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Legislative Assembly of Ontario

OFFICE OF THE INTEGRITY COMMISSIONER

1998 – 1999

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	<i>Page Number</i>
COMMISSIONER'S REMARKS	1
OVERVIEW	
A. <i>Disclosure Statements</i>	4
B. <i>Continuing Education</i>	
INQUIRIES	
A. <i>Statistics</i>	5
B. <i>General</i>	6
C. <i>Selected Inquiries under Section 28</i>	8
D. <i>Miscellaneous Inquiries</i>	17
REFERRED QUESTIONS	
<i>The Honourable Michael Harris, Premier of Ontario, and The Honourable Charles Harnick, Attorney General</i>	18
B. <i>The Honourable Elizabeth Witmer, Minister of Health</i>	19
FINANCIAL INFORMATION	
A. <i>1998/99 Statement of Expenditures</i>	24
B. <i>Public Sector Salary Disclosure Act, 1996</i>	24

COMMISSIONER'S REMARKS

The Honourable Robert C. Rutherford

This Tenth Annual Report of the Commissioner covers the period April 1, 1998 to March 31, 1999. This is my second report as Commissioner. Its contents reflect my first full year in this office.

At the outset, let me state my deep appreciation of the continuing excellence of my small staff. I remain thankful to have Lynn Morrison as my Executive Administrative Officer. I have also been greatly helped by Claire Miller, my Administrative Assistant.

Government is an extraordinarily serious business. Wisely run, it is the repository of the democratic tools that safeguard the fundamental human rights of citizens. It is also the vehicle for promoting material well-being and ensuring a measure of social justice within our society. Unwisely run, or run without the highest standards of integrity, government can become the vehicle for cronyism, corruption and the decline in the values so fundamental to democracy. Integrity in government is therefore of compelling interest to us all. Without the abiding trust of citizens in our political and governmental institutions – institutions that are so central to our way of life – democracy cannot function.

This is a challenging time for those who want to believe in the fundamental integrity of government. We are certainly seeing how secretiveness and backroom dealings outside government destroy the honesty of institutions and the public's trust in those institutions. Those who are following the depressing saga of events with the International Olympic Committee have seen firsthand what profound damage to a major international institution can flow from corrupt agreements. The Olympic movement, one of the world's noble pursuits, has been tarnished because of this behaviour. Lovers of the arts know the tremendous potential for damage to a major Canadian cultural institution – The National Arts Centre in Ottawa – because of an alleged secret agreement for the payment of moneys to the family of a major charitable donor.

In both cases, lack of transparency has facilitated unacceptable dealings or at least the potential for such dealings. Lack of transparency has made it impossible to maintain a level playing field, casting a pall over the institutions. It is surely one of the great ironies of our day that the International Olympic Committee has spoken so forcefully about ensuring a level sports playing

field. Yet, through its secret and sometimes corrupt dealings, the IOC has made the field for the operation of the Olympic Games themselves distinctly uneven.

Add to that the spectacle south of our border with the impeachment hearings and the subject matter of those hearings, then you can fully understand why the general public is becoming increasingly disillusioned with the institutions of our society.

True, we have lifted much of the veil of secrecy through access to information legislation, such as the federal *Access to Information Act* and the Ontario *Freedom of Information and Protection of Privacy Act*. Though there remain inadequacies with these laws, few would doubt that they have helped to make governments more accountable to the Canadians they serve.

But governments, not only those besieged by current scandal, but all governments, need to establish further measures to reduce the air of secrecy surrounding them and to enhance their integrity. We must never forget that as citizens of a democratic society, we trade certain liberties for the sake of good government. When we can no longer say that our governments are trustworthy, characterized by integrity and honesty in their internal dealings and their dealings with the people they serve, we create a very dangerous climate for a democratic process that is already threatened by many other pressures. People are less willing to sacrifice their liberties to serve the ends of government if what they are receiving – or at least what they perceive they are receiving – is most definitely not good government.

In Ontario, we have sought to increase public confidence in the members of the Legislative Assembly through the *Members' Integrity Act, 1994*. The *Act* seeks to reconcile the private interests and the public duties of members of the Legislative Assembly. It establishes, among other guiding principles, that members are expected to perform their duties of office and arrange their private affairs in a manner that promotes public confidence in the honesty of each member. Furthermore, the *Act* states that members are expected to act with integrity and impartiality that will bear the closest scrutiny.

Since December of 1997, I have been privileged to serve as the Integrity Commissioner of Ontario. Any member of the Legislative Assembly may ask me to give an opinion and recommendations on any matter respecting their obligations under the *Act* and under Ontario parliamentary convention. During the year ended March 31, 1999, my office received 241 inquiries from members of the Legislative Assembly about a wide range of issues concerning them. This points to the complexity of our modern world, where elected representatives regularly face a variety of potentially compromising situations, often not of their own doing. These elected representatives have a right to seek guidance through the maze of potential threats to their integrity. One important function of my office is to provide that guidance.

The *Members' Integrity Act* also permits a member of the Assembly who has reasonable and probable grounds to believe that another member has contravened the *Act* or Ontario parliamentary convention to request me to give an opinion on the matter. In the 1998-99 fiscal year, my office received five such referrals, two of which complied with the referral process set out in the *Act*. In addition, the Legislative Assembly may by resolution request my opinion as to whether a member has contravened the *Act* or parliamentary convention. The Executive Council

may also ask my opinion about whether a member of the Executive Council has violated the *Act* or parliamentary convention.

As the Integrity Commissioner of Ontario, I am committed to using the *Members' Integrity Act* to ensure to the extent possible the integrity of government.

I am confident that the process established under the *Act* is helping to protect the members of the Legislative Assembly from legal and ethical difficulties and that this process also helps to address the conflicts of interest that invariably arise in an elected body. In addition, it helps to protect the public, promoting public confidence in the integrity of our elected representatives.



OVERVIEW

A. DISCLOSURE STATEMENTS

On November 30, 1998, 130 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*.

The Disclosure Statements are available for examination by the public and copies are available through the Clerk of the Legislative Assembly.

Section 20(4) of the *Act* provides:

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.

Statements of Material Change filed by members from time to time are kept on file, and do not form part of the public record, however, the information is available upon request. If the information provided is still applicable in the following year, such information will be reflected in the Disclosure Statement at that time.

B. CONTINUING EDUCATION

There is no mandatory provision for continuing education under the *Members' Integrity Act, 1994*. However, it should be remembered that 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 matters such as judicial proceedings.

Members, and Ministers in particular, constituency and Queen's Park staff are encouraged to use the resources of the Office of the Integrity Commissioner for questions, reviewing the obligations of members under the *Act*, and outreach programs.



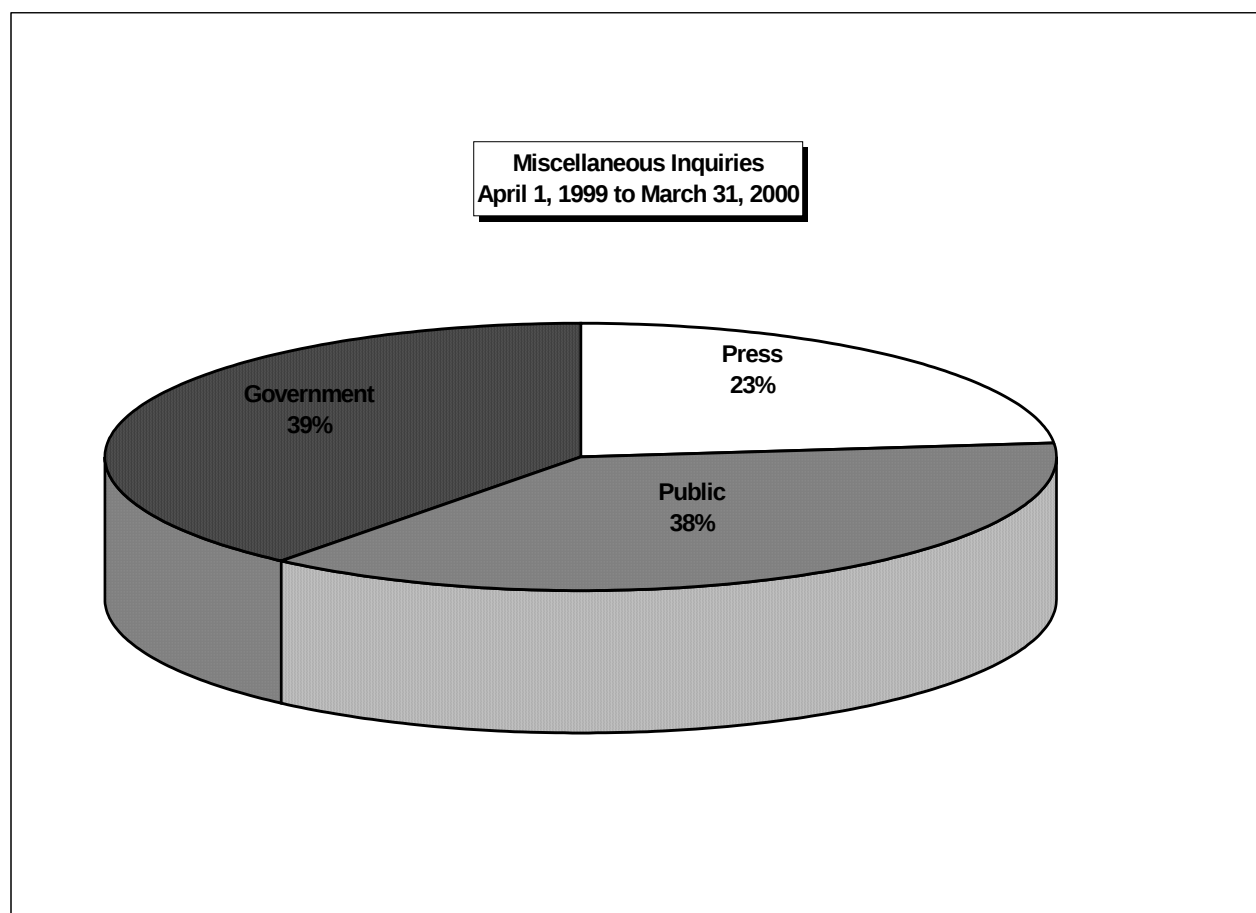
INQUIRIES

A. STATISTICS

Inquiries Received April 1, 1998 to March 31, 1999

Received From	Number Received	Conflict	No Conflict	No Jurisdiction
Member	236	92	140	7
Spouse	0	0	0	0
Trustee	3	0	30	0
Caucus	1	0	1	0
Cabinet	0	0	0	0
Committee	0	0	0	0
Former Minister	0	0	0	0
TOTAL	240	92	171	7

STATISTICS (continued)



B. GENERAL

Pursuant to s.28(1) of the *Members' Integrity Act, 1994*, the Commissioner provides advice to members in response to requests for opinions and makes recommendations regarding the members' activities, and rulings by the Integrity Commissioner have been made on an “*ad hoc*” basis endeavouring to formulate a consistent body of rulings.

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 are in conformity with these principles. Although a member cannot be found to have violated any section in the Preamble itself, the answer to the question whether the member's proposed activities interfere with his or her primary responsibility to represent constituents' interests in the Assembly and to the Government of Ontario, requires the exercise of common sense and good judgment.

Over the last ten years, this office has received 1,400 inquiries under the *Act* and this Annual Report provides an opportunity to review some of the more common issues raised by members and their staff.

Letters of Reference

Letters of reference should be addressed to an individual or organization. Addressing a letter “To Whom It May Concern” is inappropriate as you have no control over the destination of the letter.

Members should also take into consideration the professional capacity in which the letter is being written. If writing on behalf of a constituent, the letter should be written on constituency letterhead. If the reference pertains to the Minister's jurisdiction, then the letter may be written on ministerial letterhead. Personal letters of reference should be written on personal stationery.

The Judiciary

Although the Legislature and the Judiciary are both branches of the provincial government, they are separate and independent and in accordance with parliamentary convention, any encroachment in either direction is strictly forbidden. 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.

Solicitation vs Donation

Goods and services donated on a voluntary basis from local businesses for a community event such as the opening of a constituency office, or an event sponsored by the M.P.P., 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 a donation of any sort is improper as the member is exercising an inappropriate influence upon the proposed donor.

Ministerial Responsibility

Parliamentary convention prohibits all Ministers from personally appearing or advocating on behalf of a private party with any agency, board or commission, however, the matter may be directed to the office of the responsible Minister.

In addition, parliamentary convention prohibits Ministers, Parliamentary Assistants and their 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 or interfere with a decision.

Any member, including a Minister, 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. However, the member should first obtain as much information and documentation as possible from the constituent and then make the inquiry. Such action does not place the member in a conflict under the *Act*.

Gifts and Benefits

In general, complimentary memberships in golf clubs, curling clubs, etc. provided by private donors are not permitted. Tickets and passes to sporting events, theatres, etc. are in the same category unless there is a pre-existing relationship with the donor, or the event falls within the Minister's or member's jurisdiction or duties of office.

However, when the apparent purpose is to 'use' the office of the member as lobbying for the benefit of the donor, gifts and benefits 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 indirectly beneficial to the government. In these cases, a gift form is required to be filed with the Commissioner if the value exceeds \$200.

C. SELECTED INQUIRIES UNDER SECTION 28

The following summarized inquiries reflect advice provided by the Commissioner in the past fiscal year. These examples are not exhaustive, are abbreviated due to space limitations, and do not represent every type of issue which may arise in a member's day-to-day activities. The summaries are intended to raise the awareness of members and their staff and bring to their attention potential problematic issues with the expectation that this office will be contacted for advice and guidance. In view of the confidentiality requirements under s.24(2) of the *Act*, 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/Minister was asked to provide a letter of introduction to be used by a constituent on a business trip to Europe for the purpose of increasing business contacts.

Opinion:

If the member has knowledge that the constituent's company is reputable, and the constituent's business has no relationship with the Minister's ministry, the letter of introduction may be written on constituency letterhead.

INQUIRY NO. 2

Issue:

A request was received from a constituent who is the Chair of a fundraising, not-for-profit organization advising that with a donation, the member's name would be added to a 'Donor Wall'.

Opinion:

The member is entitled to make a personal donation only, and on that basis, "M.P.P." should not appear after the name, as the donation is not considered an activity in which members of the Assembly normally engage on behalf of constituents.

INQUIRY NO. 3

Issue:

A Riding Association is sponsoring a post-budget breakfast, hosted by two members and it is considered a riding event and a community/political event inviting all constituents. Is it appropriate that the invitation be sent from the constituency office on blank paper?

Opinion:

If the Riding Association, a political organization, is funding the breakfast, the invitation should appear on the Association's letterhead and/or should indicate that the Riding Association is sponsoring the breakfast.

It is inappropriate to use the constituency office to further Riding Association activities, political meetings or to display partisan, politically oriented signs. Therefore, distribution of the invitations on behalf of the Riding Association from the constituency office is inappropriate.

INQUIRY NO. 4

Issue:

Two members are hosting a joint post-budget breakfast which will be a non-partisan information session for members of the community. Is it appropriate for a representative from the Riding Association to speak to the audience about an upcoming fundraiser and to sell tickets?

Opinion:

As the event is hosted by the members and paid out of the constituency office budget, it is inappropriate for a Riding Association representative to speak of an upcoming 'political' fundraiser or to sell tickets, as the activities of the Riding Association and the constituency office should be kept separate.

INQUIRY NO. 5

Issue:

Members of an M.P.P.'s staff are interested in becoming members of the local Riding Association executive. Is this appropriate?

Opinion:

Staff may become involved with the local Riding Association on the following conditions:

- (1) The member is aware of the involvement and approves;
- (2) Riding association activities are not conducted from the constituency office and not during constituency hours.

INQUIRY NO. 6

Issue:

A member sought clarification on the restrictions placed on "government members" in terms of communicating support for particular proposals under a Request for Proposal for the government's long-term care initiative, and whether these restrictions also apply to opposition members.

Opinion:

The communication received from the Minister of Health's office was addressed to "Ministers; Parliamentary Assistants; Private Members; Premier's Office; Constituency Offices" and stated:

"Please note, that in order to ensure a fair and unbiased selection process, any attempt by an applicant to contact/discuss their proposal with any person other than the Request for Proposal Coordinator, will result in disqualification of the application. This restriction includes any staff of the Ministry of Health, including the Minister's Office; any member of Cabinet and their staff; and any government MPPs and their staff."

The member should obtain a copy of the RFP from the Tender Office, and determine the grounds for disqualification. Whether or not the reference to "Private Members" and "Government MPPs" refers to all members of the Legislative Assembly would have to be clarified by the Minister of Health's office.

If the member is interested in supporting a constituent, it was suggested that the member contact the Request for Proposal Coordinator for guidance. Otherwise, it is not within the

Commissioner's jurisdiction to comment on the issue of ministerial restrictions being applied equally to all members of the provincial legislature.

INQUIRY NO. 7

Issue:

Is a member permitted to administer an oath?

Opinion:

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

INQUIRY NO. 8

Issue:

An individual representing a business has faxed a request to a member's constituency office requesting that the Government of Ontario pursue a certain course of action or risk jeopardizing the viability of his business. The member feels the matter would be best represented by the M.P.P. in whose riding this business is located and assumed that the individual had also written to his own M.P.P., however, the letter does not indicate this information.

The member was seeking confirmation that it would not be a breach of confidentiality to forward the letter to the M.P.P. who represents the area where the business is located.

Opinion:

Without more specific information, it is difficult to determine whether the material in question is confidential. However, in order to avoid a confidentiality issue, it was suggested that the member contact the individual who wrote the letter, and seek authorization to forward the material to the individual's M.P.P.

INQUIRY NO. 9

Issue:

Various labour-related issues at a local workplace site were brought to the attention of the local member, who contacted the Ministry of Labour. Local media were requesting comments from the member, and the member inquired as to what could be said publicly on the matter.

Opinion:

As the Ministry of Labour was conducting an investigation into the issues, it would be inappropriate for the member to speak publicly on the matter. Such actions may be interpreted as improperly using the office as M.P.P. and/or attempting to interfere with the process at the Ministry.

INQUIRY NO. 10

Issue:

Is it appropriate for a Minister to provide an endorsement of a publication which deals with issues falling under the Minister's jurisdiction?

Opinion:

Such endorsement is appropriate as it falls within the Minister's jurisdiction.

INQUIRY NO. 11

Issue:

At the request of a constituent, a member wrote to the Chief of Police requesting that he be kept informed of important public statements or actions the police services was taking with respect to an investigation. Having reviewed the Commissioner's previous Annual Report, the member became concerned as to the appropriateness of his letter to the Chief of Police.

Opinion:

Upon review of the matter, the Commissioner determined that the letter to the Chief of Police was inappropriate and that the member should contact the Chief to advise that the request was being withdrawn.

As the member did request the Commissioner's opinion at the first opportunity, it was determined that the action taken by the member was an error of judgment made in good faith.

INQUIRY NO. 12

Issue:

A constituency assistant wrote a letter to a hotel with respect to an occurrence which was personal in nature, and a request for reimbursement of substantial damages. The letter, although on blank paper, had the Ontario crest at the top and stated, in part:

"I work for the Ontario Government and it's very easy for me to begin a media release."

The member did not sanction the letter and upon the matter being brought to the member's attention, the employee was reprimanded. The member was seeking further advice in this regard.

Opinion:

The letter was of a threatening nature and was an attempt to influence a settlement with the hotel by using government property to further the employee's private interest. Although the name of the member did not appear on the letterhead, it would not be difficult for the origin to be traced to the member's office.

The member was advised to inform the Manager of the hotel that the letter was not authorized and request the return of the letter. It was the Commissioner's opinion that once such contact is made with the Manager, the member will have taken all the steps necessary to avoid a conflict of interest.

INQUIRY NO. 13

Issue:

A constituent decided to check herself out of hospital and stay at a local hotel on the basis that it was a more appropriate venue for her health care needs and it would save the Ministry of Health money. She, therefore, felt the Ministry should pay her hotel costs. At the request of the constituent, the member forwarded this documentation to the Ministry of Health.

The Ministry subsequently denied her request, and made suggestions with respect to the constituent finding accessible housing or improving the accessibility of her own home. However, she did not share the reply with the hotel, and in fact assured the hotel that the Ministry or the member would cover her expenses.

The hotel is now requesting full disclosure and payment from the member.

Opinion:

The Ministry of Health is required to follow the policies and procedures which are in place, and any further action by the member may be interpreted as attempting to influence the process, contrary to the *Members' Integrity Act, 1994*.

As the constituent is misrepresenting the member's actions on her behalf, i.e. that the Ministry of Health or the member would cover her expenses, the member should write a letter to the hotel indicating that the member has no responsibility for the constituent's outstanding balances and any further inquiries should be directed to the constituent herself. A copy of the letter should be sent to the constituent.

INQUIRY NO. 14

Issue:

With the proposed redistribution of ridings in Ontario, and the resultant amalgamation of some ridings, members would like to do joint mailings to what will be the new ridings.

Opinion:

It is inappropriate to distribute material, at the expense of the Legislative Assembly, to an area which is not considered the member's present constituency. The member was referred to Inquiry No. 21 of the 1997/98 Annual Report in which The Honourable Gregory T. Evans, the former Integrity Commissioner stated:

"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. 15

Issue:

A printing company has offered to a member/Minister a voucher for print discounts which may be applied to the “householder or a riding pamphlet or any other related political print material for your riding of your choice.”

Opinion:

Although it is not clear in the letter from the printing company, it is important to note that contributions to the Riding Associations do not fall within the jurisdiction of the Integrity Commissioner, however, the letter in this case was addressed to the member as M.P.P., and the opinion was provided on the basis of the member receiving the benefit as M.P.P.

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.

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. ...”

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 member as M.P.P. or Minister, of this voucher may give the printing company an unfair advantage over other competitors in the printing business. In addition, such acceptance would be a benefit that is not an incident of protocol, customs or social obligations connected with the performance of the member’s duties as M.P.P. or Minister. To accept such a benefit may place the member in violation of the *Members’ Integrity Act, 1994*.

INQUIRY NO. 16

Issue:

A member was holding an annual open house and inquired as to the appropriateness of suggesting that attendees bring a contribution to the local Food Bank.

Opinion:

Although a local area Food Bank is a worthy cause, it would be inappropriate to request donations as this may be seen as a form of solicitation. Inquiry No. 28 of the 1995/96 Annual Report states:

“...the solicitation of donated goods is improper as the Member is exercising influence upon the proposed donor.”

As the Integrity Commissioner does not have jurisdiction over Riding Associations, it was suggested the member might wish to consider having the Riding Association sponsor the event.

INQUIRY NO. 17

Issue:

A member bought a car from a local car dealership and the dealership was now asking the member to participate in a promotional video, as the local M.P.P. expressing his positive experience dealing with the dealership.

Opinion:

It would be inappropriate for the member to take part in the video as “M.P.P.” as this does not fall within his responsibilities on behalf of constituents and it may be seen as giving an unfair advantage to one car dealership over another.

The member is entitled to appear in the video as a private citizen on the condition that he owns the car and receives no benefits for participating in the video.

INQUIRY NO. 18

Issue:

A member recently announced his candidacy for nomination in the new riding and inquired as to any problems communicating with caucus colleagues in this regard using the Queen’s Park and constituency office e-mail system.

Opinion:

It is inappropriate to use the Queen’s Park or constituency office, including the e-mail system, for any activities related to the member’s nomination or re-election.

The member was referred to the Member’s Guide with respect to *Political Activity Regulations* in which it states that these “*offices can never be used to further activities such as Riding Association activities, political meetings or to display partisan politically-oriented signs.*”

Although the Commissioner does not have jurisdiction to interpret the Regulations, the member should keep political activities separate from the duties of a Member of Provincial Parliament.

INQUIRY NO. 19

Issue:

A member’s constituency business cards were printed by a company which printed its name on the bottom of the card.

Opinion:

Having the name of the printing company on the business card is considered a form of advertising and is an inappropriate use of the card. The member may be seen as giving an unfair advantage to the printing company over other companies in the constituency and advertising is not considered a responsibility of the member or the constituency office.

INQUIRY NO. 20

Issue:

A member was asked to write an editorial with respect to his role as an M.P.P. and in return would receive an honorarium.

Opinion:

The member may write the editorial as M.P.P., however, payment for same is inappropriate as it is considered “...an activity in which members of the Assembly normally engage on behalf of constituents” as set out in s.5 of the *Members’ Integrity Act, 1994*.

INQUIRY NO. 21

Issue:

A Parliamentary Assistant would like to bring forward a resolution in the Legislative Assembly as a private member, however, the issue deals with a matter which comes under his Ministry.

Opinion:

Resolutions are considered private members’ public business and are heard in the House on Thursday mornings from 10:00 a.m. to 12:00 p.m. Without unanimous consent, members of the Legislative Assembly may consider such a resolution by a member, who is also the Parliamentary Assistant, as an inappropriate use of this restricted time.

The Commissioner also advised that duties and responsibilities attached to the offices of M.P.P. and Parliamentary Assistant, must be kept separate and apart. It is an inappropriate use of the M.P.P. position to promote a policy which falls under his jurisdiction as Parliamentary Assistant.

INQUIRY NO. 22

Issue:

An issue arose with respect to the Workplace Safety and Insurance Board (WSIB) pensions received by a constituent who recently passed away. One was a 75% pension and the other was a 25% pension, totalling 100%. Board policy permits survivor’s benefits to a person who receives a 100% pension, but not to partial pensions. The constituent’s spouse was denied survivor benefits and was in the appeal process.

The constituent, represented by a Worker Advisor, asked the member to request a change in board policy, however, as the member was concerned about the quasi-judicial nature of the Board, he inquired as to the timing of such request.

Opinion:

The member is entitled to make representations at any time with respect to a change in Board policy on the following conditions:

- (1) As the constituent is represented by a Worker Advisor, the member should not become involved in any way with the specific appeal;
- (2) Representation is made in general terms without naming a specific individual;
- (3) Representation is made in the member's capacity as an M.P.P.;
- (4) Representation is made to the General Counsel of the WSIB Legal Branch.

INQUIRY NO. 23

Issue:

A constituent has asked a member/Minister to write a letter of support to accompany an application to the Trillium Foundation.

Opinion:

Parliamentary convention prohibits all Ministers from personally appearing or advocating on behalf of a private party with any agency, board or commission. 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, can be considered by the recipient as other than actions by a Minister, and thus could reasonably be considered as attempting to influence a decision.

As the Trillium Foundation does not fall under this Minister's jurisdiction, he is entitled to write a letter of support on his constituency letterhead and the letter should be directed to the Minister responsible for the Foundation.

INQUIRY NO. 24

Issue:

A constituent working for a manufacturer of lottery gaming machines raised a concern regarding the Ontario Lottery Corporation tender process and the fact that a definitive answer as to the company's position within the tender process was not given.

Opinion:

The letter received by the manufacturer from the Ontario Lottery Corporation stated:

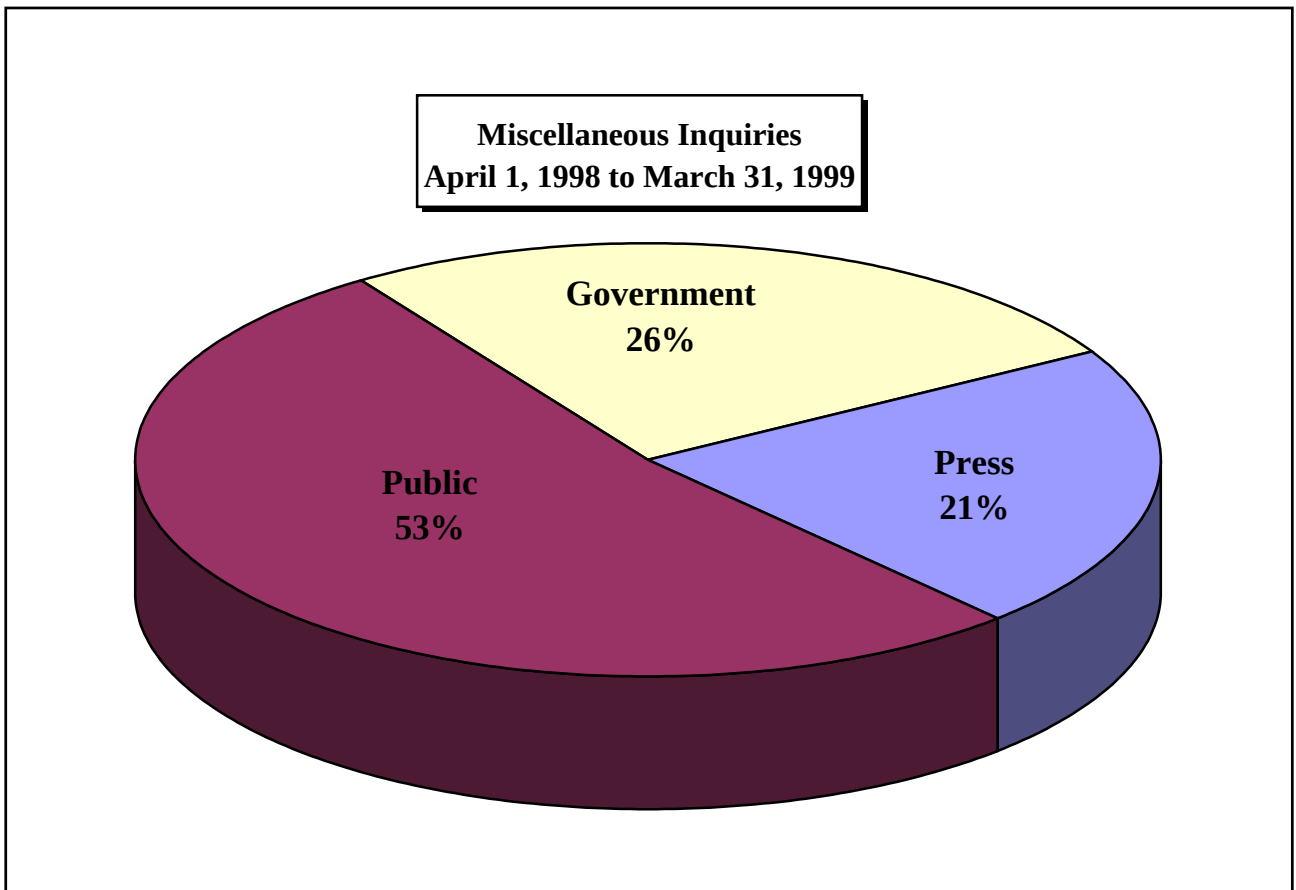
"...all terms and conditions of the RFP, including those with respect to confidentiality and restrictions on contacts with respect to this RFP continue."

It was the Commissioner's opinion that the member should not become involved. To do otherwise may be seen as an attempt to interfere with, and perhaps influence the decision of the Ontario Lottery Corporation, contrary to the *Members' Integrity Act, 1994*. In addition, it may also disqualify the constituent from the tender process. It was recommended that the member identify with the appropriate officials, on a general basis, the '*restrictions on contacts with respect to this RFP*'.

D. MISCELLANEOUS INQUIRIES

During the reporting period of this Report, 154 inquiries were received from all levels of various governments, the public and the media.

A variety of questions were raised including inquiries with respect to the actions of various government agencies and employees; conflict of interest guidelines for government agencies; complaints with respect to M.P.P.s from members of the public; general policies and procedures of the Office of the Integrity Commissioner and requests for copies of the Annual Report.



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REFERRED QUESTIONS

During the reporting period of this Annual Report, five Referred Questions were received; two of which did not comply with the process as established by this office. The members chose not to comply with the process and the Commissioner did not proceed further. The remaining three Referred Questions are summarized below, two of which were dealt with as one issue.

A. *The Honourable Michael Harris, Premier of Ontario, and The Honourable Charles Harnick, Attorney General re: Acceptance of Expense Paid Trip to New York City*

Mr. Howard Hampton, M.P.P. for Rainy River and Leader of the Ontario New Democratic Party, and Mr. Dalton McGuinty, M.P.P. for Ottawa South and Leader of the Official Opposition, filed affidavits in support of a request to investigate media reports alleging Messrs. Harris and Harnick and their spouses received an all expense paid weekend from Newcourt Credit Group, contrary to the *Members' Integrity Act, 1994*

The trip was described in the media “to raise the Canadian profile at the New York premiere of the Stratford Festival”, of which Newcourt is a co-sponsor.

Mr. Hampton stated that:

“It is highly unlikely that ‘protocol, customs or social obligations’ would have required the Premier and the Attorney General to accept Newcourt’s hospitality to such an extent.

...

Even if that were the case, the Act clearly requires Mr. Harris and Mr. Harnick to file disclosure statements with the Integrity Commissioner regardless of the existence of a complaint.”

Mr. McGuinty submitted:

“...some very serious questions about the close relationship between the Premier, the Attorney General and Newcourt Credit Group. Given the significant dealings with Newcourt Credit Group and the Government, I believe the Premier and Attorney General may have contravened the Members’ Integrity Act, 1994...”

Mr. Harris stated that the weekend was not part of his public itinerary, no staff accompanied him, and he paid his own expenses. Mr. and Mrs. Harris have been friends with Mr. and Mrs. Hudson of Newcourt Credit Group for ten years and his acceptance of the invitation was based on that personal friendship. Mr. Harris paid his own expenses, including airfare, incidental snacks and light lunches, although he did not pay for two plays, one of which was a rehearsal, a reception/dinner and a lunch, which were hosted by Newcourt.

The only time Mr. Harris felt he was acting as the Premier was when members of the press asked him questions in his capacity as the Premier.

Mr. Harnick and his wife were invited by Mr. David Sharpless, an Executive Officer with Newcourt Credit Group, and personal friend of twenty years, to attend in New York City for a weekend. The invitation was accepted on the condition that Mr. Harnick would pay all his expenses. Such payment was made.

The issue is whether Mr. Harris and Mr. Harnick violated s.6 of the *Members' Integrity Act*, 1994 by accepting an invitation for an all expense paid weekend trip to New York City from Newcourt Credit Group, which does business with the Government of Ontario.

In his Report, the Commissioner stated:

"Elected officials cannot be expected to isolate themselves from the outside world, otherwise, citizens of outstanding ability in the private sector will be inhibited from seeking public office. Messrs. Harris and Harnick each have a long-standing personal relationship with an official of a company which conducts business with the Province of Ontario. From time to time, it can be expected that their public duties may coincide with their private interests. The balancing of those interests can be very difficult and perception may become an issue.

... A news report by itself is not a solid foundation upon which to base a belief that a contravention has occurred. The material submitted in the affidavits of Messrs. Hampton and McGuinty referring to the newspaper reports is not supported by an affidavit by the journalist who wrote the article. News reports are a journalist's opinion derived from sources which may or may not be accurate. The credibility of the information provided by the journalist is unknown and credibility becomes an issue, hence 'perception' becomes an issue.

Perception is for the electorate. The office of the Integrity Commissioner deals with the facts."

The Commissioner found Messrs. Harris and Harnick attended in New York in their personal capacities and were circumspect in maintaining a distance between their personal relationships and their official duties by accepting the invitations on the condition that they pay their own expenses. There was, therefore, no violation of the *Act*.

He went on to say that even if the invitations were extended to Messrs. Harris and Harnick in their official capacities, such invitations might be considered a social obligation under s.6(2)(b). Acceptance would not, therefore be a violation, however, if the value of the benefits received exceeds \$200, a Gift Form must be filed in accordance with s.6(3) of the *Act*.

B. The Honourable Elizabeth Witmer, Minister of Health re: Niagara District Health Council and Niagara Hospital Restructuring Steering Committee

In June, 1997, Professor Thomas Mulligan asked the Minister of Health, The Honourable Jim Wilson, to remedy what he characterized as:

"...extensive noncompliance by the Niagara District Health Council and its Hospital Restructuring Steering Committee with respect to the provincial conflict of interest guidelines specified in the Management Board of Cabinet's 'Establishment and Administration of Agencies'. A Manager's Guide."

The Honourable Elizabeth Witmer was subsequently appointed Minister of Health.

Professor Mulligan wrote to the new Minister alleging that various members of the Niagara Hospital Restructuring Steering Committee and Niagara District Health Council had undeclared conflicts of interest, and that if she failed to take remedial action, she risked becoming a party to them, stating:

“[O]ne must question the outcome of all works of all agencies, boards and commissions of Ontario when any Minister at his or her choosing may deem conflict of interest rules to simply not apply.”

Information was submitted by Ms. Sandra Pupatello, M.P.P. for Windsor-Sandwich by way of Affidavit in accordance with the process adopted by this office, and the issues for consideration by the Commissioner were whether the Minister infringed s.2 of the *Members’ Integrity Act*,

- (1) by deciding to override the conflict of interest rules applying to particular individuals about whom Professor Mulligan had complained;
- (2) by making a policy decision to set aside the Management Board of Cabinet’s conflict of interest rules;
- (3) by violating the jurisdiction of another member of the Executive Council by overriding these rules;
- (4) by failing to take remedial action after she was informed that the Niagara District Health Council had added a substantive interpolation to the rules that weakened them and exempted at least one council member from a previously identified conflict of interest.

The intent of s.2 is to forbid an Assembly member from taking any action that gives the member or another person an advantage inconsistent with the public interest and incompatible with the member’s oath of office, and the Commissioner found there was no evidence before him to show that the rules with respect to issues (2) and (3) were set aside by the Minister.

Issue No. 1 – Did the Minister decide to override the conflict of interest rules in regard to certain members of the Niagara Hospital Restructuring Steering Committee and the Niagara District Health Council?

Professor Mulligan alleged the following conflicts:

- (1) Seven of the Steering Committee’s twelve members had a direct pecuniary interest in the outcome of Niagara hospital restructuring;
- (2) The largest Niagara hospital retained the law firm of which the Committee’s chair was a partner;
- (3) The Vice-Chair was Chairman of the Board of a Niagara hospital
- (4) One member was a member of the Board of Niagara Rehabilitation;
- (5) Six members of the District Health Council had direct pecuniary interests in the fates of health care institutions;
- (6) Two members of the District Health Council had non-pecuniary personal interests;

- (7) A member of the Steering Committee had joined the board of a Niagara Falls hospital approximately two months after the Steering Committee disbanded.

All parties agreed that the Management Board of Cabinet's conflict of interest rules apply to district health councils and the Commissioner was required to consider:

- (1) What the conflict of interest rules require concretely;
- (2) Whether the alleged conflicts of interest were grievous enough to require the Minister's intervention;
- (3) Whether the Minister overrode the conflict of interest rules in respect of these individuals.

Directive 6 of Management Board of Cabinet states that Schedule II agencies,

"...adhere to the general management principles of the government but can demonstrate reasons whereby full compliance with all administrative directives established by the Management Board is not appropriate."

The Commissioner was persuaded that the intent of the Directive was that the Ontario Government's general management principles should be applied flexibly.

The *Establishment and Administration of Agencies, A Manager's Guide* (the "Guide") contains provisions on conflict of interest for boards, agencies and commissions and states:

"A conflict of interest shall be declared at the earliest opportunity.

...[T]he reader should keep in mind the actual or proposed size and scope of the agency in order to gauge which of these mechanisms are of particular importance to it."

A Suggested Practice stipulates:

"...any member of an agency who has a conflict of interest in a matter under consideration by the agency should disclose the nature of that conflict to the head or chairperson at the first opportunity and refrain from any further participation in the discussions."

The requirements of the conflict of interest rules must interact with the Ministry of Health's policy on the composition of district health councils. Section 8(1)(4) of the *Ministry of Health Act* defines the functions of district health councils as follows:

- (a) to advise the Minister on health needs and other health matters in the council's geographic area;
- (b) to make recommendations on the allocation of resources to meet health needs in the council's geographic area;
- (c) to make plans for the development and implementation of a balanced and integrated health care system in the council's geographic area; and
- (d) to performance other duties assigned to it under this or any other Act by the Minister.

The Ministry of Health has espoused the following policy since 1970 to help district health councils to fulfil their statutory purposes:

- (1) forty per cent should be health care providers;
- (2) forty per cent should be consumers; and
- (3) twenty per cent should stem from local and/or regional government.

A member is not in conflict of interest solely because he or she is a health care provider. Evidence is necessary to show that a member was in an actual or potential conflict of interest. The Commissioner was required to look at the extent to which the causes promoted by the members were objectively justifiable, i.e. did the alleged conflicts of interest lead to demonstrable prejudice to the public interest?

The Commissioner could not deduce that the Steering Committee's recommendations were patently unreasonable enough to provide circumstantial evidence of partiality on the part of some members. If the Minister accepted the recommendations during her tenure as Minister of Health, she has not implicitly set aside the conflict of interest rules.

In February, 1998, three members of the District Health Council declared conflicts and withdrew and a fourth member withdrew for other reasons.

With respect to the remaining members of the District Health Council, further information would be necessary in order to draw any of the following conclusions:

- (1) their interests fell outside even a flexible interpretation of what the conflict of interest rules permit;
- (2) their advice should be discarded as tainted in its origins and unjustifiable under any objective standard;
- (3) the Minister failed to uphold the conflict of interest rules by allowing them to continue as members.

Under s.8(1)(4) of the *Ministry of Health Act*, district health councils are primarily advisory bodies and no evidence showed that the Niagara District Health Council's advice was skewed enough to portray its members as partial, or that public confidence in Ontario agencies, boards and commissions was reduced.

Issue 4: Did the Minister fail to take remedial action after informed that the Niagara District Health Council had added a substantive interpolation to the rules that weakened them and exempted at least one council member from a previously identified conflict of interest?

The Commissioner was satisfied that the Minister did cause remedial action to be taken after receiving the Professor's letter. The Deputy Minister of Health wrote to the Acting Chair of the District Health Council, asserting that its interpretation of the guidelines issued by the Management Board of Cabinet was "*inappropriate and beyond the purview of the Council. ...[T]his interpretation cannot, and will not, be supported by the Ministry of Health.*"

In a letter to the Commissioner, the Minister advised in great detail the steps taken by the Ministry to ensure agencies for which she was responsible received Management Board of Cabinet conflict of interest Directives and Guidelines and that such rules were adhered to.

Although an arms length relationship existed between her Ministry and the District Health Council, Ministry staff always impressed upon the District Health Council the critical importance of following all relevant Management Board rules.

In addition, Ministry staff attend virtually every meeting of the District Health Council offering advice on various conflicts of interest issues; legal counsel are often present to assist in explaining to the agencies their obligations under the conflict of interest legislation; and staff report back on any problems which require Ministry action.

The Commissioner found no contravention of the *Members' Integrity Act, 1994* by the Minister.



FINANCIAL INFORMATION

A. 1998/99 STATEMENT OF EXPENDITURES

Salaries
Transportation
Services
Supplies and Equipment

B. PUBLIC SECTOR SALARY DISCLOSURE ACT, 1996

This statement is provided under the *Public Sector Salary Disclosure Act*. The Commissioner is the only employee in the Office of the Integrity Commissioner receiving a salary in excess of \$100,000 during the period, January 1, 1998 to December 31, 1998.

<u>Employee</u>	<u>Payment</u>	<u>Taxable Benefits</u>
Robert C. Rutherford	\$139,528.00	\$4,279.00

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