly found the housing up-grade of \$7,260 provided by the Riding Association in recognition of Mr. Harris' political success and was unrelated directly or indirectly to the performance of Mr. Harris' legislative duties.

Mr. Harris' principal residence is in North Bay and Mr. Harris applied his accommodation subsidy, an entitlement by all out of Toronto area members, to his share of rent in Toronto. The

Progressive Conservative Party Fund contributed to the rent and retains the right to use the premises for receptions and meetings to advance the political interests of the Provincial Association. Although considered a favourable arrangement for Mr. Harris, it is not connected with the performance of his legislative duties and is not considered 'income'.

In view of the above opinion, the Commissioner found there is no legal requirement under s.6 of the *Members' Integrity Act* to disclose contributions from the Riding and Provincial Associations to the Integrity Commissioner.

Rulings by the Integrity Commissioner have been made on an "ad hoc" basis endeavouring to formulate a consistent body of rulings. In general, complimentary memberships in golf clubs, curling clubs, etc. provided by private donors are not permitted. Tickets and passes to sporting events, theaters, etc. are in the same category unless there is a pre-existing relationship with the donor, or they fall within the Minister's jurisdiction. When received from non-government agencies, they are approved for acceptance if related to the recipient's duties of office. When the apparent purpose is to 'use' the office of the member as lobbying for the benefit of the donor, they are not approved. When the invitation is extended by an agency in which the government has an interest, it is generally approved on the basis that it is a "marketing tool" and beneficial indirectly to the government. A gift form is required to be filed with the Commissioner if the value exceeds \$200.

The Commissioner found there were no grounds to hold an inquiry on the matters referred by Ms. McLeod and Mr. Cooke with respect to contributions received by Mr. Harris from his Riding Association and the Fund.

The following Referred Question was the first received under the new Directive, and all evidence was received by way of Affidavits.

4. Re: The Honourable Allan Leach, Minister of Municipal Affairs and Housing

In November, 1996, Marilyn Churley, M.P.P. for Riverdale, requested an opinion as to whether The Honourable Allan Leach, Minister of Municipal Affairs and Housing, had violated the *Act* as the result of certain actions taken by his Executive Assistant, John Matheson.

Mr. Matheson was one of a number of senior officials within the Ministry of Municipal Affairs and Housing who received from Mr. Spring, counsel with the Ministry, a copy of a letter from Mr. Donovan of the Cassels Brock & Blackwell law firm addressed to the Chair of the sub-panel on Education Finance of the "Who Does What Committee". Mr. Donovan was acting on behalf of the Parent/Staff Association of Franklin Community School, an organization which had requested information with respect to the appointment and activities of the sub-panel but had not received a response. The sub-panel's report was due shortly and Mr. Donovan stated he would seek instructions to immediately commence judicial proceedings by way of injunction, *certiorari* and *prohibition*, and requested that the sub-panel cease its deliberations pending the resolution of the matter.

Prior to Mr. Spring releasing his reply to Mr. Donovan, he received a copy of Mr. Donovan's letter of withdrawal from the case.

As Executive Assistant, Mr. Matheson regarded the threatened injunction as a potential communications and operational challenge and decided to confirm the identity of Mr. Donovan and attempt to evaluate the potential risk of a court action proceeding. In this respect, Mr. Matheson contacted Mr. Guthrie, an acquaintance and a partner at Cassels Brock & Blackwell and advised

him of the letter. The partner, Chairman of the firm's Ethics and Professional Standards Committee, was unaware of the situation and subsequently reported the matter to other senior members of the firm, none of whom were aware of the matter. The next day, Mr. Donovan was interviewed by two senior members of the firm who advised him he had failed to properly complete a "conflict search" which would have disclosed that the firm had a conflict. Hence, Mr. Donovan's letter of withdrawal.

Mr. Leach, the Minister, stated he had no contact with Cassels Brock & Blackwell and did not authorize Mr. Matheson or any member of his staff to contact the law firm.

The Guthrie and Donovan affidavits purported to reflect what transpired when Mr. Donovan met with the two senior partners, however, Mr. Guthrie was not present at the meeting, and the Commissioner found that a considerable portion of the evidence was hearsay and, therefore, not admissible. In addition, Mr. Donovan's affidavit suffered from the same prohibition and many statements were not relevant to the issue.

The sub-panel reported on schedule, thereby foreclosing the efforts of the Parent/Staff Association, and Mr. Donovan subsequently resigned from the law firm. In addition, a complaint against the law firm was filed with the Law Society of Upper Canada. The Commissioner concluded it was neither necessary nor proper to comment further on a matter which had been referred to the Law Society of Upper Canada for investigation.

In response to a question by the Leader of the Official Opposition during Question Period, the Minister stated:

"The application seemed so frivolous that my executive assistant called Cassels Brock and said, 'Are you serious?' They said: 'We're not aware of this at all. We'll get back to you.' We never heard any more about it until such time as we got a letter from the lawyer in question withdrawing the application. That's all we know.

*...
By the way, so everybody's aware, this is the law firm of the former leader of the Liberal Party, David Peterson. If anybody thinks we're going to call and try to intimidate a law firm like that, it is rather silly. There was absolutely no attempt to intimidate anybody. We made an inquiry whether this was serious. We didn't hear any more after that. What the law firm does is their business. If they're that easily intimidated, they're not very good lawyers."*

In response to another question raised by Ms. Churley, M.P.P., the Minister responded as follows:

"...I also think it's very appropriate that when you get a letter from a law firm that's threatening to take legal action on a process that's under way, it's an appropriate thing to do to call that law firm and inquire what this is all about. And that's what I said before. We called the law firm and said, 'Are you serious?' The law firm -- The principals of the law firm said they didn't know anything about the matter and that's the last we heard of it."

The Commissioner considered the 4th principle in the Preamble to the Act, "Members are expected to act with integrity and impartiality that will bear the closest public scrutiny" and stated in his report:

"The reasonable inference to be drawn from the above comments is that is not inappropriate for a Minister of the Crown, or his political staff, to communicate with the law firm which is in the process of litigating with his Ministry, to ascertain

whether that law firm is "serious" about proceeding with the litigation. Any such communication, while it may seem innocuous to the Minister, may be viewed otherwise by the recipient of the inquiry.

In my opinion, such comments were inappropriate, and do not reflect a proper appreciation of the Preamble."

The Commissioner found there was a reasonable inference that the inquiry by Mr. Matheson created a situation without which the result in issue, i.e. the withdrawal of Mr. Donovan's representation of the Parent/Staff Association, would probably not have occurred. He went on to state:

"It was a causa sine qua non. The immediate and direct cause (the causa causans) for the change of decision resulted from the meeting between Donovan and the two anonymous senior partners at which the issue of non-compliance with the firm's conflict procedure was discussed. That confrontation resulted in the letter of withdrawal which Donovan sent to his client. Whether the decision to withdraw was consensual or otherwise, it cannot be attributed to Matheson nor a fortiori to Leach."*

** The above quote should have read "That confrontation resulted in the letter of withdrawal which Donovan sent on behalf of his client to the sub-panel Chair of the 'Who Does What Committee'."*

The Commissioner found that the Minister did not violate the Act, either personally or as a result of his Executive Assistant's activities for which he accepted responsibility.

Complete texts of Referred Question Nos. 3 and 4 are available from the Office of the Integrity Commissioner upon request.

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# FINANCIAL INFORMATION

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## A 1996/97 Statement of Expenditures

|                                  |              |
|----------------------------------|--------------|
| Salaries, Wages and Benefits     | \$ 92,283.08 |
| Transportation and Communication | 2,648.59     |
| Services                         | 177,669.60   |
| Supplies and Equipment           | 8,992.58     |
|                                  | <hr/>        |
|                                  | \$281,593.85 |
|                                  | <hr/>        |

## B Public Sector Salary Disclosure Act, 1996

This statement is provided under the *Public Sector Salary Disclosure Act*. The only employee receiving wages in excess of \$100,000 during the period, January 1, 1996 to December 31, 1996, was the Commissioner who is paid on an hourly basis.

| <u>Employee</u>                            | <u>Payment</u> | <u>Taxable Benefits</u> |
|--------------------------------------------|----------------|-------------------------|
| Gregory T. Evans<br>Integrity Commissioner | \$154,752.00   | None                    |

The average annual income for the past eight years was \$118,764.00 including benefits.

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