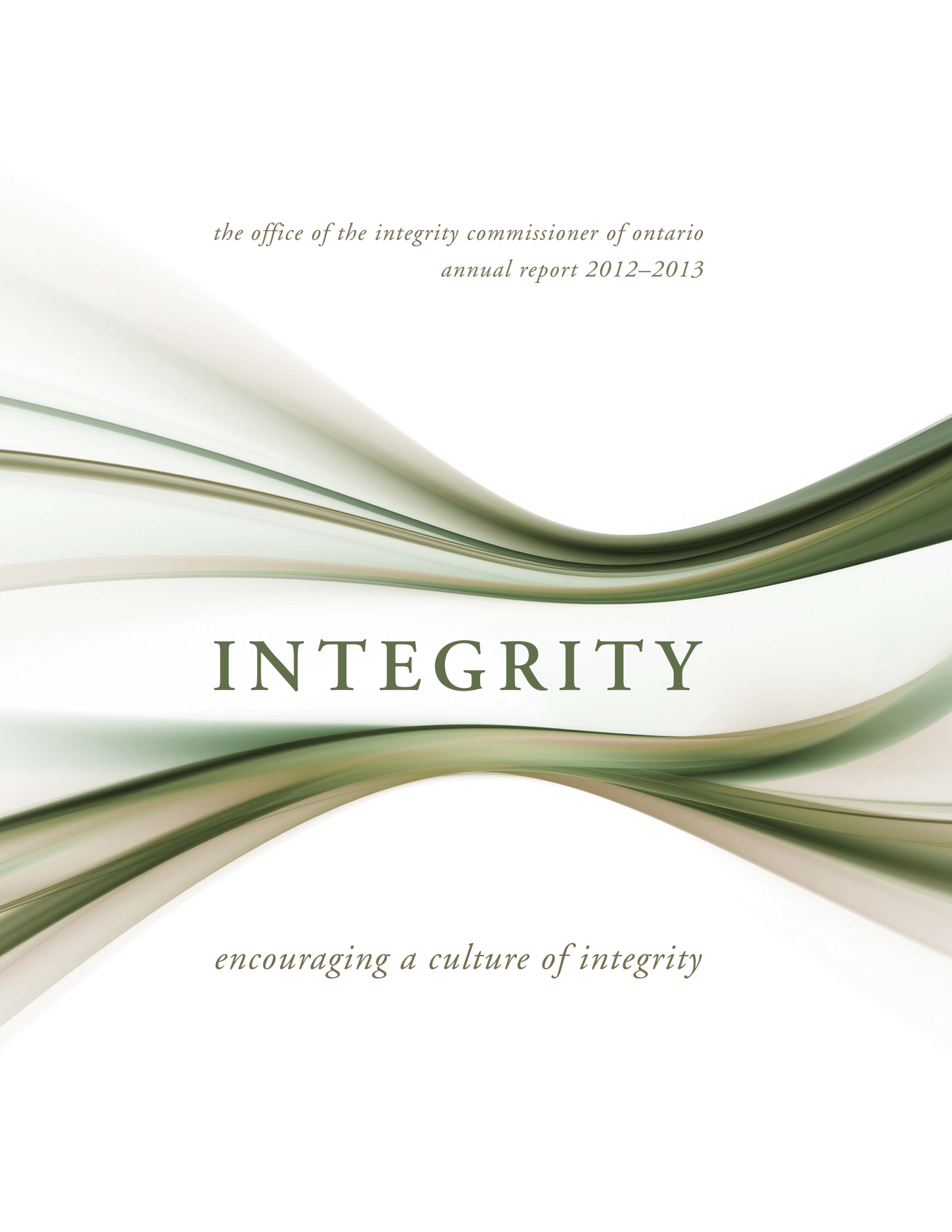




*the office of the integrity commissioner of ontario
annual report 2012–2013*

INTEGRITY

encouraging a culture of integrity

Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

Office of the Integrity Commissioner
Lynn Morrison, Commissioner

Bureau du commissaire à l'intégrité
Lynn Morrison, Commissaire

June 2013

The Honourable Dave Levac
Speaker of the Legislative Assembly of Ontario

Dear Mr. Speaker:

It is an honour to present the Annual Report of the Office of the Integrity Commissioner for the period April 1, 2012, to March 31, 2013.

Yours very truly,

Lynn Morrison
Integrity Commissioner

TABLE OF CONTENTS

02 COMMISSIONER'S MESSAGE

06 MEMBERS' INTEGRITY

14 MINISTERS' STAFF

18 EXPENSES REVIEW

21 DISCLOSURE OF WRONGDOING

27 LOBBYISTS REGISTRATION

34 OUTREACH & FINANCIAL STATEMENT

COMMISSIONER'S MESSAGE



This has been a most interesting year in the ethics business. Elected officials across the country have faced public scrutiny for a myriad of ethical issues, including their relationships with lobbyists, their use of taxpayer-funded expense accounts, and conflict of interest questions about using the status of public office for someone else's private benefit. It tells me one important thing — in today's political world, ethics matter.

My Office serves as a confidential ethics advisor to Ontario's members of provincial parliament (MPPs) and political staff, from whom we fielded 355 inquiries this year. Social media, the accelerated pace of change and the facts of life of a minority government resulted in many challenging questions for me and my staff. This year, we held a record 100 meetings with staff leaving the employ of ministers' offices, reviewed more than 3,900 expense claims, and worked with 33 public servants about possible wrongdoing. This work is summarized in greater detail in this report.

It is my job to ensure all our stakeholders understand the importance of acting with integrity. While legislation provides a framework, I believe that true success comes from open lines of communication and a frank discussion of the specifics of each case. My Office responds promptly to all inquiries and has strengthened its reputation as a helpful resource to MPPs and their staff as they face conflict of interest and ethical questions.

EDUCATION AND CHANGE

I have always been a vocal proponent of education and outreach, and this year my Office held more training and information sessions than ever before. My presentations are grounded in the principles of common sense and transparency, and make it clear to all stakeholders that we are here to provide thoughtful and considered advice. Consulting my Office with a request for advice and direction should be considered the right thing to do, not a sign of an ethical lapse.

The principles of the *Members' Integrity Act, 1994*, are sound:

- don't make a decision that inappropriately benefits you or someone you know;
- accept a gift only if it is received as a custom, social obligation or protocol;
- file a financial disclosure each year; and
- meet with the Commissioner to discuss the ethical framework for the complex challenges of serving as MPP.

The truth, of course, is that not everyone likes the advice I provide. MPPs engage in debate for a living, and they are not shy about challenging my advice. Some members feel that rules and guidelines get in the way of doing their jobs. Others are grateful that rules provide a framework against which they can make the decisions on how best to serve their constituents, and demonstrate that their decisions are made with the province's best interests at heart. I provide my best advice to all. It is up to the member to decide whether he or she wishes to follow it.

This year, I spent a considerable amount of time explaining the gift rule. I have heard the view that it is okay to accept a cup of coffee, a hockey ticket or a product sample because those items couldn't realistically be seen to influence an MPP's decisions. In my view, this argument underscores that many people simply do not understand the gift rule. It exists to protect the interests of MPPs and those of all Ontarians. People need to know that their elected representatives are not being influenced in any way by stakeholders. And let's face it: anyone who is offering an elected official a gift is almost always expecting something in return.

I discussed the gift provisions in detail with all MPPs through the fall, and stepped up my Office's education work to help Queen's Park and constituency staff fully understand the rules. These meetings are a valuable part of my job. I met with all members, raising concerns about such issues as the sometimes complicated relationship of lobbyists and fundraisers, as well as the growing trend of posting partisan material on constituency websites.

The rapid evolution of social media has changed the ways in which MPPs provide service to constituents, and can also blur the lines between an MPP's public and political roles. I have noticed that many websites carry what I consider to be political content, and I have made my concerns known to individual MPPs and caucus officials.

Constituency offices exist to serve all people in a riding, regardless of political stripe. By extension, an MPP's website should be considered the "virtual constituency office" and be free of any partisan material. It should not link to political sites, such as a riding association or party. The constituency office is neutral territory, whether it be bricks and mortar or digital.

UPDATING THE *LOBBYISTS REGISTRATION ACT*

I continue to call for amendments to the *Lobbyists Registration Act, 1998*, and released my recommendations in May 2012. The government announced in July that it intended to update the Act; however, that initiative stalled when Parliament was prorogued in the fall. I continue to advocate for change, and urge the government to consult all stakeholders in a thoughtful review that ensures Ontario is once again a leader in this field. Our democratic process is strengthened by a timely, transparent registry of who is lobbying whom in government, and about what.

Key among my recommendations are the provision of investigative powers and the removal of the “20% rule.”

I maintain that the authority and transparency of the registry would be strengthened if the Registrar was granted the power to investigate complaints, along with the corresponding power to issue penalties, including administrative monetary penalties, as well as the public reporting of contraventions and restrictions against lobbying.

I also maintain that it is time to scrap the “significant part of duties” threshold for in-house lobbyists, which has commonly become known as the “20% rule.” At present, in-house lobbyists must spend 20% of their time on lobbying in order to be required to register. As a result, I believe that in-house lobbyists can wield a considerable amount of influence on public policy without concern for the scrutiny that comes from appearing on the registry. It is time for Ontario to re-establish its lead in ensuring its citizens can obtain a true picture of lobbying activity in the province.

These changes, along with others explained in greater detail elsewhere in this report, would improve the Act by simplifying the registration process for lobbyists and standardizing the information that is provided to the public. Ontario is long overdue in taking these critical steps to strengthen the legislation.

REVIEWING THE DISCLOSURE OF WRONGDOING FRAMEWORK

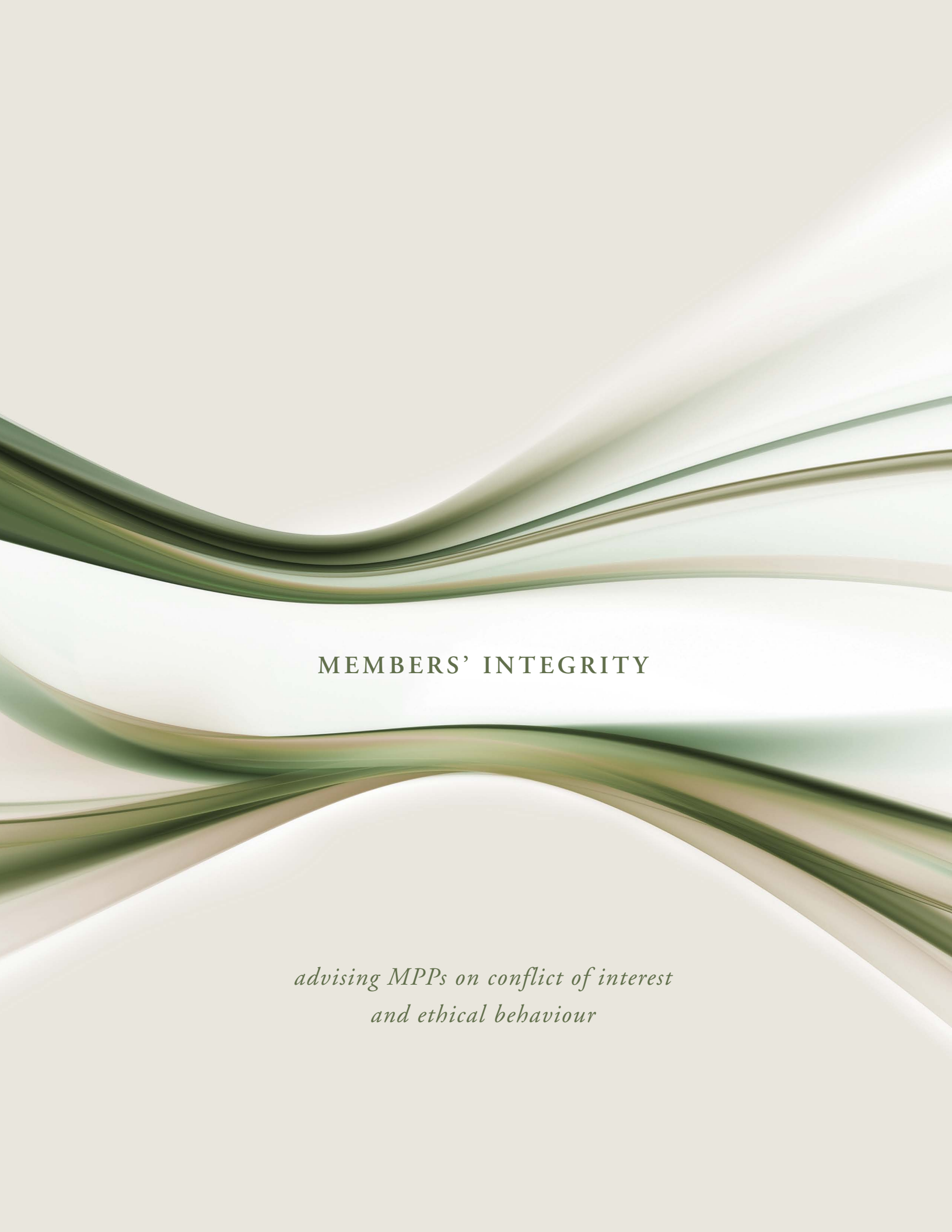
This year marked the fifth anniversary of the disclosure of wrongdoing framework in Ontario, and as contemplated in the legislation, the Minister of Government Services conducted a review of the administration and operation of the provisions. I made several recommendations, which are described in more detail in this report.

My motivation in making these recommendations is to achieve a robust system for making disclosures of wrongdoing in Ontario that public servants can trust. My most significant recommendation is to broaden my jurisdiction to allow me to commence investigations without first making a referral to government. I believe that the referral-first mechanism works, but not in every case. I also recommend that the legislation be amended to clarify that public reporting of activity under the disclosure of wrongdoing framework is in the public interest. In my view, this principle needs to be stated in the legislation so that it can be balanced against the other legitimate interests protected by privacy legislation.

MODERNIZING OFFICE OPERATIONS

A major overhaul of the Office's information technology infrastructure has brought improvements to our operations. New case management systems were rolled out in April for the Members' Integrity and Ministers' Staff mandates, and in November for disclosure of wrongdoing. As a result, work processes have been streamlined and unnecessary duplication has been eliminated. Work continues on other mandates, as well as on a new website that features improved navigation and new resource tools to educate and inform the public and our stakeholders.

This has been a busy and demanding year, and I am grateful to my staff of 12 people for their support, professionalism and hard work.



MEMBERS' INTEGRITY

*advising MPPs on conflict of interest
and ethical behaviour*

MANDATE

The Integrity Commissioner has three key responsibilities under the *Members' Integrity Act, 1994*:

1. receive inquiries and offer confidential advice on ethical issues raised by MPPs;
2. oversee the annual private disclosure statements, meeting with each MPP to discuss the information and filing a public version of this material with the Clerk of the Legislative Assembly; and
3. conduct inquiries into alleged violations of the Act, when raised by one MPP about another.

OVERVIEW

The Integrity Commissioner provides members of provincial parliament (MPPs) with confidential opinions regarding ethical issues that arise in the performance of an MPP's duties of office. This includes work done at the constituency office or at Queen's Park, and can also include work done in ministry offices.

The Office received 355 inquiries this year and conducted 49 outreach sessions with MPPs and their staff. Training will continue to be a priority in the coming year, as it is important that MPPs and staff understand how to recognize ethical issues as they arise. It is equally important that MPPs feel comfortable contacting the Commissioner for her confidential opinion on any matters of concern.

COMPLAINT UNDER SECTION 30

The Commissioner received a complaint from MPP Monte McNaughton (Lambton-Kent-Middlesex) about MPP Brad Duguid (Scarborough Centre). The Commissioner was asked to investigate whether Mr. Duguid breached the Act in relation to holiday cards mailed from his constituency office. The matter was under review at fiscal year-end, and a report will be available on the Office's website in the coming months.

MEETINGS WITH MPPS

All MPPs met the October 1 deadline to file their private disclosure statements with the Commissioner. Meetings took place through the fall to discuss the disclosure materials, as well as such issues as lobbying, the rules for receiving gifts and benefits, the use of social media, and the appearance of partisan materials on constituency websites. Public disclosure statements were filed with the Clerk of the Legislative Assembly on December 18 and are available on the website.

The Commissioner also met with several MPPs throughout the year to discuss the application of the Act's post-employment restrictions to their particular circumstances.

INQUIRIES

The following are samples of the inquiries received by the Commissioner. These summaries are published to help MPPs and their staff identify circumstances that could give rise to issues under the Act. The inquiries and the opinions are abbreviated and anonymized and are provided in order to raise awareness.

It is important to remember that each opinion is based on its own set of disclosed facts and should not be considered a substitute for calling or writing the Office.

GIFTS

INQUIRY

Is it appropriate to accept a gift that is worth less than \$200?

OPINION

The Act specifies that MPPs may accept gifts in limited circumstances; for example, if they are received as part of the protocol, customs or social obligations that normally accompany the responsibilities of office. The Commissioner requests additional information about the circumstances of the gift to determine if it is appropriate for the MPP to accept. The value of a gift has no bearing on this decision. The \$200 threshold found in the Act relates only to whether a gift must be disclosed to the Commissioner and published on the MPP's public disclosure statement.

FUNDRAISERS

INQUIRY

Staff of an MPP's constituency office are also members of the local riding association, which is holding a fundraiser. Can the invitations include the constituency office email and mailing addresses for RSVPs?

OPINION

The Commissioner advised that it would be contrary to parliamentary convention to include the constituency office contact information on the invitations. Matters related to riding associations (such as planning fundraisers or collecting donations) should never take place in a constituency office. It is imperative that legislative resources, including computers, phones, email accounts, staff time, etc., not be used for any matters related to party/partisan politics.

REPRESENTING CONSTITUENT INTERESTS

INQUIRY

A constituent asked an MPP to write a letter of support to a non-government entity. What are some general rules that the MPP should consider in deciding whether to write the letter?

OPINION

The Integrity Commissioner has established the following guidelines:

1. MPPs should provide support for an individual, organization or cause only if they are comfortable writing the letter. MPPs who do not feel they have sufficient knowledge of the requestor are not obligated to write the letter. MPPs may have other reasons for denying a request. However, they should always be open and transparent with the individual or organization about their reasons.
2. It is important that MPPs are mindful of the need to control the manner in which their support letter is being used by the constituent(s). One way to control a letter's use is to address and mail the letter directly to the individual or organization, not "to whom it may concern."
3. Use appropriate letterhead. In most cases, this will be the MPP's constituency office letterhead. A member who holds other official titles should not use letterhead containing those titles unless the matter relates to their duties in those positions.
4. Letters should never be generic and should always be focused specifically on the matter for which they are intended. The letter should discuss the individual, organization or cause directly and should address the reason(s) for which the letter is being proffered.

INQUIRY

A cabinet minister has been asked to write a letter to the Ontario Municipal Board in support of a constituent's development proposal. Can the minister write the letter?

OPINION

The minister was advised not to write the letter. It is the Integrity Commissioner's opinion that Ontario parliamentary convention prohibits ministers from appearing as advocates or supporters of a decision to be made by a provincial agency, board or commission about a particular matter affecting an individual or organization. The convention has evolved to ensure that members of these bodies can carry out their duties free from influence or the appearance of influence by cabinet ministers.

INQUIRY

A constituent is upset that charges were not laid by the police. Can the MPP assist the constituent by contacting the police and ensuring that charges are laid?

OPINION

MPPs can assist their constituents with obtaining information about policies, procedures and/or the status of a matter. Such inquiries are acceptable whether the matter is within the jurisdiction of a government ministry, including agencies, boards and/or commissions, or the matter is within the jurisdiction of the police. In this case, the MPP may choose to assist the constituent by asking the police about the processes in place regarding the right a member of the public has to file a complaint. The Commissioner recommends that MPPs respect the policies and procedures in place, and that they not use their status as MPP in order to obtain unique or preferential treatment from decision makers.

INQUIRY

Can a minister write a letter of support for a candidate for the Order of Ontario?

OPINION

First, it is important to note that there is a distinction between a letter of nomination and a letter of support for an Order of Ontario appointment. It is the Commissioner's opinion that ministers should not submit letters of nomination to the Order of Ontario program.

It is acceptable for a minister to write a letter of support. However, the Commissioner advises that it is preferable that the minister not write the letter, as this would leave him or her free to speak to the matter and vote should the application come before Cabinet. If the minister does choose to write a letter of support, the Commissioner advises that he or she should not participate in any discussions or voting on the matter in Cabinet.

INQUIRY

A community group has asked an MPP for permission to hold a seminar at the MPP's constituency office. The group would charge a fee to those attending. The MPP and staff will not advertise or participate in this event. Is this acceptable?

OPINION

It is the Commissioner's opinion that MPPs should not allow outside groups to use the constituency office for any purpose either during or outside of business hours, whether charging for attendance or not.

The Commissioner believes that it is an inappropriate use of a non-partisan office supported by taxpayers' dollars to support any outside entity in this manner. Additionally, members who use their constituency resources in this manner may run the risk of being accused of favouritism, and their actions may give rise to an expectation that they will provide the same access to any group that asks.

INQUIRY

A grateful constituent said thank you to an MPP's staff member by putting a \$20 bill in the staff member's pocket. The staff member tried to give the money back, but the constituent would not accept it despite the staff member's best efforts to explain that they were just doing their job. The constituent left the office. The staff member knows who this person is and does have their address. What should they do?

OPINION

The Commissioner advised the staff member to return the gift to the constituent with a cover letter politely explaining that they are paid to help and are not permitted to accept money or gifts.

INQUIRY

An MPP has been asked by a local charity to assist by going door to door and asking constituents for donations. Is this acceptable?

OPINION

MPPs should not assist local charities by directly soliciting funds from constituents on their behalf. The Commissioner advises that an MPP asking people or organizations for money opens up the possibility that those who donate may feel that they can expect preferential treatment from the MPP. Conversely, those who cannot or do not donate may feel that they risk receiving unfavourable treatment from their MPP.

INQUIRY

A local not-for-profit has asked an MPP to advertise the opening of its office in the community. Is this appropriate?

OPINION

It is the Commissioner's opinion that MPPs should not use government resources to promote any organization, whether for profit or not. It may be acceptable, however, for MPPs to have a listing of significant community events in their newsletters, provided they do not make reference to commercial entities.

SOCIAL MEDIA

INQUIRY

Can an MPP link to social media accounts from the constituency office's website?

OPINION

The Commissioner advises that this is acceptable as long as the link is not to a website containing partisan or commercial information.

Some examples:

1. An MPP's website should not link to a social media page (or any other website) that has pictures of the MPP together with signage or flags, etc., that show the political party affiliation.
2. An MPP's constituency website should not link to a social media account that has been used for campaign purposes only.
3. An MPP's constituency website should not contain a link to a website that contains links to other websites that are partisan in nature and demonstrate the MPP's party affiliation. A link to a link to a link, and so on, is also unacceptable as long as it is reasonable to believe that a visitor to the MPP's constituency website might follow that series of links.
4. An MPP's constituency website should never contain information about political fundraisers or how to make donations to political parties.

INQUIRY

Can a riding association put a link on its website that would direct the user to the local MPP's constituency website?

OPINION

The Commissioner does not have jurisdiction over riding associations or their websites.

MISCELLANEOUS

INQUIRY

Appearances as MPP during the writ period – An MPP has been asked to participate in an event that falls within the writ period for a general election. Can he/she attend as an MPP?

OPINION

The Commissioner advised that MPPs cease to be MPPs during the writ period. As such, they should not appear at any events as MPP or hold themselves out as MPP for any reason(s) during that time.

INQUIRY

Possible violation of the Act – An MPP learns that a member of their staff may have done something that could place the member in violation of the Act. What should be done?

OPINION

The Commissioner discussed the situation with the MPP and provided an opinion about whether the staff member's actions were improper. The Commissioner also provided advice to ensure that the issue does not take place again. Once the MPP demonstrated that all reasonable steps had been taken to remedy the situation and to protect against a repeat occurrence, the Commissioner provided the MPP with a letter acknowledging the efforts.

In some circumstances, this letter may also confirm that the MPP acted in good faith by promptly reporting the issue to the Commissioner and seeking her opinion and assistance. It is important to note, however, that the MPP could still be the subject of a complaint by another member under section 30 of the Act.

INQUIRY

Sitting on boards – What should an MPP take into account when deciding whether to join the board of directors of an organization?

OPINION

MPPs are encouraged to always seek the Commissioner's opinion when invited to join an organization's board of directors. She offers the following advice:

1. MPPs should refrain from using any government resources for board activities, including time, money, and human resources;
2. MPPs should not allow their board work to interfere with their responsibilities as MPP or their work for the government of Ontario;
3. MPPs should recuse themselves from any and all discussions that may pertain to the organization's interactions with the government of Ontario, including any funding discussions or strategic planning discussions; and
4. care should be taken not to identify oneself as an MPP while fulfilling the duties of board member.



MINISTERS' STAFF

*providing advice on conflicts of interest, political
activity and post-service employment issues*

MANDATE

As Ethics Executive for ministers' staff, the Integrity Commissioner makes determinations about conflict of interest, political activity and post-service employment issues.

The standards applicable to ministers' staff are found in the *Public Service of Ontario Act, 2006*, sections 66–69 and 94–98, and in the *Conflict of Interest Rules for Public Servants (Ministers' Offices) and Former Public Servants (Ministers' Offices)*.

OVERVIEW

Post-employment meetings dominated the workload this year, as staff met with a record 100 people who left their positions in cabinet ministers' offices. In addition, the Office received 42 questions about conflicts of interest, financial holdings and other matters. This compares with 66 post-employment meetings in 2011–2012 and 46 general inquiries. The increase can be directly attributed to the staff turnover following Premier Dalton McGuinty's resignation announcement in the fall.

Post-employment meetings provide a welcome opportunity for ministers' staff to reflect on their work for the Crown and understand how the rules will affect their job search and their work for a new employer. Staff meet with the Office and share details of their Queen's Park employment. They are fully briefed on the employment and lobbying restrictions in the conflict of interest rules and are provided with reference materials. After the meeting, the Commissioner sends each person a letter summarizing their obligations as former staff; a copy is also sent to the respective minister.

Ministers' staff who leave the government's employ are required to comply with post-service obligations and restrictions, which include the following:

1. an ongoing duty not to seek preferential treatment or disclose or use confidential information;
2. a 12-month restriction on lobbying any ministry that the public servant was employed with in the 12 months prior to leaving public service;
3. a potential restriction against accepting employment with an entity, person or public body in which a public servant (a) had substantial involvement, and (b) had access to confidential information that could harm the Crown or give the entity an advantage; and
4. an ongoing restriction against advising any entity about a specific proceeding, negotiation or transaction about which the public servant advised the Crown.

INQUIRIES

The following are samples of the inquiries received by the Commissioner and are intended to help ministers' staff identify conflict of interest issues. The inquiries are abbreviated and anonymized and are provided in order to raise awareness.

It is important to remember that each opinion is based on its own set of disclosed facts and should not be considered a substitute for calling or writing the Office.

POST-EMPLOYMENT

INQUIRY

A former employee of a minister's office was invited to attend a roundtable consultation organized by his/her former ministry on behalf of his/her employer. In light of the lobbying restriction, could he/she attend the meeting?

DETERMINATION

The Commissioner determined that the person's attendance at the ministry meeting did not violate the lobbying restriction since the ministry initiated the meeting and it was for the purpose of sharing information. The Commissioner advised the individual that communication with ministry officials should not extend beyond the scope of the consultation subject to ensure his/her compliance with the lobbying restriction and the obligation not to seek preferential treatment. The Commissioner further cautioned that it may not be possible to avoid the perception that the individual is lobbying even if he/she is engaging in friendly conversation.

INQUIRY

A former ministers' staff employee wishes to sit on the board of directors of an organization that is a stakeholder to the ministry where he/she had previously worked. He/she did not have any previous involvement with the organization; however, the organization does receive government funding.

DETERMINATION

The Commissioner determined that the board position could be accepted on the condition that the former ministers' staff employee recuses himself/herself from all discussions involving government funding.

INQUIRY

A former member of a minister's staff wishes to attend a fundraiser for his/her former minister. Can he/she attend the event?

DETERMINATION

The Commissioner determined that it was acceptable to attend the fundraiser on the condition that the individual adheres to his/her lobbying restriction. The Commissioner cautioned that it may not be possible to avoid a perceived conflict of interest and that care should always be taken when interacting with the minister.

GIFTS

INQUIRY

Under what circumstances can employees of ministers' offices accept a gift or an invitation to an event?

DETERMINATION

Public servants in ministers' offices can accept gifts and benefits only in limited circumstances. If the gift or benefit is nominal in value and is given as an expression of courtesy or hospitality, a public servant may accept if doing so is considered reasonable; for example, accepting a token gift after giving a speech.

Ministers' staff should not accept a gift or benefit if the gift is from a person or entity that

1. has dealings with the Crown,
2. provides services to the Crown, or
3. seeks to do business with the Crown

and a reasonable person might conclude that it could influence the public servant in his/her duties with the Crown. Ministers' staff should seek direction from the Commissioner before accepting a gift.

OUTSIDE ACTIVITIES

INQUIRY

A member of a minister's staff wishes to pursue part-time contract work unrelated to his/her ministerial position. The work would be conducted on personal time. Can the public servant accept the contract?

DETERMINATION

The Commissioner determined that it is acceptable for the individual to accept the work under the following conditions:

1. that he/she inform the minister and the minister approves;
2. that he/she not become involved with anything that could potentially conflict with his/her work with the Crown; and
3. that he/she not use any government resources, including time.



EXPENSES REVIEW

encouraging prudence and accountability

MANDATE

The Office of the Integrity Commissioner reviews the travel, meal and hospitality expenses for two groups of public servants:

- cabinet ministers, parliamentary assistants, leaders of the Opposition and their staff; and
- senior executives, appointees and the top five employee expense claimants at 21 of Ontario's largest agencies, boards and commissions.

The responsibilities are found in two pieces of legislation:

- *Cabinet Ministers' and Opposition Leaders' Expenses Review and Accountability Act, 2002*; and
- *Public Sector Expenses Review Act, 2009*.

The reviews are conducted using the *Rules Governing the Expenses of Cabinet Ministers, Opposition Leaders and Other Persons*, the Ontario Travel, Meal and Hospitality Expenses Directive, and guidelines issued by the Integrity Commissioner.

OVERVIEW

The Office's expense review team has one goal as it reviews travel, meal and hospitality expense claims: to help public servants comply with the rules. This year, the Office saw clear evidence of culture change under both mandates.

Staff noted a more proactive approach from its stakeholders, which resulted in an increase in questions about expenses before they took place, as well as more general inquiries and requests for clarification of the rules. Staff also found that stakeholders quickly responded to feedback, which translated into well-documented and complete expense reports. This heightened awareness encourages the prudent use of taxpayer dollars and helps ensure that accountability becomes part of the culture.

OUTREACH

The Commissioner is an avid proponent of education and outreach. The philosophy has always been to support stakeholders and provide them with the tools and knowledge to fulfill their responsibilities. Staff provided training materials and met with administrative managers and senior staff in all ministers' offices. In addition, resources, education and advice were regularly provided to officials who work in the agencies, boards and commissions. These meetings help to build relationships and cultivate a consultative culture.

The Office took this feedback into account in preparing recommendations that were submitted to the government for consideration in its review of the Travel, Meal and Hospitality Expenses Directive. A key recommendation is the adoption of a *per diem* system for meals for employees who travel, which would translate into administrative cost reductions and equitable treatment of staff.

THE REVIEW PROCESS

The review process is similar across both mandates. Expense claims are submitted to the Office after they have been processed by the government or agency. Each individual claim and attached supporting documentation is checked to ensure accuracy and compliance. Where necessary, staff asks for additional information and explanations prior to the final review by the Commissioner.

If a claim does not conform to the directive or rules, the Commissioner may provide feedback to the claimant, request other remedial action and/or request a reimbursement.

All expense claims are posted online by each entity only after the claims have been reviewed and results of the review have been issued by the Office.

CABINET MINISTERS' AND OPPOSITION LEADERS' EXPENSES REVIEW

The Office reviewed 822 claims for ministers, parliamentary assistants, Opposition leaders and their respective staff.

The Commissioner is required to provide the Speaker of the Legislative Assembly of Ontario with a written report on the review conducted under the *Cabinet Ministers' and Opposition Leaders' Expenses Review and Accountability Act, 2002*. The Commissioner can name in the report any person who does not comply with an order to repay or a recommendation for other action; however, the Commissioner cannot name a third party and cannot fault anyone for relying on her advice.

PUBLIC SECTOR EXPENSES REVIEW

Staff reviewed 3,110 expense claims submitted for designated senior management employees, appointees and the top five employee spenders of the province's 21 largest agencies, boards and commissions.

The volume of work is considerable, but the impact of the reviews is becoming evident. One agency reported that it modified its airline fare preference to a lower economy fare, only to see its travel service provider request to renegotiate a more favourable service contract because there had been such a drastic drop in spending. Other agencies have also advised of significant reductions of spending in travel, meals and hospitality.

This feedback demonstrates that although the claims of only a small number of individuals are reviewed, there is a trickle-down effect ensuring compliance throughout the organization. Some of the agencies, boards and commissions are fully compliant with the directive and have even adopted stricter guidelines internally.

As a result, the Office has recommended to the government that it implement a mechanism to randomly rotate all agencies through the review process for a fixed time period. This would also serve to increase the transparency of the use of public funds, as at present only the 21 agencies are required to submit expenses for review and publish them on their websites.



DISCLOSURE OF WRONGDOING

*ensuring a meaningful response when public servants
make allegations of wrongdoing*

MANDATE

As an independent third party, the Integrity Commissioner can receive allegations of wrongdoing from public servants (or former public servants) working in ministries or public bodies. The process for dealing with an allegation is to refer the matter to a senior official to investigate and report back to the Commissioner. If the Commissioner is not satisfied with the response, an investigation can be launched. The Commissioner's authority is set out in Part VI of the *Public Service of Ontario Act, 2006*.

OVERVIEW OF OPERATIONS

In addition to fulfilling core responsibilities, this year the Office also established important policies, refreshed the information on the website, and engaged in outreach activities. It also began planning for a broader outreach campaign for public servants in public bodies and provided comprehensive recommendations to the Minister of Government Services about how to improve the legislation.

FIVE-YEAR REVIEW RECOMMENDATIONS

One of the Office's most significant activities this year was participating in the statutory review of the disclosure of wrongdoing section of the Act. The Commissioner provided comprehensive recommendations to the minister in the summer of 2012, and published them on the Office's website in March 2013. The Commissioner looks forward to the release of the minister's report and to participating in the development of any legislative changes that may flow from the review.

The Commissioner made 20 specific recommendations. Among the highlights:

Provide the Commissioner with more options on how to deal with a matter

Under the existing legislation, if the Commissioner has jurisdiction over a matter, it must first be referred to an appropriate senior official within government for an investigation. The Commissioner can commence an investigation only if the senior official has a conflict or the Commissioner is not satisfied with the investigation. While this mechanism has worked successfully in many cases, there are times when referral could have a negative impact on the integrity of the investigation or the referral causes the disclosing public servant to lose confidence in the process.

In addition, the Commissioner seeks an amendment to allow referrals to be made to the Conflict of Interest Commissioner.

Improve the Commissioner's powers in relation to preliminary assessments

Upon receipt of a disclosure of wrongdoing, the Commissioner must determine whether there is jurisdiction to receive and deal with the matter. First, she considers whether the subject matter is in the

nature of wrongdoing (i.e., one of the four types of wrongdoing set out in the Act). Second, she considers whether any of the circumstances in section 117 are present. This section lists subject matters from which the Commissioner is restricted.

In order to assist in the review of a disclosure, the Commissioner requires more authority to make reasonable requests of government offices to provide information without having to first disclose the nature of the alleged wrongdoing.

In addition, the Commissioner seeks amendments to govern how confidential advice can be obtained from other officers of the Legislative Assembly when a matter touches on their respective areas of expertise.

Training and public reports

The Commissioner recommends that there be annual training regarding the disclosure of wrongdoing mechanism and that the Ontario Public Service provide public reports about internal disclosure of wrongdoing activity. The Commissioner believes that increased information about the system and the level of activity will create confidence in the system itself. In addition, the Commissioner recommends that the Act be amended to expressly state that there is a public interest served by transparent reporting about activity under the disclosure of wrongdoing framework.

Legal funding

The Commissioner renewed her recommendations to allow her to have greater flexibility to arrange and pay for legal funding to public servants who are considering making a disclosure, and the criteria to be used when assessing a funding request.

Ongoing review

Public interest disclosure of wrongdoing legislation is new in Canada. Although there have been many lessons learned in the five years that Ontario's framework has been in place, there will certainly be new lessons learned in the future. The Commissioner suggests that it would be beneficial to review the Act every five years to ensure that the legislation is current and responsive to emerging best practices.

Investigation powers

The Commissioner seeks amendments to improve the scope of the summons power and the ability to enforce summons that are issued.

Other observations

In carrying out the work under this mandate, the Commissioner has observed a number of policy issues that require consideration:

- Whether another statutory or internal mechanism ought to be established to resolve disputes between regulated professional public servants and non-regulated professional

decision makers receiving their advice. Experience shows that sometimes within the public service there can be a strained relationship between regulated professionals providing advice and non-regulated professional management. Members of a regulated profession can have a valid concern that their opinions are not being understood or are ignored by senior decision makers who do not have similar professional credentials. It is, of course, understood that decision makers are not bound to make decisions solely informed by professional advice.

- Whether contractors should be able to disclose possible wrongdoing about public servants.
- Whether a person at a lower level than deputy minister should be appointed within the ministries to deal with allegations of wrongdoing. Federal and provincial counterparts have more elaborate systems for internal reporting, whereby mid-level managers are assigned the duty to receive and deal with disclosures of wrongdoing. It may be that this type of model encourages more reporting because a public servant is not required to reach out to the highest position in the organization to make the report.
- The Commissioner has noted, and is concerned about, the fact that a disclosure of wrongdoing investigation can cause significant workplace disruption. The government is encouraged to explore means by which this disruption can be minimized.

ACTIVITY

	2011–12	2012–13
Total contacts from public servants	35	33
Requests for information	18	25
Intention to file a disclosure of wrongdoing	17	8
	2011–12	2012–13
Disposition of matters where a public servant sought to make a disclosure of wrongdoing (including matters carried over from the prior fiscal year)	19¹	11²
Referred to appropriate senior official for investigation or under investigation by the IC	3	2
Not received as a disclosure of potential wrongdoing because the allegations could not possibly reveal a “wrongdoing” as that term is defined in the Act	5	3
Received as a disclosure of potential wrongdoing, but the circumstances were outside the Office’s jurisdiction	3	3
File closed for miscellaneous reasons (e.g., discloser decided not to proceed, insufficient information to determine jurisdiction)	5	2
Remaining under review at fiscal year-end	3	1

¹ Includes 17 inquiries in which the public servant expressed an intention to file a disclosure of wrongdoing, plus two inquiries remaining under review at year-end 2011

² Includes eight inquiries in which the public servant expressed an intention to file a disclosure of wrongdoing, plus three inquiries remaining under review at year-end 2012

In addition to these activities and the summaries below, the Office has engaged in significant activity to follow up on closed cases from prior years.

CASE REPORTS

CASE 1

ALLEGATION OF GROSS MISMANAGEMENT AND CONFLICT OF INTEREST IN RELATION TO PROCUREMENT AND CONTRAVENTION OF CONFLICT OF INTEREST RULES (REFERRAL)

It was alleged that senior public servants at a public body were responsible for gross mismanagement and/or conflicts of interest in relation to specific procurement projects. It was also alleged that another public servant at the public body had acted contrary to conflict of interest rules.

The matter was referred for investigation to the deputy minister of the ministry responsible for the public body. The deputy minister engaged a neutral third party to conduct the investigation.

Procurement

The investigation concluded that there was no gross mismanagement or conflicts of interest in relation to procurement issues. The deputy minister advised that prior to the referral the public body had already taken steps to improve procurement practices. The investigation confirmed that there were serious issues with

procurement practices at the public body. Notwithstanding the changes already underway, the deputy minister was committed to take further steps for improvement.

The Commissioner made recommendations, including that the deputy minister cause a review of a number of other procurements commenced prior to the changes. The deputy minister accepted the Commissioner's recommendations. The further review was completed, and no wrongdoing was identified.

Other alleged COI contravention

The investigation concluded that there had been no contravention of the conflict of interest rules. Notwithstanding the deputy minister's conclusion, the Commissioner recommended that the deputy minister seek a determination from the Conflict of Interest Commissioner about the particular matter. The determination was completed, and the finding of the deputy minister was confirmed.

The Commissioner followed the file for several months after the initial report and was satisfied with the investigation and conclusions. The Commissioner closed the file.

CASE 2

ALLEGATION OF CONTRAVENTION OF THE CONFLICT OF INTEREST RULES (REFERRAL AND INVESTIGATION)

It was alleged that a public servant contravened the conflict of interest rules by supervising a family member who worked in the same office. The matter was referred for investigation to an ethics executive within the OPS. The ethics executive concluded that there was no contravention of the rules and therefore no wrongdoing. The Commissioner was

not satisfied with the investigation because it failed to address certain issues related to the disclosure, including whether the public servant contravened section 65(3) of the *Public Service of Ontario Act, 2006*. Section 65(3) requires public servants to make timely disclosures of personal and pecuniary interests to their ethics executive.

A new investigation was conducted by the Commissioner. The Commissioner concluded that the public servant did not contravene the conflict of interest rules or the Act.



LOBBYISTS REGISTRATION

*providing transparency about who is talking
to whom in government, and about what*

MANDATE

The Office maintains an online public record of paid lobbyists. The database is searchable and outlines each lobbyist's name, company, client or employer, the lobbying activity and the targeted ministry or agency. The Integrity Commissioner is the province's Lobbyists Registrar.

This responsibility is found in the *Lobbyists Registration Act, 1998*.

OVERVIEW

The Commissioner has been calling for a review of the Act for two years, and in May 2012 released a summary of key recommendations for change. In July, the government announced its intention to introduce amendments; however, this work halted when Parliament was prorogued in October.

As Lobbyists Registrar, the Commissioner continues the push for change. Ontario's legislation is overdue for updating and risks falling out of step as other jurisdictions make key improvements to their own laws. The Commissioner urges all parties to renew the effort to review the Act, consult with all stakeholders and conduct a thoughtful and considered review.

The key recommendations for amendments to the Act are:

- Provide the Registrar with the power to investigate complaints and issue penalties, including administrative monetary penalties, public reporting of contraventions, and restrictions against lobbying. The ability to receive and review complaints, along with the penalty provisions, would serve to encourage compliance.
- Eliminate the "significant part of duties" threshold. The Act requires that in-house lobbyists must register only if they spend 20% or more of their time on lobbying activities. The Commissioner believes that paid lobbyists should be required to register, regardless of the time spent lobbying.
- Combine the two types of in-house lobbyists (persons & partnerships and organizations). The current system is unnecessarily confusing. A simplified process would increase transparency.
- Require the same type of information from all lobbyists, and permit the Registrar to introduce new categories of information if it aligns with the spirit of the Act.

Registration Activity

	March 31, 2012	March 31, 2013
Total Registrations	1,562	1,735
REGISTRATIONS BY TYPE		
Consultant	1,154	1,313
In-House, Organizations	218	220
In-House, Persons & Partnerships	190	202

OPERATIONS

In Ontario, a registerable lobbying activity occurs when a paid lobbyist communicates with a public office holder in an attempt to influence government decisions about:

- the making, developing or amending of provincial legislative proposals, bills or resolutions, regulations, policies or programs;
- the awarding of grants, contributions or other financial benefits from all levels of government;
- privatization and outsourcing decisions; and
- in the case of consultant lobbyists, the awarding of a provincial government contract and arranging a meeting between a client and a public office holder.

As Lobbyists Registrar, one of the Commissioner's responsibilities is to review and verify the content of a lobbyist's registration form before it is posted on the registry to ensure accuracy and clarify ambiguous information. A registration must contain sufficient detail so it is clear to the public what the lobbyist is trying to influence.

Throughout the year, the Commissioner and staff continued their efforts to obtain more detailed information by actively following up with lobbyists by telephone or email. The most common issues requiring follow-up included:

- registrations that contained vague details about the lobbying activities, contrary to the principles of the Act to ensure that the process of lobbying government is kept open and transparent;
- few changes to information upon renewal of the registration, which can be problematic because it does not accurately reflect any specific activities that may have occurred within the renewal period; and
- updating government funding information and clarifying whether a grant had been renewed or whether it was still applicable.

Lobbyists continue to cooperate with the requests for greater details, and the push has resulted in more information available to the public.

It is important to note that not all lobbying activity requires registration. However, there are no restrictions within the Act prohibiting a lobbyist from registering out of an abundance of caution. In fact, over the year the Office received several general inquiries about whether certain activities required registration.

Indeed many lobbyists register *unpaid* lobbying activities, in-house lobbyists often register even if the lobbying activities do not meet the 20% threshold test, or, where there is no specific lobbying activity underway, some lobbyists may simply indicate that they are monitoring or assessing regulatory and/or policy changes or providing strategic advice. In the interest of transparency, these registrations continue to be accepted and posted on the registry.

COMPLIANCE STRATEGY

As part of the Office's compliance strategy, the Commissioner wrote to major law firms and unions in the province to raise awareness and remind them of their obligations under the Act.

Some law firms believed that they were not required to register because their work was covered by solicitor-client privilege. This is incorrect; the act of lobbying public office holders is not a confidential solicitor-client communication. The Commissioner worked hard to ensure lawyers fully understand the requirement to register all of the lobbying activity they undertake on a client's behalf. The letters resulted in a noticeable increase in registrations from law firms.

Trade unions were contacted because they may be engaged in registerable lobbying activities if any of their employees communicate with public office holders in an attempt to influence government activities. Registration is required if the communication with public office holders constitutes a significant part of the duties of one employee or a group of employees. The term "significant part of duties" is determined by regulation and occurs when the accumulation of lobbying activities over a three-month period reaches the threshold of 20% of an individual employee's time or the combined times of more than one employee.

INTERPRETATION BULLETIN – GRASS-ROOTS LOBBYING

In July, the Commissioner issued Interpretation Bulletin #8 – Grass-roots communication registration requirements. It stipulates:

Lobbyists engaged in developing and/or managing grass-roots communication campaigns may not have direct communications with public office holders on behalf of their client (in the case of consultant lobbyists) or their employer (on behalf of in-house lobbyists). Because the lobbyist is not involved in direct communication, this may lead to the incorrect conclusion that registration is not required. In fact, registration may be required.

The bulletin elaborates on the meaning of grass-roots communication that would *result* in a communication campaign that uses any combination of advertising, websites or social media tools to encourage members of the public to communicate with public office holders.

OUTREACH

The Office continued to enjoy great success with training sessions for lobbyists. These small group sessions were held throughout the year and featured a short presentation, followed by a question period with staff and the Commissioner.

The training sessions assist lobbyists in navigating the Act by examining the following questions:

- Communication – Are you communicating either directly or indirectly?
- Attempt to influence – Are you attempting to influence a government activity?
- Payment – Are you being paid (either on contract or as an employee)?
- Public office holders – How do you determine who you are lobbying?
- Significant part of duties (applies to in-house lobbyists) – What is the 20% rule?

Feedback has been positive, and the training sessions are now a permanent feature on the Office calendar.

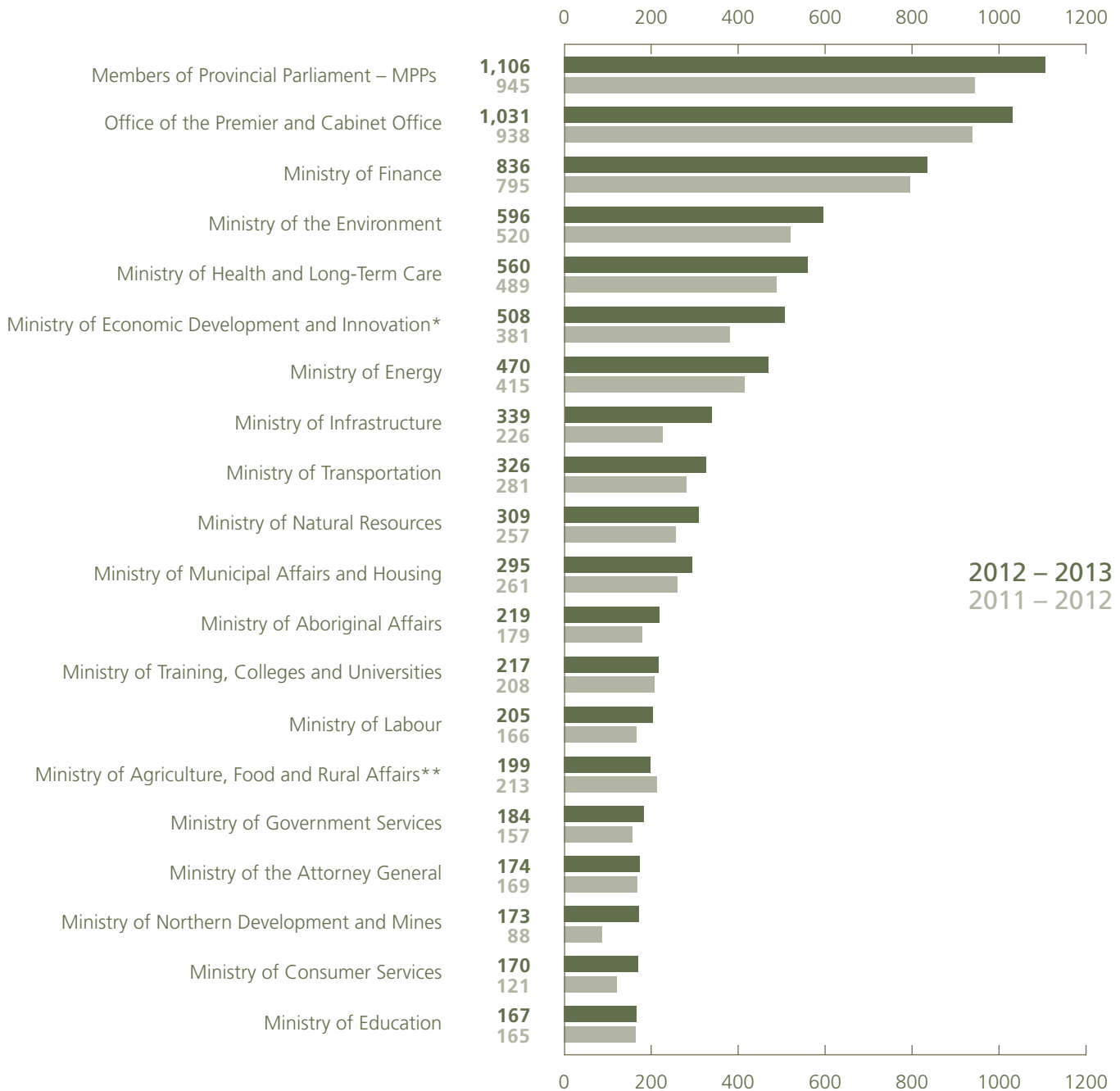
In September and again in February, the Commissioner and Office staff attended meetings with Lobbyists Registrars and Commissioners from across Canada. Along with the federal government, lobbying legislation is in place in British Columbia, Alberta, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador, as well as Toronto and Ottawa. The meetings provide an opportunity to touch base with other jurisdictions and gain insight into their processes and procedures.

WEBSITE

Online resources were updated throughout the year as staff worked on the information technology renewal project. This work will result in a new system for registrants in the coming year, as well as a streamlined case management system for staff.

The review included the release of an updated version of the *Guide to the Lobbyists Registration Act* in October. The updated guide provides further clarification of the terms and requirements of the Act, the application of the *Broader Public Sector Accountability Act, 2010*, and features a new “How To” section with instructions about creating a lobbyist account, submitting a registration, updating content, renewals, terminations and searching the registry.

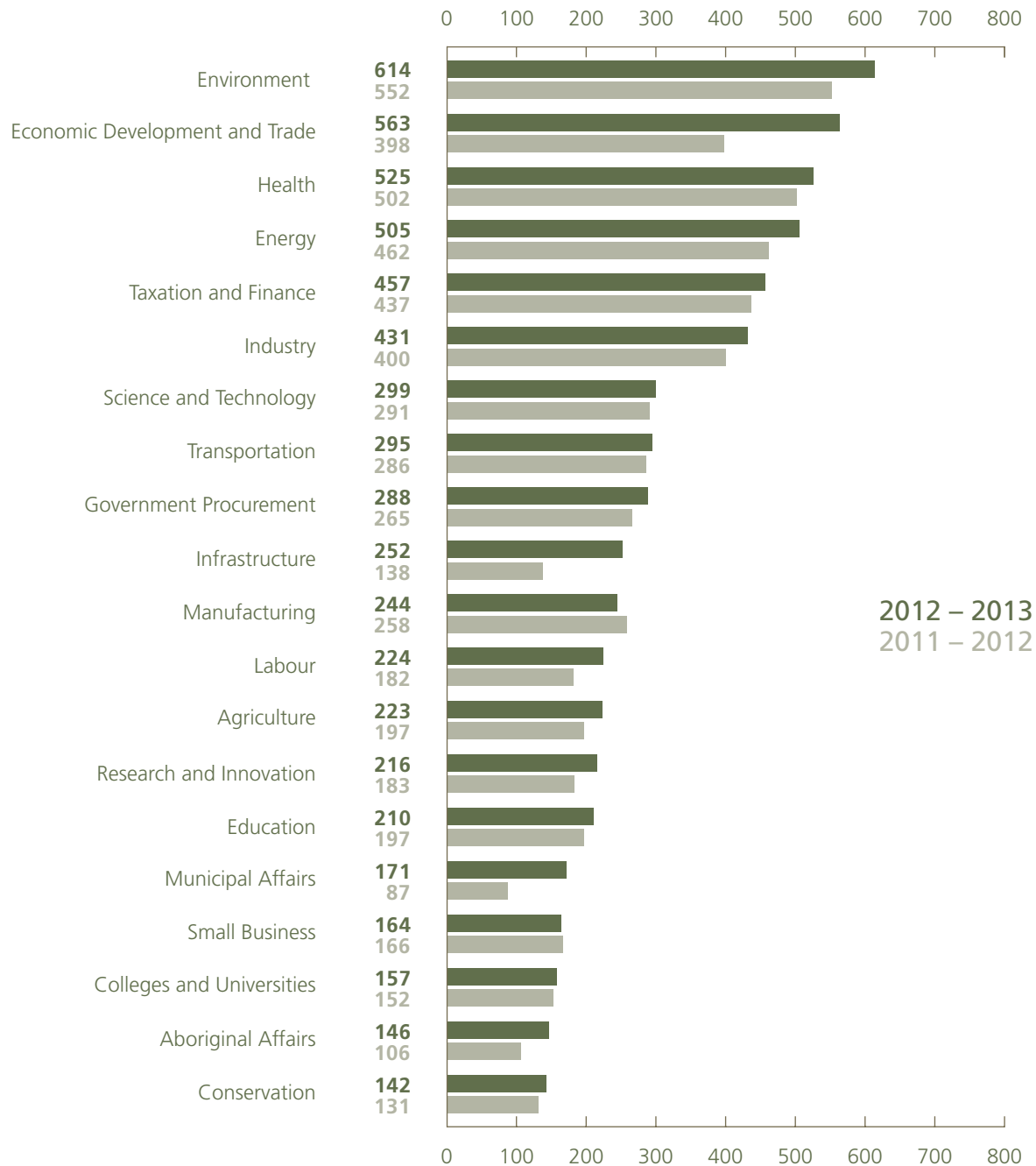
LOBBYIST ACTIVITY BY MINISTRY/AGENCY

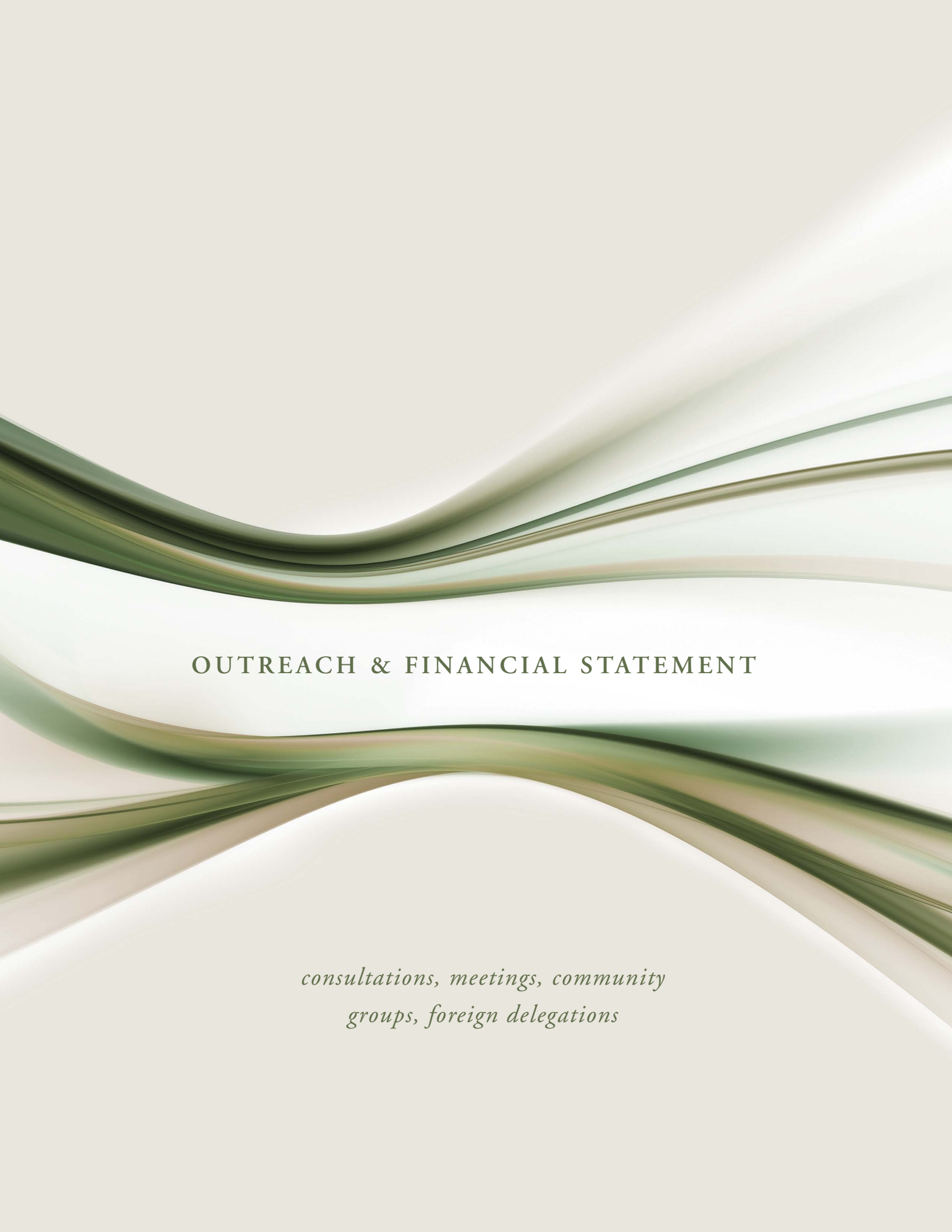


* In February 2013, the Ministry of Economic Development & Innovation was split into two separate ministries: the Ministry of Economic Development, Trade & Employment and the Ministry of Research & Innovation.

** In February 2013, the Ministry of Agriculture, Food & Rural Affairs was split into two separate ministries: the Ministry of Agriculture & Food and the Ministry of Rural Affairs.

LOBBYIST ACTIVITY BY SUBJECT MATTER





OUTREACH & FINANCIAL STATEMENT

*consultations, meetings, community
groups, foreign delegations*

The Integrity Commissioner and her staff were in demand for speeches, panel appearances and training sessions. Among the appearances:

- Canadian Conflict of Interest Network annual meeting in Saint John, New Brunswick
- Meetings of Lobbyists Registrars and Commissioners of Canada in Toronto and Ottawa
- Meeting of Canadian protected public interest disclosure officers in St. John's, Newfoundland
- Speech to a seminar examining lobbyists' registration systems, sponsored by The Department of Public Expenditure and Reform, in Dublin, Ireland
- Participated in ongoing orientation sessions to newly appointed chairs of Ontario public bodies with the Office of the Conflict of Interest Commissioner
- Appearance before The Standing Committee on Access to Information, Privacy and Ethics at the House of Commons of Canada, regarding the statutory review of the federal *Conflict of Interest Act*
- Participated on a panel on Lobbying, Government Relations & Ethics: The Latest Rules and Strategies for Compliance, for Osgoode Professional Development
- Speech to the Public Affairs Association of Canada
- Speech to employees of Workplace Safety & Prevention Services
- Presentation on disclosure of wrongdoing to Environment and Land Tribunals Ontario
- Speech to the annual meeting of the Canadian Consumer Specialty Products Association
- Presentation to a delegation of government officials from China's Ministry of Justice
- Presentation to a delegation from China's General Office of the State Council
- Presentation to a delegation of senior officials of the Kenyan Commission on Administrative Justice
- Presentation to students studying Ethics and Accountability in the Public Sector, Carleton University School of Public Policy & Administration

FINANCIAL STATEMENT

Salaries and Benefits	\$1,220,347
Transportation and Communication	72,197
Services	435,105
Supplies and Equipment	24,264
Total	1,751,911

The Office of the Integrity Commissioner's fiscal year begins April 1 and ends March 31.

Financial transactions are subject to audit by the Office of the Auditor General through the accounts of the Office of the Assembly.

Information about the *Public Sector Salary Disclosure Act, 1996*, can be found at www.fin.gov.on.ca.

Proactive Disclosure

Expense claims for travel, meals and hospitality for the Office's senior management and employees with claims exceeding \$5,000 can be found at www.oico.on.ca.

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Office of the Integrity Commissioner

Suite 2101, 2 Bloor Street East, Toronto, ON M4W 1A8

Telephone: 416.314.8983 1.866.884.4470 Fax: 416.314.8987 www.oico.on.ca