

Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

Annual Report

2004 - 2005

Office of the Integrity Commissioner

Ontario

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Office of the Integrity Commissioner
The Honourable Coulter A. Osborne, Q.C.
Commissioner

Bureau du Commissaire à l'intégrité
L'honorable Coulter A. Osborne, c.r.
Commissaire

June 22, 2005

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

Dear Mr. Speaker:

It is an honour to present the Annual Report of the Office of the Integrity Commissioner for the period April 1, 2004 to March 31, 2005.

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

Yours very truly

A handwritten signature in black ink, appearing to read 'C. Osborne'.

The Honourable Coulter A. Osborne

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COMMISSIONER'S REMARKS



This is my fourth annual report as Integrity Commissioner. My jurisdiction as Integrity Commissioner is found in the *Members' Integrity Act 1994*. My office now has jurisdiction under three other statutes – *MPP Compensation Reform Act (Arm's Length Process), 2001*, *Cabinet Ministers' and Opposition Leaders' Expenses Review and Accountability Act, 2002*, and the *Lobbyist Registration Act, 1998*.

The purpose of the *Members' Integrity Act* is revealed by its Preamble. Taken generally the *Act's* purpose is to provide greater certainty for Members in reconciling their private interests and public duties as Members of the Legislature and to provide a flexible code under which Members are expected to act with integrity and impartiality that will bare the utmost scrutiny.

The Honourable Coulter A. Osborne

As an Officer of the Legislature, I report through the Speaker to the House. I do not report to the Government or through any Minister. It is essential to the appropriate operation of my office and the discharge of my responsibilities under the *Members' Integrity Act* that I am, and remain, independent. I can state without reservation that there has been no attempt to compromise the independence of my office or my position as Integrity Commissioner by any Member or ministry, since my appointment in September, 2001.

As I did last year, I want to express my appreciation to all members and their Queen's Park and constituency office staffs for their cooperation throughout this past year. That cooperation includes the timely filing of financial disclosure statements and Members' attendances to review those statements as mandated by s.20(3) of the *Members' Integrity Act*. In practice, one hundred of the one hundred and three members of the Legislature attend at my office for that statutorily required meeting. In recognition of their positions I meet with the Premier, the Leader of the Opposition and the Leader of the Third Party in their respective offices.

My office operates with a staff of four – Lynn Morrison, Executive Administrative Officer, Jennifer Koen, Administrative Clerk, Tracey Berwick, Administrative Assistant, and Charlie Hastings, Technical Administrator. I am grateful to all of them for the manner in which they have discharged their responsibilities over the past year. For much of the work done by my office Lynn Morrison is the point of first contact. Her experience, dedication and competence are especially appreciated.

The main day to day work of my office consists of providing advice and opinions to Members as provided for in s.28 of the *Members' Integrity Act*. That section provides:

28. (1) A member of the Assembly may request that the Commissioner give an opinion and recommendations on any matter respecting the member's obligations under this Act and under Ontario Parliamentary convention.

Inquiries

(2) The Commissioner may make such inquiries as he or she considers appropriate and shall provide the member with an opinion and recommendations.

Confidentiality

(3) The Commissioner's opinion and recommendations are confidential, but may be released by the member or with the member's consent.

(4) The member's request, the Commissioner's opinion and recommendations and the member's consent, if any, shall be in writing. 1994, c.38, s.28.

The *Members' Integrity Act* does not address apparent conflicts of interest. That was a decision made by the Legislature in 1994. Nonetheless, I frequently give advice to Members premised on apparent conflict factors. Although an apparent conflict of interest does not constitute a breach of the *Members' Integrity Act*, it does have political consequences and Members know it.

Last year there were five hundred requests for an opinion or advice under s.28. We respond to most of them within twenty-four hours. In some cases, particularly where further information is required, the turnaround time is slightly longer. I am encouraged by the number of opinions sought under s.28 of the *Act*. It suggests that Members are asking before acting.

As I indicated last year, I hope that the Legislature will consider amending the confidentiality provisions of s.28 to permit the release of the full opinion of my office in cases where the Member requesting and receiving the opinion has chosen to release part, but not all, of that opinion. Piecemeal or selective disclosure of an opinion under s.28 may distort the opinion and undermine the integrity of my office. This is not, I might add, a widespread problem. It is, however, a problem that can easily be rectified. I do not wish to be taken to have expressed the opinion that the confidentiality provisions of s.28 should be removed. It is only in cases where the Member receiving the opinion has released part of it that I think adjustments should be made in s.28's confidentiality requirements.

The *Members' Integrity Act* provides that a Member who has reasonable and probable grounds to believe that another Member has contravened the *Act* (including Ontario parliamentary convention) may request an opinion as to the matter. In the event that I find that there was a

contravention of the *Act* (including Ontario parliamentary convention) the range of sanctions is set out in s.34. In this past year there were three allegations of breaches of the *Act*, two of which concerned the issue of budget secrecy.

In dealing with formal complaints alleging a contravention of the *Members' Integrity Act*, I have never been required to go beyond the investigative stage. In all the complaints that I have addressed since my appointment as Integrity Commissioner in September 2001, the facts have either not been in dispute, or easily determined, that is determined without establishing a formal inquiry and invoking the provisions of the *Public Inquiries Act*. I recognize that there could be circumstances where the facts are in significant dispute and where a formal inquiry would be required.

I have proceeded on the basis that the allegations made by the complainant must be established by clear and convincing evidence, a middle ground standard of proof between the criminal standard (beyond a reasonable doubt) and the civil standard (by preponderance of evidence). I see no reason to vary that standard of proof.

The *Act's* provisions dealing with formal complaints require me to suspend any inquiry under the *Act* if I discover that the subject matter of the inquiry is being investigated by the police or that a charge has been laid. I think this section might be reviewed and expanded. It seems to me that if an agency, board or commission, (for example, the Ontario Securities Commission) is investigating the "subject matter of the inquiry" I should also have jurisdiction to suspend any ongoing investigation of a complaint or an inquiry into a complaint.

Section 6 of the *Members' Integrity Act* addresses the issue of gifts and benefits. It provides that Members shall not accept a gift or benefit that is connected directly or indirectly with the performance of the Member's duties of office. That prohibition does not apply to a gift or benefit that a Member receives as an incident of protocol, customs or social obligations that normally accompany the responsibilities of office. Section 6 also contains a reporting provision under which Members are required to report any gifts or benefits in excess of two hundred dollars to my office. Reporting is a secondary, albeit important, issue. The primary issue is whether the gift or benefit should be accepted in the first place, irrespective of its value. Answering that question (which is the subject matter of many inquiries made by Members under s.28 of the *Act*) requires consideration of the source of the gift or benefit and the particular surrounding circumstances.

Lastly let me say something about Members' compensation. In 2001, the Legislature passed the *MPP Compensation Reform Act (Arm's Length Process)*, 2001. The purpose of the *Act* was to provide an arm's length process to determine Members' compensation. The *Act* received Royal Assent on June 29, 2001, and its history has been somewhat unhappy.

In short form, the *MPP Compensation Reform Act* gave the Integrity Commissioner appointed under the *Members' Integrity Act*, 1994 jurisdiction to determine the appropriate salaries for Members. The *Act* does not give the Integrity Commissioner jurisdiction to deal with Members' pension entitlements. On August 27, 2001, in the first Report issued under the *MPP Compensation Reform Act*, The Honourable Gregory Evans, Q.C. noted:

“There has been no change in Members’ salary since April 1990, other than in 1992 when their salary was reduced by 5.5%. The reduction was restored in 1996 by the Brown Commission when the tax free allowance was eliminated, the pension plan revised and the salary restructured to the present salary of \$78,007.00, all of which became subject to tax.”

In the end, in his August 27, 2001 Report Mr. Evans determined that Members should receive a 3% increase effective April 2001, and a similar increase in each following year to the year in which the next election was held. As it turned out the election contemplated by Mr. Evans occurred in October 2003. Mr. Evans also determined that Members’ salaries should increase by 25% immediately after what turned out to be the October 2003 election. He viewed this increase as a catch-up increase, made necessary by the unwillingness of the Legislature to address the sufficiency of Members’ salaries at reasonable intervals.

Not surprisingly the 25% post election salary increase threatened to become an issue in the October 2003 election. This was unfortunate. Nevertheless, in the end result, all three party leaders took the position that the 25% salary increase should, in effect, be rescinded. That happened.

With the significant exception of the 25% salary increase, we are now, therefore, back on the track established by Mr. Evans in his August 27, 2001 Report. In that Report he recommended a quadrennial review of salaries (a recommendation that I support) which would result in a review of salaries in 2005.

I did not think it was appropriate to embark upon a review of Members salaries before the end of the government year, March 31, 2005, because in April, 2004, the Legislature passed the *MPP Salary Freeze Act, 2004*. This was in response to a Report I issued in March, 2004 in which I determined that Members should receive a 2.7% increase in their salaries to take account of inflation. The life span of the *MPP Salary Freeze Act* has now ended. I propose, therefore, to review Members’ salaries this year.

In my view, no realistic review of Members’ salaries can take place without consideration of other elements of their compensation package. Thus, I think I must take into account the Members’ pension arrangements, severance pay, all other benefits that accrue to Members and, of course, their salaries.

I recognize that there are fiscal considerations that must be taken into account. That important issue aside, in the calculus of appropriate compensation for Members, I think that it is abundantly clear that the Members’ salaries are inadequate when considered in isolation or by comparison with remuneration provided to other groups which could reasonably be used as comparators. On the pension side, I am satisfied that there was a reasonable basis to move in 1995 from what was rhetorically referred to as a “gold-plated” pension plan to some different pension arrangement for Members. Unfortunately, the choice made at that time provided Members with manifestly inadequate pension arrangements. It is my hope that consideration will be given by Members themselves to restructuring their pension arrangements to make them

somewhat more sensible and more comparable to pension arrangements available to other parliamentarians.

In the meantime, I will commence a review of the Members' overall compensation package and, in due course, make a determination of what I think Members' salaries should be.

OVERVIEW

A. DISCLOSURE STATEMENTS

On January 21, 2005, 103 Public Disclosure Statements were filed with the Clerk of the Legislative Assembly in accordance with s.21(6) of the *Members' Integrity Act, 1994*. All Members were in compliance with all the provisions of the *Act*.

The Public Disclosure Statements are available for examination by the public and copies are available through the Clerk of the Legislative Assembly, Room 104, Legislative Building, Queen's Park, Toronto.

On March 13th, 2005, a bi-election was held in Dufferin – Peel – Wellington – Grey, and Mr. John Tory was elected. Pursuant to s.20(1)(a) of the *Act*, a Member has 60 days after election to file a Private Disclosure Statement. Mr. Tory has complied with s.20.

MPPs have the option of filing Annual Private Disclosure Statements either manually or electronically. Four years of electronic filing experience has resulted in about 30% of the Members filing on line. We will continue to promote electronic filing in September, 2005, when Members will once again be required to file their Annual Disclosure Statement.

B. THE ACCOUNTABILITY FOR EXPENSES ACT (CABINET MINISTERS AND OPPOSITION LEADERS), 2002

Section 10 of *The Accountability for Expenses Act (Cabinet Ministers and Opposition Leaders), 2002* requires the Integrity Commissioner to provide the Speaker with a written report with respect to the review of the expenses incurred by Ministers, Parliamentary Assistants, Leaders of the Opposition and their staff during the fiscal year. A report for the fiscal year ending March 31, 2005 was filed with the Speaker on June 1st, 2005, a copy of which may be viewed on our website at <http://integrity.oico.on.ca>.

C. MPP COMPENSATION REFORM ACT (ARM'S LENGTH PROCESS), 2001

In my Report under the *MPP Compensation Reform Act (Arm's Length Process), 2001*, dated March 9th, 2004, I stated:

“The indexing feature of members’ compensation is not controversial, nor should it be. In my view indexing should continue. Indexing to take account of inflation is not the equivalent of a salary increase. It simply recognizes the extent to which the purchasing power of a given sum of money has been reduced by inflation.

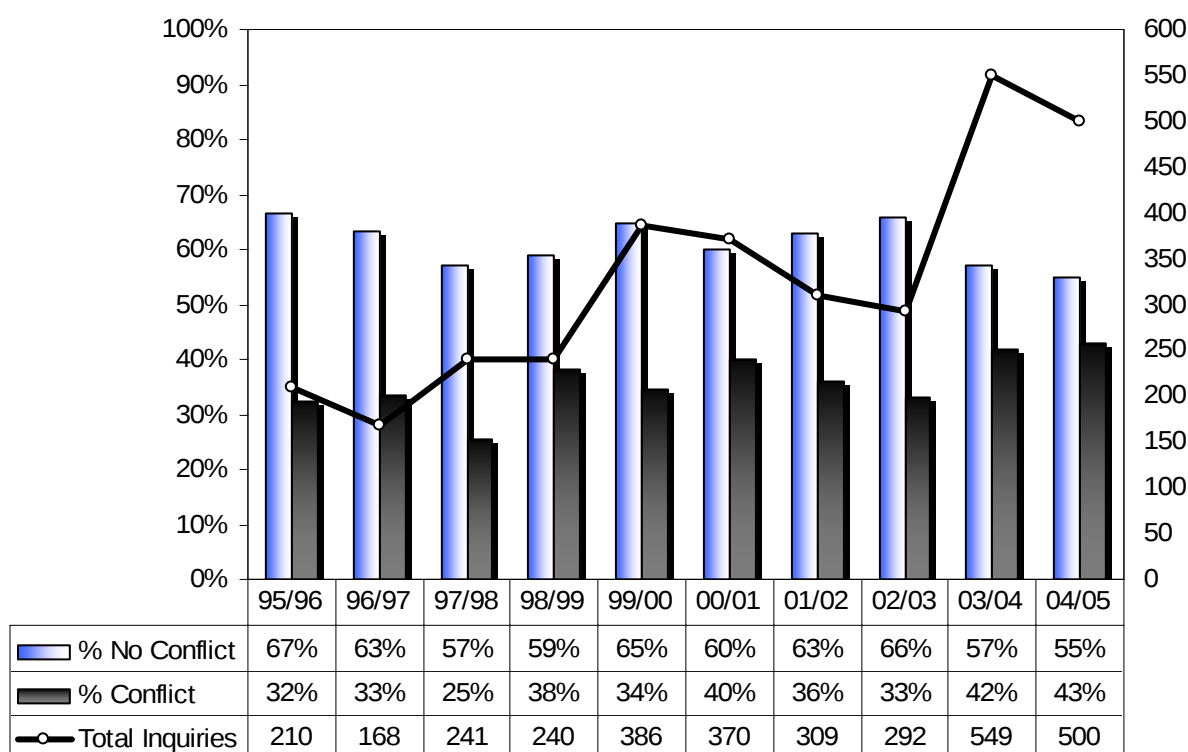
Given the purpose of indexing, I think that the operative index should be the Consumer Price Index.”

As of April 1, 2005, the Members’ salaries were increased by 1.9% in accordance with the Consumer Price Index.

INQUIRIES

A. STATISTICS

Ten Year Historical Comparison of Inquiries under s.28 of the Members' Integrity Act, 1994.



Not all annual percentages total 100%. The difference represents miscellaneous inquiries which were withdrawn or were not within the Commissioner's jurisdiction.

**Inquiries under s.28 of the Members' Integrity Act, 1994
Received April 1, 2004 to March 31, 2005**

Received from	Number Received	Conflict	No Conflict	No Jurisdiction
Member	497	215	272	10
Spouse	1	0	1	0
Trustee	0	0	0	0
Caucus	1	1	0	0
Executive Council	0	0	0	0
Committee	0	0	0	0
Former Minister	1	0	1	0
TOTAL	500	216	274	10

B. SELECTED INQUIRIES UNDER SECTION 28

The following summary of selected example inquiries reflects advice provided by the Commissioner in the past fiscal year. These examples are not exhaustive and are abbreviated due to space limitations. The summaries are intended to raise the awareness of members and their staffs and bring to their attention potential issues with the expectation that this office will be contacted for advice and guidance when such issues arise. It should be noted that each inquiry is based on its own disclosed facts and that the opinion issued was based on those facts.

INQUIRY NO. 1

Issue:

A Minister's long-time friend has asked the Minister to provide a reference with respect to a job application. In what capacity can the Minister provide the reference?

Opinion:

As the Minister has known the constituent for many years on a personal and professional basis, he is entitled to provide a reference, however, since this association has nothing to do with his ministerial responsibilities, the letter should be written either on personal or constituency letterhead.

INQUIRY NO. 2

Issue:

A group home for children with behavioral problems is scheduled to open once licensed by the Ministry of Community and Social Services. Constituents have launched a campaign to prevent the opening and a constituency assistant has provided the constituents with information regarding

by-laws and licensing requirements including contact information for complaint purposes. The constituents are adamant that the Member, who is also a Minister, attend a meeting with city councillors and the owner of the group home to voice his opinion.

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. By the same token, a Minister's action in publicly supporting a private party's position may be considered as an action of the Minister, intended to influence a decision of a government agency, board or commission. This is so even if the Minister does so in his or her capacity as an MPP.

Any further involvement by the Member may be interpreted as an attempt to interfere with and/or influence the process required to be followed with respect to the licensing of group homes, contrary to the *Members' Integrity Act, 1994*.

INQUIRY NO. 3

Issue:

A Minister has included a paragraph in his constituency newsletter, information with respect to his appointment as Minister and was seeking guidance from the Integrity Commissioner as to the appropriateness.

Opinion:

The Guide to Members' Allowances and Services and Members' Support and Caucus Staff states:

Members may not print or mail, at the expense of the Assembly, any material of a partisan, political or personal nature. As directed by the BOIE, each Caucus is responsible for reviewing newsletter content for its Members to ensure that it meets this requirement. Members should ensure that content has been reviewed by their Caucus Administration prior to submitting invoices to Financial Services for payment.

The purpose of a constituency householder is to inform constituents about an MPP's activities as an MPP and to advise in a generally non-partisan way, what the Member's party is doing.

The proposed draft followed the standards that appear to be accepted by all parties. There is nothing wrong with noting the fact that the MPP has been appointed a Minister and providing constituents with information as to what the MPP is doing as their representative. However, care must be taken not to promote the government [or opposition party] in a partisan or political way.

INQUIRY NO. 4

Issue:

A constituent is seeking a meeting with his MPP, a Minister, about a dispute which will be brought before the Cabinet. Can the Member meet with the constituent?

Opinion:

The MPP is entitled to meet with the constituent, however, when the issue comes before Cabinet, the MPP must remove himself from the discussion and from voting in Cabinet.

INQUIRY NO. 5

Issue:

A Riding Association is holding a fundraiser for its Member, who is also a Minister. Can the Minister's title and Ministry name be used?

Opinion:

Although a Minister is a Minister is a Minister, using the title and Ministry name for a personal political fundraiser is an inappropriate use of the Minister's title and if nothing else, may be criticized.

INQUIRY NO. 6

Issue:

The constituency office of an MPP sought guidance regarding the use of constituents' names and addresses.

Opinion:

A constituency office represents all constituents in the riding and the expenses of that office are paid by the Legislative Assembly. It is imperative that the office remain non-partisan at all times and in that respect, it is inappropriate to permit any partisan political activities in the office.

MPPs are entitled to participate in initiatives which are political in nature, however, such participation must be outside the constituency office, after hours, and must not interfere with their responsibilities as MPPs.

A constituency office is permitted to compile lists of contacts made with the office either from organizations promoting or opposing their work or individuals who have sought assistance from the office. Such lists may be used for purposes of sending invitations for "Information Sessions" that are intended to keep constituents informed. This kind of activity is considered one of the responsibilities of a Member of Provincial Parliament.

Although the constituency offices are not subject to the *Freedom of Information and Protection of Privacy Act*, providing such a list to the Riding Association or any other outside organization is inappropriate and may violate the privacy of the constituents.

INQUIRY NO. 7

Issue:

A Ministry has requested that the Members of the government caucus place a petition in Members' constituency offices for purposes of supporting a Bill which will be introduced in the Legislative Assembly. Is it appropriate to place this petition in constituency offices?

Opinion:

Constituency offices are non-partisan and should never be used to further activities of Riding Associations, political meetings or to display partisan, politically-oriented signs, etc. In addition, they are not intended for the promotion of government activities.

The fact that the petition is considered a “government document” does in fact support the concept that it is a “party” document and is political in nature.

There is no prohibition on Members supporting petitions on the premise that such petitions are generated in the community and not coordinated through partisan efforts. The petition in question was generated by a Ministry. It contained the request that the petition, upon completion, be returned to the Caucus office – supporting the concept that in substance, if not in form, it is a ‘party’ document.

It is the Commissioner’s opinion that complying with the Ministry’s request to place the petition in each constituency office is inappropriate and may be found to be a violation of the *Members’ Integrity Act, 1994*.

INQUIRY NO. 8

Issue:

A constituent has asked a Member, “What do you think?” with respect to an issue which falls under the Member’s responsibility as Parliamentary Assistant.

Opinion:

A response of this nature from the Member may be interpreted as a political response. Generally speaking, political information, as opposed to an opinion in response to a specific request, does not violate the *Members’ Integrity Act* on the condition that the information is responsive to the inquiry and not gratuitous or propaganda.

As the Member is the Parliamentary Assistant to the Minister responsible for the issue, to avoid a potential conflict of interest, it was the Commissioner’s opinion that it may be better if the MPP referred the letter to the Ministry for response, and advised the constituent of the action taken.

INQUIRY NO. 9

Issue:

An MPP’s constituency office requested guidance with respect to the ability of MPPs to sign as a Commissioner for Taking Affidavits and as a Notary Public.

Opinion:

By virtue of an MPP’s office, all Members are Commissioners for Taking Affidavits. When asked to sign an affidavit as Commissioner, the Member should request identification to verify the individual is who they say they are. A stamp or seal is not required for Commissioners.

In order to establish criteria for purposes of developing guidelines within a constituency office with respect to signing documents, the following should be considered:

- [1] The document should require the signature of a Commissioner for Taking Affidavits;
- [2] The document must be required for proper purposes;
- [3] If the document is a translation, it should be an official translation which would normally be attached to an affidavit signed by the translator;
- [4] The person swearing the affidavit should be identified.
- [5] The Commissioner should have the individual swear (affirm) in the presence of the Member that the contents are true.

Any requests to sign as a Notary Public should be referred to a lawyer, unless the Member is a lawyer.

INQUIRY NO. 10

Issue:

A Member has been asked to accept the appointment as a Patron to a non-profit organization. Can he accept?

Opinion:

As the title of Patron implies that the office is a mark of honour, without any active duties and there is no compensation, if the Member is satisfied that this is an organization which he would like to support, he is entitled to accept the appointment as Patron on the following conditions:

- [1] He does not become involved in discussions regarding any funding from the Ontario government;
- [2] He does not further or seek to further his private interest or improperly further another person's private interest; and
- [3] He is not in a position to confer or deny a benefit to any donor.

INQUIRY NO. 11

Issue:

A request was made for guidance with respect to providing reference letters for individuals seeking employment in the public and private sector.

Opinion:

Requests for letters of reference will arise in a variety of ways and there is no rigid list of rules that will cover all situations. The following represents considerations which should be addressed before agreeing to the request, and if there is any doubt, the Integrity Commissioner should be consulted.

- [1] Members, acting as Ministers, Parliamentary Assistants, and Members should not provide letters of reference for persons about whom they have no personal knowledge even if they are constituents.

[2] Parliamentary convention prohibits all Ministers from personally appearing or advocating on behalf of a private party with any agency, board, commission or entity over which the Minister has jurisdiction. Ministers always wear the cloak of ministerial responsibility. Thus a Minister's action in contacting an agency, board, commission or entity over which they have jurisdiction to support a private party's position may be considered by the agency, board, commission or entity as an action of the Minister, intended to influence a decision of the agency, board, commission or entity. This is so even if the Minister making the contact does so in his/her capacity as an MPP, or if the contact is by or through the ministerial staff. The practice has evolved whereby Ministers and their offices do not deal directly with public servants but go through the office of the responsible Minister. That is to say, such letter should be addressed to the Minister responsible only.

Although Parliamentary Assistants are entitled to advocate on behalf of a private party, parliamentary convention prohibits Parliamentary Assistants from appearing or advocating on behalf of a private party with any agency, board, commission or entity which falls under the ministerial jurisdiction of the Parliamentary Assistant.

[3] If there is a direct reporting relationship in the Ministry between the Minister or Parliamentary Assistant and the person seeking the letter of reference, the Minister or Parliamentary Assistant is in the position of an employer and would be viewed as such by anyone considering the employee for employment purposes. Therefore, it is appropriate for the Minister or Parliamentary Assistant to provide a letter of reference on ministerial letterhead or act as a reference for the employee, if the employee is seeking employment in the public sector and, of course, if the Minister or the Parliamentary Assistant is prepared to support the employee's application for employment.

[4] For purposes of potential employers in the private sector, if the Minister, Parliamentary Assistant or MPP knows the individual seeking the letter of reference on a personal basis, such reference letter should be written on personal letterhead. If the Minister, Parliamentary Assistant knows the individual in the capacity as MPP, the letter should be written on constituency letterhead.

[5] Letters of reference should never be addressed "To whom it may concern" as there is a potential loss of control over the use of the letter.

[6] In their form, letters of reference should be focused on the position sought by the person seeking employment. This will avoid use of the letter for a purpose other than that for which it was intended.

[7] Although exceptions may arise from time to time, letters of reference should not be directed to the person asking for the letter, but should be directed to the would-be employer. Exceptions to this should be referred to the Integrity Commissioner for advice.

[8] A copy of the reference letter should not be provided to the constituent, as once again, there is a potential for loss of control of the use of the letter.

INQUIRY NO. 12

Issue:

A Minister has been asked to speak at a strike rally “*to say a few words in solidarity and support of the strikers*”. Should he accept this invitation?

Opinion:

It is essential that all Members, including Ministers, do not discuss with the media, union representatives, employees, colleagues or any other unauthorized persons any aspect of a collective bargaining or labour relations mandate. Should the Minister accept the invitation from the union President, such action may be interpreted as an attempt to interfere with and/or influence the negotiation process, contrary to s.4 of the *Members’ Integrity Act, 1994*.

INQUIRY NO. 13

Issue:

A constituent felt that a decision by the Law Society of Upper Canada was “unjust” and appealed the matter to the Law Society Complaints Resolution Commissioner. The constituent felt that the subsequent decision by the Complaints Resolution Commissioner was also “unjust” and he was now asking the Member to seek a detailed explanation of the decisions from the Law Society of Upper Canada and the Complaints Resolution Commissioner.

Opinion:

There are procedures in place at the Law Society and the Complaints Resolution Commissioner to address complaints and it would be inappropriate for the Member to interfere with that process. Apart from these processes, it may be open to the constituent to seek judicial review of the decisions and the constituent may wish to consider retaining legal counsel in this regard.

The Member may contact the Law Society and the Complaints Resolution Commissioner to see what, if any, appeal procedures are available.

INQUIRY NO. 14

Issue:

A Parliamentary Assistant is attending a conference out of town and the sponsor of the conference has offered to pay for the Parliamentary Assistant’s accommodation. Can he accept?

Opinion:

As the sponsor of the conference is a stakeholder in the Parliamentary Assistant’s Ministry, acceptance of the offer may create an expectation of something in return. It would, therefore, be inappropriate to accept the offer. However, the Ministry could cover the accommodation expenses, i.e. attendance on Ministry business can be justified.

INQUIRY NO. 15

Issue:

A Parliamentary Assistant's staff person's spouse is interested in sitting on a public board falling under the jurisdiction of the Parliamentary Assistant's Ministry. Does this place the Parliamentary Assistant in a conflict of interest position?

Opinion:

Although there is no statutory disqualification under the *Members' Integrity Act, 1994*, should the spouse apply for the appointment, great care must be taken by the staff person to ensure that as a member of the senior staff to the Parliamentary Assistant, he or she must be removed from any involvement with respect to the board in question. By imposing these restrictions, it is the Commissioner's opinion that the steps necessary to avoid placing the Parliamentary Assistant in a conflict of interest situation will have been taken.

If the staff person is subject to the Conflict of Interest and Post Service Directive, consideration should be given to seeking an opinion from the Conflict of Interest Commissioner, who is responsible for the administration of the Directive.

INQUIRY NO. 16

Issue:

A constituent has requested a letter of support from the Member who is also a Minister, with respect to an appointment as a Justice of the Peace.

Opinion:

The Member is not familiar with the individual and on that basis, it would be inappropriate to provide the requested letter.

In addition, it is important to note that Justice of the Peace appointments are approved by the Executive Council. Since the Minister is a member of the Executive Council, providing a letter of support would place the Minister in a potential conflict of interest and require removal from any discussions and voting should this appointment come before the Executive Council.

INQUIRY NO. 17

Issue:

A Member would like to write a personal letter to friends and family to advise of his support of the local federal candidate. Can he write the letter and add "MPP" to his name?

Opinion:

The Member is, in fact, an MPP, and it would, therefore, be acceptable to use MPP after his name. However, care must be taken not to use the facilities of the Member's constituency office for this purpose.

INQUIRY NO. 18

Issue:

Two members of a Minister's staff have been invited to attend an announcement by the Premier. Stakeholders involved in the announcement are chartering a plane and have invited the staff to join them on the flight. Can they accept the invitation?

Opinion:

Accepting the flight from stakeholders may set up an expectation of something in return on the part of the stakeholders and may place the staff, and hence the Minister in a conflict of interest position. If it is important that the staff members attend, the Ministry should pay the staff's share of the travel costs.

INQUIRY NO. 19

Issue:

A Minister has been offered a three day pass to the Molson Indy and a golf game as part of the event. Can he accept?

Opinion:

As the Molson Indy received provincial government funding, accepting the pass and golf game are considered a marketing tool and acceptance does not place the Minister in violation of the *Members' Integrity Act, 1994*.

If the value of the benefit exceeds \$200, a Gift Form must be filed with the Integrity Commissioner pursuant to s.6(3) of the *Act*.

INQUIRY NO. 20

Issue:

A Member/Minister requested clarification with respect to correspondence for scrolls and birthdays and the use of MPP and "The Honourable".

Opinion:

Correspondence from the constituency office in the Member's capacity as the local MPP has nothing to do with the Ministerial responsibilities and all documents, including scrolls, should be signed as MPP.

Although not free from doubt, parliamentary tradition has been to refer to Members as MPP while carrying out MPP responsibilities, thus avoiding the potential for a perceived conflict of interest and possible criticism.

INQUIRY NO. 21

Issue:

A constituent was receiving support payments directly from her former spouse, however, the payments were in arrears. She has prepared the necessary documentation for purposes of filing

with the Family Responsibility Office; however, she has asked her MPP to contact her former spouse, prior to filing with the FRO, to tell him that the documents will be filed unless he pays the arrears.

Opinion:

It is inappropriate for the MPP to act as a 'collection' agency. Contacting the constituent's former spouse may be interpreted as threatening.

The constituent is of course, entitled to file the documentation with the FRO at any time and any contact with her former spouse should be made by her personally or the FRO.

INQUIRY NO. 22

Issue:

A matter has been put on the Cabinet agenda which involves an issue in which a Minister has some financial interest. Should the Minister refrain from any discussions and voting on this issue at the Cabinet meeting?

Opinion:

Section 2 of the *Members' Integrity Act, 1994*, defines "conflict of interest" as,

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

'Private interest' is defined as,

"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...

The Cabinet submission which was reviewed by the Commissioner indicated that the initiatives were of general application and they affected the Minister as one of a broad class of persons. The Minister is entitled to participate in the Cabinet meeting and such participation would not place him in a conflict of interest.

INQUIRY NO. 23

Issue:

A constituent has requested the Member's assistance in obtaining information regarding criminal matters that will be going to trial shortly. She is concerned that the Crown reduced a Dangerous Driving Causing Death charge to Careless Driving and she wants to know the reasoning. She wants the Dangerous Driving Causing Death charges reinstated.

Opinion:

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 Crown Attorney about a matter which is or which was before the courts.

Any involvement by the Member in this matter may be interpreted as an attempt to interfere with and/or influence the process, contrary to the *Members' Integrity Act, 1994*.

The Member may wish to consider suggesting that the constituent contact the Crown Attorney directly to obtain the information she is seeking.

INQUIRY NO. 24

Issue:

There is an ongoing class action involving a Ministry and the Minister is a friend of the plaintiff's lawyer. The Minister requested advice as to the steps that should be taken to avoid any real or perceived conflict of interest.

Opinion:

It is assumed that carriage of the defense in the class action will either be by outside counsel or by counsel within the Ministry of the Attorney General, and there may be circumstances in which lawyers from the defending Ministry may be involved, at least in an advisory capacity.

Given the personal association, the Minister should not participate in any aspect of the defense of the class action. There are a variety of ways in which this could be accomplished. The most common is to issue a notice directing that all contacts concerning the class action be filtered through the office of the Deputy Minister.

The Minister is entitled to know the status of the class action. Beyond that, there should be no active participation in the defence.

INQUIRY NO. 25

Issue:

A Parliamentary Assistant requested guidance with respect to a proposed meeting with a potential lobbyist regarding an issue in the Member's riding, and which falls under the jurisdiction of the Parliamentary Assistant's Ministry. The Member participates on a Committee presently holding hearings with respect to this issue, and was concerned that the potential lobbyist may be appearing before the Committee.

Opinion:

[1] The Member is entitled to meet with the lobbyist on the condition that the meeting does not violate the *Members' Integrity Act, 1994*. In this case, the Member needs to determine the nature of the meeting and if in fact it is with respect to the issue before the Committee, the meeting should not take place. A meeting can take place if the issue is of some other nature.

[2] The individual requesting the meeting was not registered on the Ontario Lobbyist Registry as an active lobbyist. The obligation to register rests with the lobbyist and there is no obligation on the part of a public office holder to ensure registration. However, the Member may suggest to the lobbyist that as a result of the request for the meeting, consideration should be given to registering in accordance with s.4(1) of the *Lobbyists Registration Act*.

INQUIRY NO. 26

Issue:

A Minister is giving a speech to an organization which would like to present the Minister with a gift – a donation to the Minister’s favorite charity. Is this acceptable?

Opinion:

The organization is entitled to make a donation in the name of the organization, however, it should not be in the name of the Minister, as it may be interpreted that the Minister or Ministry made the donation.

INQUIRY NO. 27

Issue:

A constituency office displays, on a rotating basis, the paintings of local artists. The artists have now requested that a business card and the price be displayed on the painting.

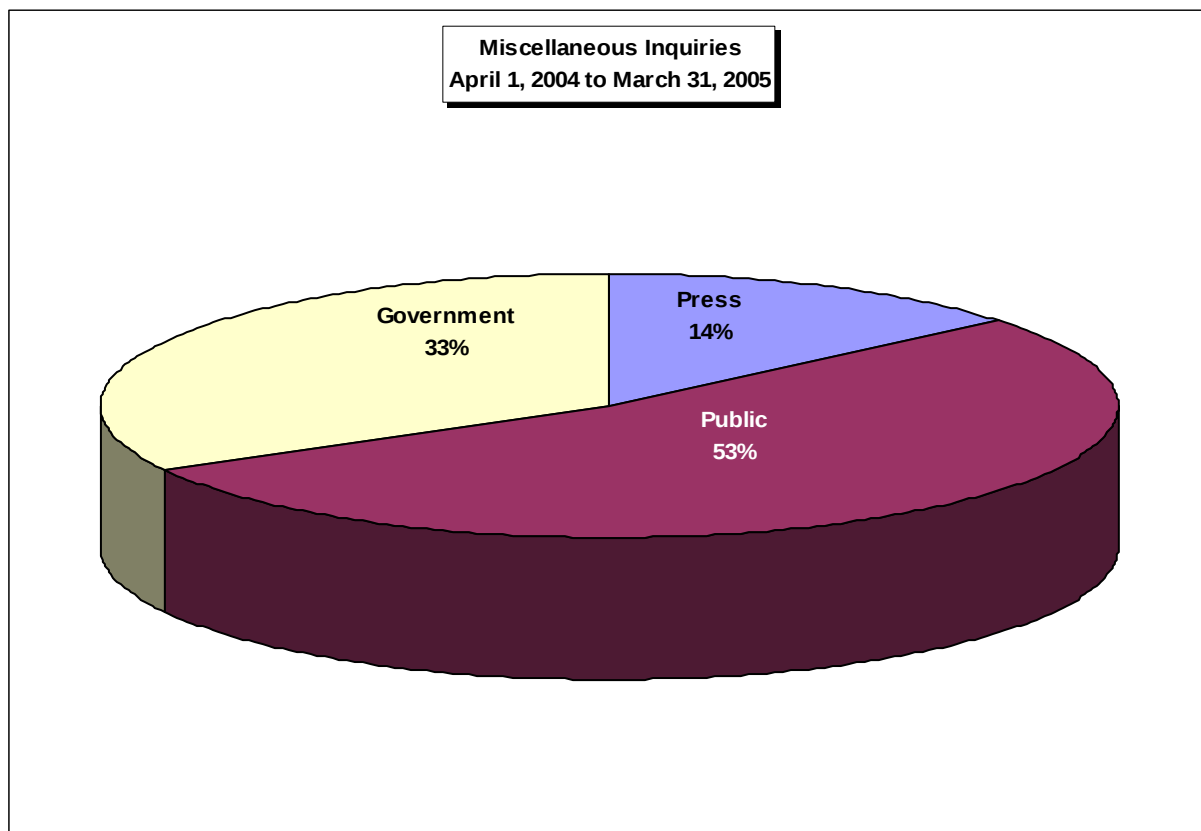
Opinion:

Hanging the paintings in the constituency office is acceptable and should there be an inquiry with respect to a painting, the name of the artist and contact information may be provided. However, to display that information would be an inappropriate use of the constituency office as it is not a store. The interests of one artist should not be preferred over those of other artists.

C. MISCELLANEOUS INQUIRIES

During the reporting period of this Report, 105 miscellaneous inquiries were received from all levels of governments, the public and the media, a decrease of 50% from the previous fiscal year.

A variety of questions were raised, including questions about the actions of various government agencies and employees; conflict of interest guidelines for government agencies; complaints with respect to MPPs from members of the public; general interpretation questions regarding the *Members' Integrity Act, 1994*, the *MPP Compensation Reform Act, 2001* and the *Accountability for Expenses Act (Cabinet Ministers and Opposition Leaders), 2002*; Reports by the Integrity Commissioner, Public Disclosure Statements, policies and procedures of the Office, and requests for copies of the Annual Report.



REFERRED QUESTIONS

Section 30 of the *Members' Integrity Act, 1994*, provides as follows:

30. (1) *A member of the Assembly who has reasonable and probable grounds to believe that another member has contravened this Act or Ontario parliamentary convention may request that the Commissioner give an opinion as to the matter.*

(2) *The request shall be in writing and shall set out the grounds for the belief and the contravention alleged.*

(3) *The member making the request shall promptly give a copy of it to the Speaker, who shall cause the request to be laid before the Assembly if it is in session or, if not, within 10 days after the beginning of the next session.*

(4) *The Assembly may, by resolution, request that the Commissioner give an opinion as to whether a member has contravened this Act or Ontario parliamentary convention.*

(5) *The Executive Council may request that the Commissioner give an opinion as to whether a member of the Executive Council has contravened this Act or Ontario parliamentary convention.*

(6) *The Assembly and its committees shall not conduct an inquiry into a matter that has been referred to the Commissioner under subsection (1) or (4). 1994, c. 38, s. 30.*

A Directive regarding the process under this section may be found on our website at <http://integrity.oico.on.ca>.

During the reporting period of this Annual Report, the following four inquiries under s.30 were received and reports were issued by the Commissioner. Complete texts are available on our website at <http://integrity.oico.on.ca> under "Commissioner's Reports", and hard copies are available upon request.

- (1) Report dated August 19, 2004 - The Honourable Gregory Sorbara, Minister of Finance, with respect to continuing responsibility for the Ontario Securities Commissioner and the Toronto Stock Exchange during an investigation of Royal Technologies Inc.
- (2) Addendum to the Report re The Honourable Gregory Sorbara, Minister of Finance, with respect to the continuing responsibility for the Ontario Securities Commissioner and the Toronto Stock Exchange during an investigation of Royal Technologies Inc. dated September 8, 2004.
- (3) Report dated September 23, 2004 – The Honourable Dalton McGuinty, Premier of Ontario, with respect to disclosure of certain provisions of the May 2004 budget prior to the tabling of the budget in the Legislature.
- (4) Report dated September 23, 2004 – The Honourable Gregory Sorbara, Minister of Finance, with respect to disclosure of certain provisions of the May 2004 budget prior to the tabling of the budget in the Legislature.

FINANCIAL INFORMATION

A. 2004/2005 STATEMENT OF EXPENDITURES

Salaries and Benefits	\$361,073.68
Transportation and Communications	10,267.10
Services	137,024.95
Supplies and Equipment	<u>8,337.20</u>
	<u>\$516,702.93</u>

B. PUBLIC SECTOR SALARY DISCLOSURE ACT, 1996

This statement is provided under the *Public Sector Salary Disclosure Act, 1996*.

<u>Employee</u>	<u>Payment</u>	<u>Taxable Benefits</u>
Coulter A. Osborne	\$165,557.16	\$0