

Office of the
Integrity Commissioner



Bureau du
commissaire à l'intégrité

The Honourable Robert C. Rutherford
M.B.E., C.D., Q.C., LL.B.
Commissioner

L'honorable Robert C. Rutherford
M.B.E., C.D., C.R., LL.B.
Commissaire

July 8, 1998

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, 1997 to March 31, 1998.

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 Robert C. Rutherford

This Ninth Annual Report of the Commissioner covers the period April 1, 1997 to March 31, 1998. This is my first report as Commissioner. Its contents reflect the last eight months of my predecessor's term, and the first four months of my term.

I was privileged to succeed The Honourable Gregory Evans in this post on December 1, 1997. Following an exemplary legal and judicial career, Mr. Evans continued to dedicate himself to the public interest from a different vantage point, that of Integrity Commissioner. Armed both with personal commitment and a formidable intellect, he sought to ensure that Ontario citizens could be truly confident in their provincial political process. I can only pledge that I will attempt to do the same -- that I will apply my energies for the citizens of this province, for their elected representatives, and for the integrity of the political process as a whole.

In the short time that I have held this post, I have been impressed by the competence and dedication of my small staff. Like my predecessor, I am deeply thankful to have Ms. Lynn Morrison as Executive Administrative Officer. Ms. Morrison's worth to my office, to members of the Legislature and to the citizens of this province, became immediately apparent to me when I assumed this post. Her presence here is less an employment than a calling, for she shows a constant commitment to the proper functioning of our political process through the application of the *Members' Integrity Act, 1994*.

As one who has been involved both as an advocate and a judge in Canada's legal system for several decades before accepting this post, I am acutely aware of the importance of integrity in the functioning of public institutions. In exchange for their membership in our civil society, Canadians have entrusted key aspects of their lives to others through the justice system and the system of democratic government. They have a right to expect integrity from their elected representatives. Without the abiding trust of citizens in political institutions -- institutions that are so central to our way of life -- democracy cannot function.

Equally, given the complexity of our modern world, elected representatives have a right to advice about whether their activities might compromise or be seen to compromise their integrity. Members face a minefield of potentially compromising relationships and interests. Many forces tug at them, sometimes with great subtlety, in an attempt to secure unfair or corrupt advantage. Just as citizens have the right to see politics conducted with integrity, elected politicians have a right to seek guidance through the maze of potential threats to their integrity.

Like my predecessor, I have sometimes been troubled by the questionable behaviour of politicians

in many jurisdictions. I am concerned about the impact of this behaviour on the functioning of a political process that must be seen to be honest if democracy is to have any hope of working in the long run. I am reminded of the words of the Honourable John Oliver -- "Honest John" as he was known, because of his considerable integrity -- Premier of British Columbia from 1918 to 1927: "The first duty of a public man", he said, "is to consider the welfare of the people he represents." I trust that all members of the Legislature, men and women, and those around them, will take this advice to heart. To the extent that I can help them fulfill their duties with integrity, I will.



OVERVIEW

A. Disclosure Statements

On January 6, 1998, 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 with the Act.

In accordance with s.21(7) of the Act, the Statements are available for examination by the public through the Clerk of the Legislative Assembly.

B. Conflict of Interest and Post-Service Directive and Ontario Regulation #435/97 made under the Public Service Act

On April 23, 1997, The Honourable David Johnson, then Chair of Management Board of Cabinet, announced the Ontario government was:

"...establishing a new conflict of interest policy for senior public officials and senior public servants to reflect our wide range of relationships with other government organizations and the private sector.

The new policy covers individuals involved in a range of activities, including contracting out, franchising, and public/private partnerships.

New provisions will expand and reinforce existing rules in the Public Service Act, which govern public servants in their day-to-day activities. Ministers are already covered by the Members' Integrity Act, which has rules consistent with those being put in place as of today.

People in positions of authority who have had access to confidential or insider information cannot use it to gain an unfair advantage or put the public interest at risk. They may be restricted for up to 12 months from accepting jobs with organizations they had significant dealings with as a government employee within the previous 12 months.

Individuals are also prohibited from "switching sides" if they were involved in a government transaction. For instance, if they have worked on a government tender, they cannot then go to work for any of the bidders for that tender before the contract is awarded.

...potential conflict situations will be reviewed and ruled on by an impartial third party."

Subsequent to this announcement, the Commissioner was asked to act as the independent third party for the purpose of the adjudication and application of the policy with respect to senior political staff and in that capacity, to provide advisory opinions on post-service cases referred to the Commissioner. On October 28, 1997, Management Board of Cabinet approved the Conflict of Interest and Post-Service Directive with Release on December 3, 1997. Ontario Regulation 435/97 made under the *Public Service Act* was approved on November 19, 1997 and filed December 3,

1997. The Directive and Regulation reinforce previously existing conflict rules for all public servants and include special provisions for senior public servants and senior public officials. They may be viewed on the government intranet at: "intra.gov.on.ca/CPB", or a copy of same may be obtained in English upon request to the Office of the Integrity Commissioner.

IN-SERVICE

The in-service rules which apply to all public servants and public officials cover outside activities, prohibited use of position, confidential information, gifts, hospitality and other benefits, avoidance of preferential treatment, procurement, political activity and duty to disclose potential conflicts.

POST-SERVICE

The new provisions include post-service restrictions for senior employees, restrictions on lobbying a former ministry and a process for administering the new rules.

• *Switching Sides*

A public official or public servant who has provided advice to the government on a specific proceeding, transaction, negotiation or case shall not switch sides by acting for or on behalf of any person, commercial entity, association, or union in connection with that specific proceeding, transaction, negotiation or case to which the government is a party.

• *Post-Service Lobbying*

For twelve months after leaving the service of the Crown, a former senior public servant or a former senior public official is restricted from lobbying for or on behalf of any person, entity or organization, to any ministry or organization of the Crown with which the individual worked in the twelve months prior to leaving the service of the Crown.

• *Designated Individuals*

After leaving the service of the Crown, a former senior public servant or former senior public official is restricted for twelve months from accepting employment with or appointment to the board of an outside entity:

- (i) if that individual had substantial involvement with that outside entity in the course of his or her employment by the Crown during the twelve months before he or she ceased to be a senior public servant or senior public official; and
- (ii) if he or she had, or had access to, confidential information (in the course of his or her employment by the Crown during the twelve months before he or she ceased to be a senior public servant or senior public official) that, if disclosed to that outside entity, could result in loss or damage to the Crown or could give the outside entity an unfair advantage.

• *Review Process*

Where it is determined that the post-service restriction is to apply, the Integrity Commissioner has authority to set out terms and conditions as to that restriction based on:

- (i) importance of the confidential information held by the person by virtue of his or her position with the Crown;
- (ii) desirability of a rapid transfer of the person's knowledge and skills from the government to the private sector or the broader public sector;
- (iii) degree to which the new employer might gain an unfair commercial advantage or cause loss to the Crown;
- (iv) extent to which the person had confidential information or substantial involvement;
- (v) disposition of other cases;
- (vi) other relevant factors.

• *Penalties*

The Crown may seek damages for the misuse of confidential information from the former public servant/public official and/or any organization which uses the confidential information where the damages are quantifiable and recoverable.

PRIVATIZATION MATTERS

Individuals routinely involved in privatization matters are now required to disclose certain financial assets through a disclosure statement and to complete a declaration of non-conflict. Individuals involved in specific privatization files are only required to complete a declaration of non-conflict. All of these individuals are subject to restrictions on the purchase of shares of privatized businesses and to an ongoing responsibility to disclose any material change in their financial situation.

Following the announcement by the Chair of Management Board and the subsequent implementation of the Directive and Regulation, 27 post-service opinions were requested. A potential conflict of interest was identified in 6 cases. With the cooperation of the employees and the private sector employers, restrictions were imposed on the individuals in question to avoid a conflict of interest.

Before making a decision to leave government, there may be a number of opportunities available to the employee. When requested, the Commissioner has provided preliminary confidential advice with respect to potential conflicts of interest.

In addition to carrying out the responsibilities of Integrity Commissioner and of the independent third party, the Commissioner has offered to assist former employees with any concerns regarding their private sector employment and potential conflicts which arise during the 12-month post-service period. Nine requests for an opinion of this nature were received, and one potential conflict of interest was identified. In this case, the former employee and the private sector company agreed to the employee being removed from any activity surrounding the issue.

At the time of writing this Report, the Civil Service Commission is notifying employees who are to be designated under the Directive and Regulation and information sessions are taking place. With the designation of employees involved in routine privatization and specific privatization matters, the completion and filing of Declarations and Disclosure Statements with this office is underway.

A high degree of confidentiality is absolutely necessary if the integrity of this office is to be respected. We have been very successful in maintaining confidentiality since 1988 and the Integrity Commissioner is committed to continued confidentiality with respect to the new responsibilities under the Directive and Regulation.

C. Prospective Candidates

In last year's Annual Report, the Commissioner addressed the issue of those individuals who are interested in becoming candidates in the next provincial election and the impact of the *Members' Integrity Act, 1994* on their lives, should they be elected, and particularly, should they be appointed to Cabinet. With a provincial election to be held within the next couple of years, those words bear repeating:

"...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."



INQUIRIES

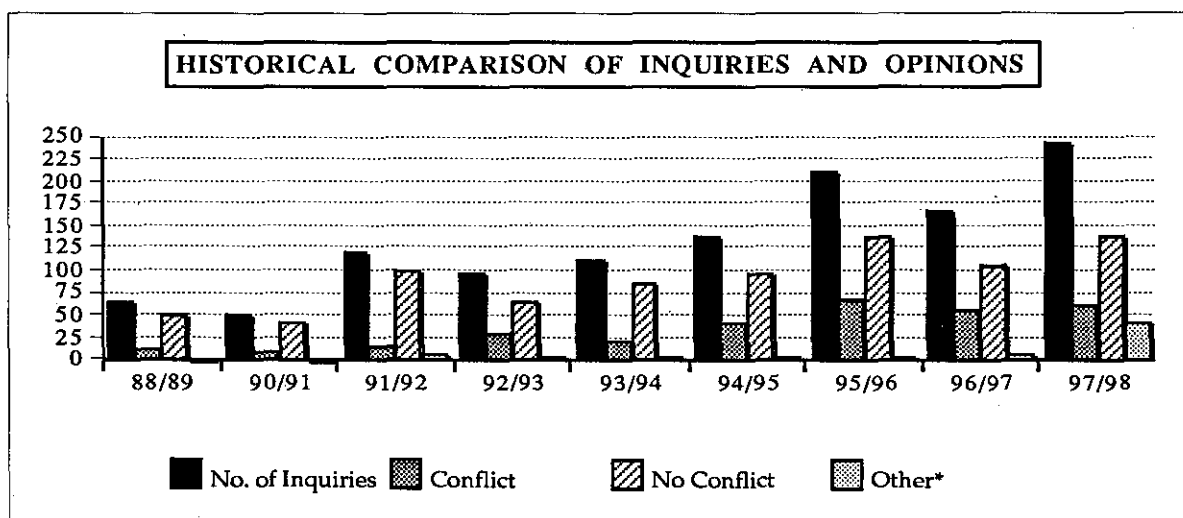
A. Statistics

INQUIRIES RECEIVED APRIL 1, 1997 TO MARCH 31, 1998						
Received From	Number Received	Conflict	No Conflict	No Jurisdiction	Withdrawn*	Outstanding
Member	235	60	133	3	38	1
Spouse	0	0	0	0	0	0
Trustee	3	0	3	0	0	0
Caucus	3	1	2	0	0	0
Cabinet	0	0	0	0	0	0
Committee	0	0	0	0	0	0
Former Minister	0	0	0	0	0	0
TOTAL	241	61	138	3	38	1

* Verbal inquiries for which a written request for an opinion was not received from the member and a written opinion was not provided by the Commissioner.

Inquiries under s.28 of the *Members' Integrity Act, 1994* continue to increase and the issues raised in those inquiries are becoming more complex.

It should be noted that prior to the implementation of the Conflict of Interest and Post-Service Directive and Regulation in December, 1997, conflict of interest inquiries from senior public servants in Ministers' offices with respect to outside activities were dealt with under the *Members' Integrity Act, 1994*. The Commissioner's opinion was based on whether such activities placed the Minister in a conflict of interest and the Minister was provided with a copy. These inquiries are now responded to under the Directive and Regulation and are considered confidential between the Commissioner and the senior public servant.



* Withdrawn or No Jurisdiction

B Selected Inquiries under Section 28

The following pages summarize, in accordance with s.24(2) of the *Members' Integrity Act, 1994*, advice given by the Commissioner in answer to requests for an opinion and recommendations he received in the past fiscal year under s.28(1) of the *Act*. 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 constituent organization asked a member/Minister to "help us overcome the irrational bureaucracy in this matter so that we can use the money to acquire a larger and better facility..." and to "intercede on a ministry decision", a ministry which did not fall within the Minister's jurisdiction.

Opinion:

The member was advised to contact the Ministry involved to inquire only as to policies and procedures and the status of the matter, and to so advise the constituent organization. It would be inappropriate for the member to comply with the wishes of the constituent organization as it may be seen as an attempt to interfere with the process.

INQUIRY NO. 2

Issue:

A member was asked by a constituent doctor to provide a character reference with respect to an alleged OHIP overbilling.

Opinion:

As the constituent is not well known to the member and the member is not familiar with all the facts regarding the alleged OHIP overbilling, it would be inappropriate to provide a character reference.

INQUIRY NO. 3

Issue:

To assist in the understanding of the issues raised in a Private Member's Bill, a member inquired as to the appropriateness of distributing supporting material to all members of the Legislative Assembly.

Opinion:

As the material is to better inform members and will be distributed to all members of the Legislative Assembly, such distribution does not place the member in a conflict situation.

INQUIRY NO. 4

Issue:

The Executive Assistant to a member advised that he had made telephone calls on behalf of the federal election campaign from the member's Queen's Park office after hours, and the member had advised him that such calls are not permitted regardless of the time of day.

Opinion:

The member's advice was correct. Such telephone calls are an inappropriate use of the Queen's

Park office, and should be made on personal time and in places other than Queen's Park or the constituency office. However, as the Executive Assistant contacted this office immediately upon the matter being brought to his attention, it was the Commissioner's opinion that the calls had been an error of judgment made in good faith and the undertaking to 'cease and desist' was noted.

INQUIRY NO. 5

Issue:

A number of members, including Parliamentary Assistants, were invited by a private corporation to attend the 1997 U.S. Open Championship golf tournament in Maryland, U.S.A. The invitation included hospitality and tickets to the tournament.

Opinion:

Section 6 is an absolute prohibition against the acceptance of a fee, gift or personal benefit that is connected directly or indirectly with the performance of the members' duties of office with two exceptions:

- (1) compensation authorized by law; and
- (2) a gift or personal benefit received as an incident of the protocol, customs or social obligations normally accompanying the responsibilities of office.

The invitation was not connected directly or indirectly with the performance of the members' duties as M.P.P.s or as Parliamentary Assistants, nor was the benefit to be received an incident of the protocol, customs or social obligations that normally accompany the responsibilities of those offices.

Regardless of the value of the benefit, the invitation extended by the private corporation cannot qualify as a proper exemption. If the Government of Ontario should consider the attendance of one or more members at the golf tournament to be in the public interest, then it should be prepared to select the members and pay their expenses.

The suggestion by the private corporation that the members accept tickets to the tournament and then remit the cost to the private corporation, which would then donate the payments to a charity, is a subterfuge which would not withstand public scrutiny.

In the absence of a lobbyist register in Ontario, it could be assumed that the duties of the individual who wrote the letters on behalf of the private corporation include lobbying government members and agencies and that the invitation extended falls within the ambit of such duties. The members were reminded of sections 3 and 4 of the Preamble to the *Members' Integrity Act*:

"3. 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.

4. Members are expected to act with integrity and impartiality that will bear the closest public scrutiny."

The acceptance of such invitation would be a violation of s.6 of the *Members' Integrity Act, 1994*, and of the principles contained in the Preamble to the Act.

INQUIRY NO. 6

Issue:

A constituency assistant received \$50 from a constituent wanting to show his gratitude. The constituent assistant advised he could not accept the money and suggested that the constituent

donate the money to a charity. Did he take the right steps?

Opinion:

Acceptance of money or gifts of any nature is inappropriate as the constituency assistant is paid by the Legislative Assembly to assist constituents. Having a contribution made in his name to a charity does not place the member in violation of the *Act*, on the condition that the member or the constituency assistant do not use the income tax receipt which may issue.

INQUIRY NO. 7

Issue:

A request was made for the Commissioner to set out guidelines with respect to the printing of business cards.

Opinion:

(1) Ministry Cards - Minister and Parliamentary Assistant - A Minister's or Parliamentary Assistant's ministry card may include the address and telephone number of the ministry office and the address and telephone number of the constituency office.

Advertising on the back of the card is appropriate, as long as it is advertising for the Minister's or Parliamentary Assistant's ministry.

(2) Constituency - Minister and Parliamentary Assistant - A Minister's or Parliamentary Assistant's constituency card may include the address and telephone number of the constituency office and the address and telephone number only of the Queen's Park office. There should be no reference to the ministry or member's position as Minister or Parliamentary Assistant.

If a member wishes to advertise on the back of the card, the advertising must be general in nature, e.g. "Ontario - Yours to Discover", and not specifically applicable to a ministry or program within a ministry.

(3) Backbenchers and Members of the Opposition need only one card which may include their constituency office and Queen's Park office addresses and telephone numbers.

Advertising must be of a general nature and not specific to a ministry or program within a ministry.

INQUIRY NO. 8

Issue:

A backbencher inquired as to the appropriateness of expressing in a letter to constituents personal views on the recommendations or directives of the Health Services Restructuring Commission.

Opinion:

It may be difficult, though not impossible, for a member who supported legislation when it was passed by the Assembly to criticize it later, however caucus discipline may result from such behaviour.

With respect to the expression of personal views, it is doubtful that it would make much difference whether the views expressed are personal or those of an M.P.P. To the constituents, the member is the M.P.P. and is free to express personal views on constituency letterhead.

INQUIRY NO. 9

Issue:

A Mayor invited the local member/Parliamentary Assistant to play in an annual charity golf

tournament, with proceeds to support a local health centre. Subsequently an invitation was received from a private company which does business with the Parliamentary Assistant's ministry.

Opinion:

The Mayor's invitation may be accepted, however, the member should pay for the entry fee personally. In this respect, a tax receipt may be accepted.

The invitation by the private company should not be accepted as the company does business with the member's ministry. In addition, in light of the member's position as Parliamentary Assistant, the member should not play in a foursome which includes representatives of any organization which has dealings with his ministry.

INQUIRY NO. 10

Issue:

The constituency assistant to a member/Minister inquired as to the appropriateness of

- (1) contacting a Ministry of Health adjudicator about the status of a matter and about information with respect to the applicable legislation;
- (2) contacting the Clarke Institute of Psychiatry with respect to rules and regulations applying to a certain surgical procedure;
- (3) contacting the Clarke Institute with respect to procedures in place for altering regular rules;
- (4) contacting the Clarke Institute with respect to other options available to the constituent.

Opinion:

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 its policies and procedures and the status of a matter. However, it is inappropriate to contact the adjudicator directly, as it may be seen as an attempt to influence the decision and/or interfere with the process.

The Clarke Institute may be contacted with respect to its policies and procedures which may include appeal procedures or other options available to the constituent. To request a deviation from those policies and procedures is inappropriate and may be seen as an attempt to interfere with the process.

INQUIRY NO. 11

Issue:

A member submitted a letter of support on behalf of a constituent, addressed "To Whom it May Concern" and requested the Commissioner's opinion with respect to the appropriateness of the letter.

Opinion:

The body of the letter was appropriate, however, all letters of reference and support should be addressed to a specific individual or organization, otherwise there is no control over the use of the letter.

INQUIRY NO. 12

Issue:

A constituent asked a member for a review of the bail hearing on a case still before the courts and a review of the process in general.

Opinion:

There is nothing the member can do to assist the constituent with respect to the bail hearing. The

matter is before the courts and any action taken by the member may be seen as an attempt to interfere with the process.

If the constituent wishes to request a review of the process, such a request should be directed to the Attorney General.

INQUIRY NO. 13

Issue:

A Parliamentary Assistant was preparing his constituency newsletter and inquired as to the inclusion of a logo which referred to the Ministry to which he was the Parliamentary Assistant.

Opinion:

The member was referred to the *Guide to Members' Allowances and Services and Members' Support and Caucus Staff* which states that "*Members may not print or mail, at the expense of the Assembly, any material of a partisan, political nature.*"

The Guide is produced by the Board of Internal Economy and questions with respect to those guidelines are to be directed to the individual caucuses. The Commissioner, therefore, has no jurisdiction to give an opinion in this matter.

INQUIRY NO. 14

Issue:

A Minister accepted an invitation to open a conference. The invitation included transportation by a private company with other guests the night before on a chartered jet paid for by the company.

Opinion:

The Minister may fly on the chartered jet paid for by the private company, however, as the conference is considered ministerial business, the ministry should pay his costs for the transportation and accommodation.

INQUIRY NO. 15

Issue:

A constituent died in a house fire four days after a conversation with the member's office, and it was felt that the information received from the constituent may be relevant to the police investigation of the events surrounding the fire. The member inquired as to the appropriateness of contacting the local police.

Opinion:

As the information in the member's possession may assist the police in their investigation, the member is entitled to contact the local police to advise with respect to his knowledge of the matter.

INQUIRY NO. 16

Issue:

A member inquired as to whether Ministers, Parliamentary Assistants, private members and political staff are constrained from working in their personal time on behalf of municipal candidates in the municipal election.

Opinion:

The Commissioner was not prepared to give an opinion on a hypothetical question, however, the member was referred to the *Guide to Members' Allowances and Services and Members' Support and Caucus Staff*. "Political Activity Regulations" deal with the use of office premises and

activities of constituency office staff during campaigns and although there is no specific reference to municipal elections, the Commissioner suggested that one should assume the omission is an oversight and that the general provisions as set out could be applicable.

All members should consider the principles in the Preamble to the *Members' Integrity Act, 1994*, in determining whether the activities in which they propose to engage on behalf of candidates for municipal office are in conformity with these principles. The answer to the question whether the proposed activities interfere with the members' primary responsibility to represent their constituents' interests in the Assembly and to the Government of Ontario requires the exercise of common sense and good judgment by the members.

INQUIRY NO. 17

Issue:

Can a Minister's constituency office sponsor community placements within the Ontario Works Program?

Opinion:

In order to qualify for the Ontario Works Program, people receiving welfare must be willing to contribute service to their communities at the same time that they make efforts to find paid employment. Welfare recipients will be required to accept offers of community placement and/or employment support or employment placement as a condition of eligibility for welfare.

Placement can be sponsored by communities and/or public, non-profit or private-sector organizations. Constituency offices are not considered for-profit organizations and may, therefore, directly sponsor community placements within the Ontario Works Program on the condition that they follow the criteria set out for participants.

INQUIRY NO. 18

Issue:

Can a member's staff person seek elected office with a local school board?

Opinion:

A staff member is entitled to seek office with a local school board on the following conditions:

- (1) the M.P.P. is aware of the individual's activities and approves; and
- (2) no school board business is conducted at the member's offices.

The staff member was also referred to 'Political Activities' in the *Guide to Members' Allowances and Services and Members' Support and Caucus Staff*.

INQUIRY NO. 19

Issue:

A constituent has written to a member requesting assistance in a matter which is the subject of an investigation for tax evasion with a court date scheduled.

Opinion:

Although the member is also a lawyer, the constituent is seeking the member's assistance as an M.P.P., and the member can only advise the constituent to seek legal counsel elsewhere. It is inappropriate for the member to accept legal business from the constituency office. In addition, the member cannot become involved in matters before the court as an M.P.P.

INQUIRY NO. 20

Issue:

A member's Provincial Association is presenting a fundraising event featuring the member as the official host. Is it appropriate for the Provincial Association to forward invitations to associations which may have met the member or corresponded with the member's constituency office?

Opinion:

Acting as the host of an event sponsored by the member's Provincial Association does not place the member in violation of the *Act*. The Commissioner does not have a mandate to advise as to the appropriateness of the Provincial Association's activities, other than as they relate to the member as the local M.P.P.

INQUIRY NO. 21

Issue:

In view of the upcoming redistribution of the electoral map in Ontario and the change in ridings, a member inquired as to the permissible activities of members of the Legislature in areas outside of their present ridings.

Opinion:

The Commissioner referred the member to the *Guide to Members' Allowances and Services and Members' Support and Caucus Staff*:

(a) Part III, Q, "Political Activity Regulations" provide guidance as to the use of the office premises and activities of constituency office staff during a writ period, with a recommendation from the Commissioner that members and staff conduct themselves in the same manner as if the writ had been issued;

(b) Part V, A(viii) provides for the Members' communications budget, including newsletters, flyers and target mailings, and states, "*Members may not print or mail, at the expense of the Legislative Assembly, any material of a partisan, political nature.*" The Commissioner suggested that these provisions referred to the constituency boundaries now in effect and that it would be inappropriate to distribute material, at the expense of the Legislative Assembly, to an area which is not considered the member's present constituency.

All members should consider the Preamble to the *Act* in determining whether the activities in which they propose to engage are in conformity with these principles. The answer to the question whether the proposed activities interfere with the member's primary responsibility to represent constituents' interests in the Assembly and to the Government of Ontario requires the exercise of common sense and good judgment by each member.

INQUIRY NO. 22

Issue:

A constituent's lawyer has written to the member stating "It is my understanding that you will attempt to have the notice of garnishment suspended until such time as we are able to obtain a hearing date..."

Opinion:

The lawyer should be taking the action necessary to have the notice of garnishment suspended. The request is inappropriate as any involvement by the member may be seen as an attempt to interfere with the legal process and to improperly influence a government agency and the bank.

INQUIRY NO. 23

Issue:

A Minister's office inquired as to the appropriateness of seeking corporate sponsors for ministry-related events, and of the 'presence' of the Minister at such events.

Opinion:

Ministers and staff should not become involved in seeking sponsorship, as these actions may be interpreted as an attempt to exercise influence upon the proposed sponsor, and may also be seen as an attempt to give an unfair advantage to that contact over other individuals or corporations that may be interested in the sponsorship.

The Chair or members of the various agencies under the jurisdiction of the Minister are the more appropriate individuals to seek such sponsorship, and the Minister may participate actively at the actual event.

INQUIRY NO. 24

Issue:

The spouse of a constituent has not complied with a court order with respect to monthly support payments and arrears. The wife is suggesting one full support payment be made in cash and delivered to the member's office by a certain time. Upon receipt of same, the information would be faxed to the Family Responsibility Office for update purposes.

Opinion:

If the court order is not complied with, there is a legal process which should be followed through the courts. It is inappropriate for the member to become involved as an intermediary.

INQUIRY NO. 25

Issue:

A Minister and a member of his staff were invited by a private company which does business with the Minister's ministry, to sit at the company's table at an event which fell within the Minister's jurisdiction.

Opinion:

Although attendance at this event may fall within the Minister's jurisdiction, the acceptance of the private company's invitation does not fall within the "customs or social obligations that normally accompany the responsibilities of office..." as set out in s.6 of the *Act*. The company does business with the provincial government, and in particular, the Minister's ministry. Sitting at the company's table may be seen as giving that company an unfair advantage with respect to future business.

The Minister was also referred to s.4 of the Preamble which states: "*Members are expected to act with integrity and impartiality that will bear the closest public scrutiny.*"

If the Minister wishes to attend, the Ministry should pay for the tickets and the Minister should avoid sitting at a table which includes individuals or companies that do business with the ministry.

INQUIRY NO. 26

Issue:

A member has been asked to write a character reference for a constituent charged with theft over \$5,000.

Opinion:

If the member knows the constituent on a personal basis and has known him prior to election as an M.P.P., the letter of reference should be written on personal letterhead. If the member knows the individual through his work as an M.P.P., and the member is fully aware of the circumstances surrounding the charge, the letter of reference can be written on constituency letterhead. Any letter of reference should be directed either to the individual's lawyer or the court.

However, character references in criminal matters are best offered under a subpoena, at which time, both the Crown and the defence counsel have an opportunity to question the member.

INQUIRY NO. 27

Issue:

A Parliamentary Assistant requested clarification of what he was permitted to do on behalf of his constituents seeking assistance in matters which fell under the responsibility of his ministry.

Opinion:

The member was referred to Inquiry No. 23 of the 1995-96 Annual Report which stated:

"...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.

*...
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 conflict under the Act."

A constituent can always be referred to a colleague in a neighbouring riding.

INQUIRY NO. 28

Issue:

A member forwarded to the Commissioner a copy of a letter sent to a police officer, in which he expressed concerns regarding an investigation on behalf of a constituent. The letter stated, in part,

"I would appreciate being kept informed of any progress that you may be able to make with this file. As well I would appreciate a briefing as to why it has not been possible for the (police) to meet its obligations to the community."

The letter was returned to the member by the officer, unanswered, and the member was now seeking advice from the Commissioner.

Opinion:

In the Annual Report, 1995-96, the Commissioner stated in his Remarks:

"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...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..." (Emphasis added)

The police have a process in place for investigations and, as part of the judicial process, are independent of all other levels of government. The member's letter was inappropriate as it may be seen as an attempt to interfere with the administration of justice. The officer was not required to respond to the member.

The member should contact the Chief of Police and the Attorney General, both of whom also received copies of the letter, to advise the letter was returned unanswered and the inquiry abandoned.

INQUIRY NO. 29

Issue:

A private company offered the use of a new aircraft to a Minister at no cost. Two company representatives would be on the plane to point out the various attributes of the aircraft to the Minister and staff.

Opinion:

The purpose of s.6 of the Act is to prohibit a member of the Assembly from accepting a bribe as the price of influencing the 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.

Acceptance by the Minister of the free use of the plane may give the private company an unfair advantage over other competitors in this area. In addition, such acceptance is a benefit that is not an incident of protocol, customs or social obligations connected with the performance of the Minister's duties.

It can be assumed that the presence of the private company representatives on the plane during the trip falls within the ambit of lobbying. Although there is no proposal for the government to purchase new aircraft at the present time or in the near future, such possibility may put the Minister, as a member of the Executive Council, in a potential conflict of interest in the future.

INQUIRY NO. 30

Issue:

A member has been asked to accept an appointment as Chair of the Board of a private company, which he has been very active in supporting. Although the company does not receive funds from the Provincial Government at the present time, it is their intention to request funding for research and development purposes from both the Federal and Provincial Governments.

Opinion:

A request for funding from the Federal Government does not place the member in a conflict of interest situation when acting as an M.P.P. or as Chair of the Board.

Section 7 of the Act states in part:

"(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.

(2) No member shall have an interest in a partnership or in a private company that is a party to a contract with the Government of Ontario under which the partnership or company receives a benefit.

*...
(4) Subsection (2) does not apply if the Commissioner is of the opinion that the interest is unlikely to affect the member's performance of his or her duties."*

Acceptance of the position of Chairman of the Board subjects the member to s.7 should the private company solicit funding from the Provincial Government, thus placing the member in a conflict of interest situation. The Commissioner would, under such circumstances, not apply s.7(4), as it was his opinion that the section was to be used only in exceptional cases.

The member had been actively promoting the private company as an M.P.P. and in that capacity, he is entitled to continue assisting with the promotional activities, including the request for research and development funds from the Provincial Government, thereby avoiding a breach of s.7.

INQUIRY NO. 31

Issue:

A member/Minister requested clarification with respect to the establishment of a foundation in the member's name with funds to be designated to assist charitable organizations.

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."

Soliciting funds under a foundation named after the member, who is also a Minister, is inappropriate as any solicitation may be seen to be from the Minister and considered as exercising improper influence upon the proposed donors, contrary to s.4.

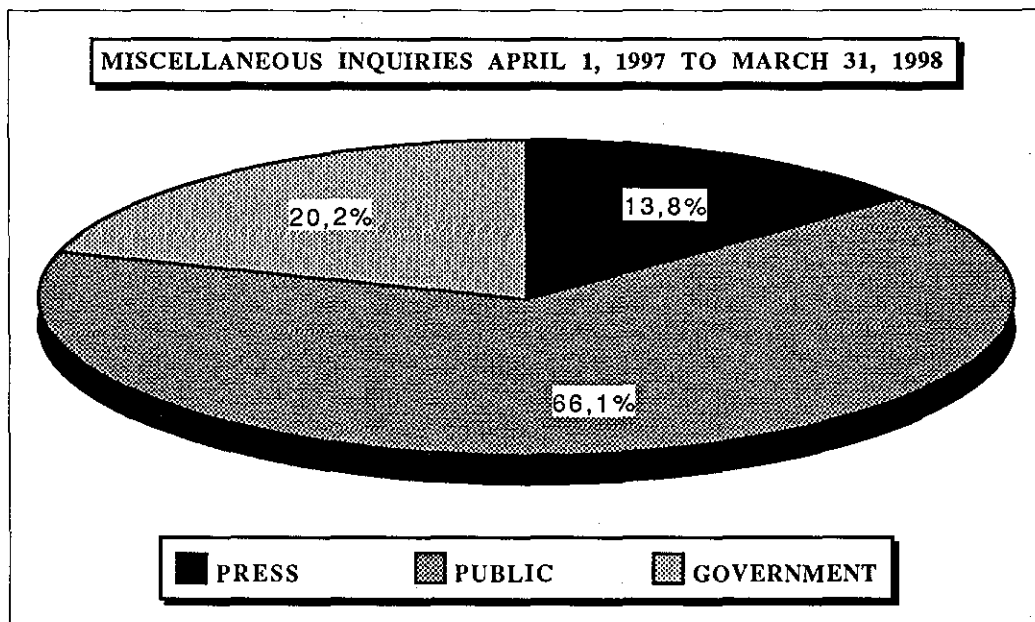
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### C. *Miscellaneous Inquiries*

During the period covered by this Report, a variety of inquiries were received from all levels of government in Ontario and from as far away as New Zealand. In addition, inquiries were received from members of the public and the press.

The inquiries included questions regarding the Commissioner's mandate and the Commissioner's policies and procedures, complaints about various government agencies, conflict of interest allegations concerning government employees, requests for copies of reports by the Commissioner, municipal conflict of interest issues, and complaints about Ontario Members of Provincial Parliament. Where possible, the individual was provided with the requested information or referred to the appropriate authority.

The total number of miscellaneous inquiries received was 109, and the breakdown is represented below.



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REFERRED QUESTIONS

The 1996-97 Annual Report set out the process adopted by the Commissioner with respect to complaints under s.30(1) of the *Act* and the requirement of an affidavit.

During the past fiscal year, four Referred Questions were received, two of which did not comply with the *Members' Integrity Act, 1994* and the above-noted process. The Commissioner did not proceed, nor did the members choose to comply with the process. The remaining two Referred Questions are set out below in a summarized format. Complete texts are available from the Office of the Integrity Commissioner upon request.

A. *The Honourable Allan Leach, Minister of Municipal Affairs and Housing re: letter to the Health Services Restructuring Commission*

On May 14, 1997, Gerard Kennedy, M.P.P. for York South, requested an opinion as to whether The Honourable Allan Leach, Minister of Municipal Affairs and Housing, was in violation of the *Members' Integrity Act, 1994* ("Act") by writing to the Health Services Restructuring Commission ("H.S.R.C.") requesting the H.S.R.C. to extend the deadline for the receipt of submissions on behalf of Wellesley Central Hospital and Women's College Hospital, in opposition to the closure of these hospitals as recommended in the report by the H.S.R.C. In response to Mr. Leach's request, the H.S.R.C. extended the former deadline.

The H.S.R.C. was established by Ontario Regulation 88/96 under the *Ministry of Health Act* exercising a mandate delegated to it by the Minister of Health under the *Public Hospitals Act*.

"(1) The following are the duties of the Commission:

- 1. To consider local hospital restructuring plans provided by the Ministry and such other information relevant to the plans as it deems appropriate.*
- 2. To determine which local hospital restructuring plans provided by the Ministry shall be implemented and to vary or add to those plans if it considers it in the public interest to do so.*
- 3. To determine the timing of the implementation of local hospital restructuring plans and the manner in which they are to be implemented.*
- 4. To set guidelines respecting representations that may be made to the Commission by a hospital that has received notice under subsection 6 (5) of the Public Hospitals Act that the Commission intends to issue a direction that the hospital cease to operate or that it amalgamate with another hospital.*
- 5. To give the Minister quarterly reports on the implementation of local hospital restructuring plans.*
- 6. To advise the Minister where the Commission is of the opinion that a local hospital restructuring plan should be developed for a specified hospital or for two or*

more hospitals in a geographic area.

7. Where a hospital fails to carry out a direction issued by the Commission under section 6 of the Public Hospitals Act, to advise the Minister as to appropriate actions, including the appointment of investigators under section 8 of the Public Hospitals Act and of hospital supervisors under section 9 of that Act.

(2) The guidelines established under paragraph 4 of subsection (1) shall set out the manner in which representations may be made and the procedure for making the representations. ..."

The Minister of Health explained the purpose of the legislation as follows:

"Therefore, on the advice of our partners, on the advice of local communities, we are putting in place a system whereby a Health Services Restructuring Commission will be able to, at arms's length from government, use the authority in the Act to work with local communities to implement--not write, but implement--their restructuring reports as recommended..." Hansard, December 6, 1995, page 1304

The Commission is intended to operate at arm's length from government and without political interference--a clear direction to Cabinet Ministers not to become involved with the Health Services Restructuring Commission.

The issue was whether Mr. Leach, Minister of Municipal Affairs and Housing, advocated on behalf of private parties by forwarding a letter on his constituency letterhead to the H.S.R.C., requesting an extension of time for the filing of submissions by Wellesley Central Hospital and Women's College Hospital violating parliamentary convention, contrary to the *Members' Integrity Act, 1994*.

Mr. Kennedy submitted that Mr. Leach's request to the Chair of the H.S.R.C. to grant these hospitals an extension for filing submissions with regard to their proposed closure, which, if ordered by the Commission, would adversely affect his constituents, was a breach of parliamentary convention, since it was a request by a Minister of the Crown to an independent commission.

In a letter to constituents, Mr. Leach referred to the recommendations of the Metropolitan Toronto District Health Council that both Wellesley and Women's College Hospital be closed and that Central Hospital, which later merged with Wellesley, be converted to an ambulatory care centre. The letter stated in part,

"Unfortunately, the Restructuring Commission which had been announced by the government on November 30, 1995 to implement hospital restructuring and is intended to function at arm's length from the government, accepted the recommendations of the District Health Council, and rejected the Alliance's plans for consolidated medical services and cost savings.

At the request of the two hospitals, I asked the Restructuring Commission to extend the deadline for submissions and they have done so. ..." (emphasis added)

Mr. Leach made the following submissions:

(1) The guidelines issued by the H.S.R.C. invite any person or organization to make written submissions to it or to seek an extension of time within which submissions may be made and Mr. Leach's acceptance of the invitation was a proper exercise of his responsibilities as an M.P.P. and does not violate any parliamentary convention.

(2) The letter is the only communication which he or his staff had with the H.S.R.C. and the letter did not violate s.4 of the *Members' Integrity Act, 1994*.

(3) The H.S.R.C. is neither a judicial nor a quasi-judicial body, and accordingly, his action was not inappropriate.

Mr. Leach stated that his purpose in making representations to the Commission on March 17, 1997 was to obtain an extension of time for further submissions to the H.S.R.C. by the hospitals and their supporters.

Black's Law Dictionary defines "quasi-judicial" as follows:

"A term applied to the action, discretion, etc. of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature."

"Quasi-judicial power" is defined as:

"The power of an administrative agency to adjudicate the rights of persons before it."

The H.S.R.C. was granted wide powers by the government. Its decisions will bring drastic changes to the manner in which health care is provided in Ontario, the closure of numerous hospitals, as well as the dislocation and the unemployment of medical and nursing personnel and their support staff. It is, therefore, essential that the members of the H.S.R.C. be free to discharge their onerous mandate without political interference. Their decisions are not simply administrative, but are of a quasi-judicial nature.

Ministers may need to be in contact with agencies in their portfolio on a broad range of administrative, policy and regulatory matters when authorized to do so by legislation. However, the H.S.R.C. is not an agency of Mr. Leach's portfolio. It falls within the jurisdiction of the Minister of Health and Mr. Leach cannot intervene on behalf of any person or entity with the H.S.R.C. in any matter before it that requires a decision in its quasi-judicial capacity.

Mr. Leach's letter to the H.S.R.C. would indicate his support was not limited to a request for an extension of time, but for reconsideration of issues relative to the Commission's decision to close Wellesley and Women's College Hospitals. His letter to his constituents indicated dissatisfaction with the acceptance by the H.S.R.C. of the recommendation of the District Health Council. A Minister is deemed to agree with government policy and should not publicly indicate opposition to its implementation.

In dealing with Cabinet solidarity, Eugene A. Forsey and G.C. Eglington, in a publication entitled The Question of Confidence in Responsible Government, state:

"A Minister must not speak about or otherwise become involved in a colleague's portfolio without first consulting him and gaining his approval..."

Certain general principles are dealt with in the publication and are summarized as follows:

- Conventions are observed rules of constitutional and political behaviour. The conventions governing ministerial responsibility are most important because they define the essential characteristics of the way we are in fact governed.
- The responsibility of Ministers, whether collective or individual, to the Assembly

is not contained in any statute. All these matters are governed by conventions, that means precedent and common sense.

- Most democratic governments accept the fundamental principles of ministerial responsibility and agree that the appearance and reality of integrity are indispensable parts of our system of government.
- Gross breaches of ordinarily accepted codes of conduct which have been enshrined in legislation usually result in serious political consequences. However, ministerial bungling by way of an error of judgment while the subject of criticism, may not require a penalty unless there are extenuating circumstances.
- Conventional principles are generalizations from a mass of usages flowing down from incident to incident. These incidents in the light of common sense are usually termed precedents which over a period of time reflect common usage and are consolidated ultimately into conventions.
- A precedent may be followed on another occasion because the actions composing the precedent are seen with hindsight to be correct, that is, to have constituted a common sense solution to a particular problem in conformity with the best general constitutional principles.
- If the reasons for regarding those actions as correct are still applicable in a like political situation, they are likely to be followed. Once a new practice is followed, a precedent is established which will constitute a usage and in due time a convention. Conventions and usages are not cast in stone; they may be modified or even abandoned, if they are no longer germane to current conditions or to the underlying principles of the current political system. Some conventions are easily identified as cut-and-dried principles but most exist in variable states of elasticity.
- Conventions have been defined as extra-legal rules of structure or procedure or principles established by precedent, consolidated by usage and generally observed by all concerned.

The practice has evolved whereby Ministers and their offices do not deal directly with public servants when advocating on behalf of a constituent, but go through the office of the responsible Minister. However, Ministers and their staff may seek information on the status of a matter and the policies and procedures of any particular agency, board or commission.

The Commissioner found that Mr. Leach's letter to the Chair of the H.S.R.C. was inappropriate. As a Minister, he should have directed his constituents to forward their complaints to the H.S.R.C. or he could have personally consulted the responsible Minister, who would have determined whether the concerns were relevant to status, policies or procedures of the H.S.R.C. To by-pass the Minister of Health was not only a failure to show proper respect for the Minister, but in the present situation, was also a flagrant breach of parliamentary convention since the H.S.R.C. was set up as an independent quasi-judicial tribunal to operate at arm's length from government. The meaning of "arm's length" in the present context is "without interference by members of the political party responsible for the enactment of the legislation creating the H.S.R.C." It is an accepted convention that there are limitations on the ability of a Minister to act on behalf of constituents as far as quasi-judicial tribunals are concerned.

The fact that Mr. Leach wrote on his constituency letterhead does not alter the situation. Nor does the fact that the H.S.R.C. invited "anyone" to make representations. A Minister is always a Minister and the recipient in the present case would be well aware of Mr. Leach's position in Cabinet. Mr. Leach is a member of the Executive Council which established the H.S.R.C. and is

bound by parliamentary convention not to interfere.

The Executive Council is by convention supposed to speak with one voice, since it is collectively responsible for initiating and implementing policies. Therefore, Cabinet solidarity requires that all Ministers accept collective responsibility for the policies and actions of the government.

Mr. Leach was found to have contravened the *Members' Integrity Act, 1994* by communicating with the Chair of the Health Services Restructuring Commission.

Mr. Leach was elected to the Ontario Legislature and appointed to the Executive Council in 1995. Prior to his election, he held several important and high profile positions in the field of public transportation, was well respected in the business community, and had no prior experience in government. The Commissioner was of the opinion that the action by Mr. Leach was an error in judgment, based on his limited experience in government, but made in good faith in the mistaken belief that he was entitled to do so. The Commissioner recommended that no penalty be imposed.

B. Mr. Joseph Tascona, M.P.P., Simcoe Centre re: representation as lawyer and as member of a Legislative Committee

David Christopherson, M.P.P. for Hamilton Centre, requested an opinion as to whether Mr. Joseph Tascona, M.P.P., Simcoe Centre, was in violation of s.2, 4 and 6(1) of the *Members' Integrity Act, 1994* ("Act") by representing employers and employees in his capacity as a lawyer in employment standards cases and at the same time, actively participating in the Legislature and as a member of the Resources Development Committee considering Bill 49, which amended the *Employment Standards Act*.

Mr. Christopherson submitted affidavits by two private citizens who had filed a claim under the *Employment Standards Act* to collect severance and lost wages from a company related to a company now bankrupt. Both citizens alleged they were unable to make use of their M.P.P. (Mr. Tascona) because he had been retained as a lawyer to act for the related employer company. As such Mr. Tascona was opposed to the claim for severance and lost wages and he was also vigorously supporting the pro-employer changes to the *Employment Standards Act* in the Legislature and in Committee.

Mr. Tascona set out in great detail his participation in the issue. He has carried on a law practice in such areas as real estate, land development, civil litigation and labour/employment law, representing both employees and employers. As a member of the Legislature since June, 1995, and not a member of the Executive Council, Mr. Tascona is entitled to practice his profession, and this was confirmed in an opinion given by the then Commissioner, The Honourable Gregory T. Evans.

The Preamble to the *Members' Integrity Act, 1994*, states in part:

- (1) *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.*
- (2) *Members' duty to represent their constituents includes broadly representing their constituents' interest in the Assembly and to the Government of Ontario."*

The Commissioner found Mr. Tascona had broad legal experience in many issues and in particular, in acting on behalf of both employees and employers in employment standard matters. Such

experience would be a benefit to the Resources Development Committee in reviewing the *Employment Standards Act*, and subsequently in debate in the Legislative Assembly.

The Commissioner also found Mr. Tascona was carrying on his responsibilities and duties as a lawyer representing his client, and at the applicable time, was making broadly based representations to the Resources Development Committee with respect to employment standards issues and subsequently to the Legislative Assembly.

Sections 2 and 4 refer to the furthering of "the member's private interest..." and s.1 of the *Act* defines "private interest" as follows:

*"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,
..." (Emphasis added)

Mr. Tascona's participation in the review of the *Employment Standards Act* was of general application to the people of Ontario, benefitting both employers and employees, and amendments to the *Employment Standards Act* affect Mr. Tascona as one of a broad class of persons, i.e. lawyers, in Ontario. As a result, the Commissioner found there was no conflict between his responsibilities and obligations to his client as a solicitor and his duties as a member of the Legislative Assembly.

There was no evidence that Mr. Tascona received a fee, gift or personal benefit from any employer or employee to specifically pursue amendments to the *Employment Standards Act*. Therefore, there was no violation of s.6(1) of the *Act*.

In order to promote public confidence in the integrity of not only the members, but the Legislative Assembly as a whole, the Commissioner recommended the private interest of a member should be stated on the record of each committee hearing.

In September, 1993, the Office of the Integrity Commissioner issued a memorandum to the Members of the Legislative Assembly which stated in part:

"Perhaps the Chair of each Committee would consider asking the question at the commencement of the hearings:

If there are any members of the committee who may have a private interest in the matter to be considered, would they please state their interest for the record.

While not every private interest would create a violation of s.2 of the Act, such a statement by the Chair would remind the Committee members that they should address their attention to the provisions of the Act."

The Commissioner endorsed the recommendation, stating that failing such a statement by the Chair, there is an onus on Members of the Legislative Assembly who may have an interest to state their interest for the record.

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# FINANCIAL INFORMATION

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## A. 1997/98 Statement of Expenditures

|                                  |              |
|----------------------------------|--------------|
| Salaries, Wages and Benefits     | \$142,983.00 |
| Transportation and Communication | 3,923.00     |
| Services                         | 117,595.00   |
| Supplies and Equipment           | 10,638.00    |
|                                  | <hr/>        |
|                                  | \$274,940.00 |
|                                  | <hr/> <hr/>  |

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