

The Office of the
INTEGRITY
Commissioner of Ontario

ENCOURAGING A CULTURE OF INTEGRITY



ANNUAL REPORT 2013–2014

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 2014

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, 2013, to March 31, 2014.

Yours very truly,

Lynn Morrison
Integrity Commissioner



TABLE OF CONTENTS

01 Commissioner's Message

04 Members' Integrity

13 Ministers' Staff

18 Expenses Review

21 Disclosure of Wrongdoing

29 Lobbyists Registration

34 Financial Statement

Commissioner's Message

As I look back on the past year, I am struck by the unprecedented events across Canada that placed elected officials and their political staff at all levels of government under scrutiny.

Controversy has been front and centre, from Parliament Hill to Queen's Park and municipal council chambers. There have been expense scandals, allegations of corruption and influence peddling, and questionable behaviour by politicians and political staff.

These matters affect the reputations of those involved, and they cast a shadow on the actions of elected officials in general, their staff and the institution of government itself. I am deeply concerned when I read allegations that staff ignored established procedures and put party politics ahead of the public good.

As Integrity Commissioner, I provide conflict of interest advice to members of provincial parliament, and I am the Ethics Executive to ministers' staff. While the rules are clear, if they don't ask, I can't answer.

There is an ambiguity about the role of the political staffer. There needs to be much more clarity around their roles and responsibilities and how they work with the rest of the Ontario Public Service. The lines between political and public policy work are blurred, and as events have shown, this needs a careful reexamination to transparently reflect how this work furthers the public interest.

The role of political staff can have a significant impact on the integrity of the public service.



To this end, in the coming year I will be discussing this issue with party leaders and former parliamentarians, as well as with current and former political staff. I want to learn more about the expectations and realities of their jobs and determine how these can be reflected in guidelines and rules.

Ontario was the first Canadian provincial jurisdiction to create the position of commissioner to oversee a conflict of interest regime for elected officials. This year my Office marked its 25th anniversary, and I took some time to reflect on this foundation of ethical principles and what it has meant for our elected stakeholders, as well as for the public. I have always been a vocal

proponent of training and education, believing that I can help people face the challenges of modern political life by offering assistance and resources and by being accessible. As an Officer of the Legislative Assembly, I am neutral and independent. My advice is offered in confidence with one key goal: to assist members in living up to high ethical standards.

I believe this preventive approach truly makes a difference for Ontario and its citizens. In meeting the requirements of the *Members' Integrity Act, 1994*, each member of provincial parliament is required to provide me with details of their financial holdings. I meet with all MPPs to discuss their holdings and any conflict issues that may arise. These meetings help me build relationships with elected officials, to make sure they know that I am here to listen and offer advice as requested. We have full and frank discussions, which allow me to understand the realities of political life and ensure that my advice is sound and pragmatic.

I take advantage of these opportunities to discuss how these principles are reflected in my Office's other mandates, including my work advising members of ministers' staff, the review of travel, meal and hospitality expenses and my work as Ontario's Lobbyists Registrar. I am uniquely positioned to educate and provide advice that reflects the diverse issues faced by MPPs, whether they are about conflicts of interest, the filing of their expenses or using the lobbyists registry.

This year, my Office received 360 inquiries from MPPs and their staff. I am pleased that they feel confident in calling to ask for advice, and I believe that this also results in the filing of relatively few official complaints under section

30 of the Act, where one MPP can complain about the actions of another. This year, I published two reports under this section.

Proposals for Legislative Change

In March 2014, the government introduced Bill 179, the *Public Sector and MPP Accountability and Transparency Act, 2014*, as part of a push to strengthen transparency and accountability. The bill, if passed, would amend the legislation for three of the mandates in my Office:

- the *Lobbyists Registration Act, 1998*;
- the *Cabinet Ministers' and Opposition Leaders' Expenses Review and Accountability Act, 2002*; and
- the *Public Sector Expenses Review Act, 2009*.

I welcome these proposals and the discussions to follow. I have been asking for a review of the *Lobbyists Registration Act* for several years. The proposed amendments would provide my Office with investigative powers, as well as the ability to impose penalties such as public reporting and lobbying bans. These changes would strengthen our ability to encourage compliance with the legislation.

In our expenses review work, the proposals would introduce a key change to our work: once an agency, board or commission demonstrates that it is compliant with the rules, my Office would be able to rotate the entity off the review list, to be replaced by a different agency.

The amendments would also bring needed administrative updates, which would strengthen the ability of my Office to do its work more efficiently.

Disclosure of Wrongdoing

Bringing an issue of concern forward to an Ethics Executive, or to this Office, is often difficult. I commend public servants who make that difficult decision to come forward, even to make an inquiry. The important work that my Office completed this year would, quite literally, not have been possible without them.

This year, my Office completed a significant investigation, commenced another and continued to receive disclosures and inquiries from public servants. The number of inquiries was lower than in other years, which causes me concern.

I believe more can be done to raise awareness about making disclosures of wrongdoing within the public service. That is why, when the government undertook a mandatory review of the disclosure of wrongdoing legislation, I recommended that the senior managers responsible provide public servants with annual training and information about the process.

In October, the Minister of Government Services tabled a report regarding the review, and I was encouraged by the call for improved education. I was also pleased that the minister recognized there needs to be better reporting of internal disclosure of wrongdoing activity. Information about internal reporting is an important factor when one considers the overall effectiveness of the system.

Unfortunately, the government did not act on two of my main recommendations, which would have allowed me to investigate prior to making a referral in certain circumstances and to expand my preliminary review powers to assist with my assessment of files. These powers

would have helped me take a more streamlined approach in serious cases. Most important, I maintain these proposals would have gone a long way to improving the confidence that public servants have in the system. As part of the ongoing conversation on improving the disclosure of wrongdoing framework, I will continue to try to persuade the government of the need for further change.

Other Developments

My Office completed the final steps in a major information technology renewal project that saw us move all operations to a new system and prepare for the launch of a redesigned website. This site will be one of my key vehicles to provide up-to-date information to all stakeholders. It will be mobile-friendly and provide new resources for all mandates, as well as simplified navigation. The goal is to use the site as a part of our conversation with all stakeholders.

The Office also moved to a new building this year, and while the distance travelled was short, the gains have been substantial as we brought staff from two floors into a single location. This has yielded notable results in increased collaboration and consultation in all parts of our work.

In reviewing our accomplishments in the past year and looking forward to the future, I must acknowledge the hard work and dedication of the staff in our Office. I am most grateful to each and every one of them.

*Advising MPPs on conflict of interest
and ethical behaviour*

MEMBERS' INTEGRITY

MEMBERS' INTEGRITY

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 Commissioner provides members of provincial parliament with confidential opinions regarding integrity issues that arise in the performance of an MPP's duties of office. This includes work done at the constituency office or Queen's Park, and can also include work done in ministry offices. The Office received 360 inquiries this year. Many of the inquiries were related to serving constituents, but MPPs also asked about accepting gifts, political activities, their personal finances and the use of social media, among other things. The Office strives to answer all inquiries within 24 hours, though the complexity of an issue may occasionally demand more time be taken.

This past year has been a busy one for by-elections, as the Commissioner welcomed seven new MPPs. Each MPP was required to file a private disclosure statement with the Commissioner and to meet with her to discuss that filing. These meetings also provided the Commissioner with an opportunity to discuss

such topics 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 for all MPPs were filed with the Clerk of the Legislative Assembly and are available on the Office's website.

This past year also saw the Commissioner conducting numerous outreach sessions with MPPs and their staff, including larger sessions with constituency office and Queen's Park staff. Training continues to be a priority, 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.

Inquiries

The following are samples of the inquiries received by the Commissioner this year. 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 AND PERSONAL BENEFITS

Inquiry

A local business offered its MPP a gift card as a way to thank the MPP for their hard work on behalf of the community. Can the MPP accept?

Opinion

The Commissioner advised that it would be inappropriate to accept a gift card, much like it would be inappropriate to accept cash.

Furthermore, accepting gifts from constituency stakeholders may lead to the expectation that the MPP will return the favour in the future.

Inquiry

A member who travels frequently by air has been contacted by an airline and asked for their airline-specific rewards number. The airline would like to flag the member's account so that they are treated unofficially as having the highest rewards level offered. Is it appropriate to accept this benefit?

Opinion

It was the Commissioner's opinion that the proposed rewards upgrade was contrary to

the gift rule in the Act and therefore not permissible.

Inquiry

A member has been offered two free tickets to the Stratford Festival directly from a festival executive. Can the member accept the tickets? The member suggested that the gift should be permissible because it is expected that MPPs attend such events to show their support and help promote the arts, especially for programs that receive government funding.

Opinion

The Commissioner advised that the free tickets were contrary to the gift rule in the Act. The Commissioner considered whether any of the exceptions to the gift rule applied to allow the gift, but it was her opinion that because this particular MPP did not represent the riding in which the Stratford Festival operates, and because the MPP had no duties relating to the festival, there was no basis for accepting the tickets.

In response to the member's suggestion about the propriety of the gift, the Commissioner noted that many organizations are funded by the government. The fact that an organization receives funding does not automatically justify a gift offered by that funded organization.

Inquiry

A large government stakeholder hosted a reception at Queen's Park and invited all MPPs and their staff. The names of all attendees were put in a draw (unknownst to them), and door prizes were awarded. One MPP won a barbecue but did not want to accept because they felt it would be improper to do so. The stakeholder asked whether it could donate the barbecue in the MPP's name. Would it be acceptable for the MPP to agree to this?

Opinion

It was the Commissioner's opinion that although the government stakeholder could donate the barbecue to a charity of the MPP's

choosing, it should not make the donation in the MPP's name.

Inquiry

An MPP placed an advertisement in a local telephone directory publication. When the MPP received the invoice, it included a 25% discount. Can the MPP accept this discount? If so, does the discount constitute a gift and would it need to be disclosed under the Act?

Opinion

The MPP received written confirmation from the publisher that the 25% discount was applied to the invoices of all customers and was not unique to the MPP's account. Since the discount was not uniquely applied to the MPP,

the Commissioner's opinion was that it did not constitute a personal benefit under the Act and therefore the MPP was not required to file a Statement of Gifts and Personal Benefits.

LETTERS OF REFERENCE

Inquiry

Can an MPP write to a federal agency, board or commission about a decision that is pending under their jurisdiction?

Opinion

Given that the agency, board or commission is federal and not provincial, the Commissioner

advised that it would not be a violation of the Act for an MPP to write the letter.

REPRESENTING CONSTITUENTS

Inquiry

A member, who is also a minister, has been approached by a constituent group that is seeking to have a local pub's licence revoked due to the volume of complaints made by residents in the neighbourhood. The group has asked the member to write to the Alcohol and Gaming Commission on its behalf to request that the establishment's licence be revoked. Is it appropriate for a member, who is a minister, to write such a letter?

Opinion

The Commissioner advised that it would be improper for the minister to write such a letter. Ontario parliamentary convention prohibits cabinet ministers from appearing as advocates or supporters of a decision to be made by a provincial agency, board or

commission about a particular matter.

The convention has evolved to ensure that members of agencies, boards and commissions can carry out their duties free from influence and the appearance of influence by ministers.

Inquiry

An MPP has been approached by an individual who does not live in that MPP's riding and has been asked to assist with a dispute with the local utility. Is the MPP prohibited from assisting this individual by virtue of the fact that they are not actually that MPP's constituent?

Opinion

The Act does not address the protocol for providing constituency assistance to individuals outside the member's riding.

CONSTITUENCY OFFICE EVENTS

Inquiry

An MPP holds a community event to talk about the state of the province. The event is being held at a centrally located restaurant. Can the MPP put an ad in the local paper promoting the event and indicating that attendees are free to purchase lunch from the establishment during the event?

Opinion

It was the Commissioner's opinion that hosting this event at a restaurant was not contrary to the Act; however, the MPP should not mention in the advertisement that attendees can buy lunch from the restaurant. Promoting the restaurant's business (and not simply mentioning its name as the venue) could be seen as the MPP advertising the restaurant, which would be improper under the Act.

Inquiry

An MPP is holding a community picnic and has been approached by local for-profit groups that would like to set up booths at the event. Could the MPP allow these groups to set up their booths?

Opinion

The Commissioner advised that this would be improper. MPPs should not use their resources, including human resources and office budgets, to promote businesses. By planning and promoting a community picnic using government resources, the

MPP is effectively taking their constituency office outdoors. As such, the MPP must ensure that their event meets the same high ethical standards that must be met within a physical or virtual constituency office.

SOLICITING DONATIONS

Inquiry

Given a recent ice storm and the heightened needs of many citizens, can an MPP include a request for donations in their community newsletter? If so, can the MPP include the name of a specific charity that they suggest people donate to?

Opinion

The Commissioner advised that it would be improper to use government resources to promote a specific charity. As an alternative, the MPP may choose either to promote all similar

charities or to simply encourage people to give to charities that are working to assist those affected by the ice storm.

Inquiry

An MPP would like to add a link to their website asking people to donate to the Red Cross fund for the Lac-Mégantic disaster. Is this appropriate?

Opinion

It was the Commissioner's opinion that the MPP should refrain from putting a link to a specific charity on their legislative/constituency website. Alternatively, the MPP may wish to consider posting information about the crisis and encourage people to help in whatever way

they can. Posting a link to a specific charity would be akin to using legislative resources to promote one charitable organization over another.

USE OF CONSTITUENCY OFFICE WEBSITE

Inquiry

An MPP would like to include information on their constituency website that outlines the work they do in their critic portfolio. Is it appropriate for an MPP to advertise/promote their critic portfolio?

Opinion

The Commissioner advised that they should not use constituency resources to advertise the fact that they are a specific party's critic of a

certain portfolio. Instead, the MPP could use the language of being an "Official Opposition" or "Official Third Party" critic.



MISCELLANEOUS

Inquiry

An MPP would like to know if they are entitled to vote on a bill in the legislature, given that the MPP's spouse is among the class of people who will be affected by the passing of the bill.

Opinion

The Commissioner advised that in this case, considering all the circumstances, the MPP could vote on the bill. The Act stipulates that a private interest (that could give rise to a

conflict of interest) does not include an interest in a decision that is of general application. The Commissioner determined that the bill in question was one of general application.

Inquiry

A member would like to print new business cards that include information about their Twitter and Facebook accounts. Is this permissible?

Opinion

The Commissioner advised that it would be acceptable to include the social media information only if the accounts in question

are non-partisan (i.e., do not mention the MPP's political affiliation or fundraising efforts).

Inquiry

A minister has been approached about an investment opportunity and would like to buy some shares in a company. Is this acceptable?

Opinion

The Commissioner advised the minister that section 11(1) of the Act states that “[a] member of the Executive Council shall not hold or trade in securities, stocks, futures or commodities.”

A few exceptions do exist under section 21(4), however, and the Commissioner requested

further information about the proposed investment in order to determine whether any of those exceptions applied. In this case, there were no applicable exceptions and the minister was advised that it would be inappropriate to buy the shares in question.

Inquiry

A constituent has asked an MPP to display a flyer promoting that constituent’s private tutoring business. Is this acceptable?

Opinion

Although it is acceptable to promote community events in the constituency office, it is improper to advertise business ventures. To do so would

be akin to using the MPP’s office resources to promote an individual’s private interests, which would be contrary to the Act.

Inquiry

Does an MPP have an obligation to disclose to the public the details of who they are meeting with? For example, if an MPP meets with a lobbyist and is asked publicly about whether they met with said lobbyist, would the MPP have a duty to disclose?

Opinion

The Commissioner advised the MPP that the Act does not impose any such legal obligation. Likewise, Ontario’s *Lobbyists Registration Act*,

1998, imposes no obligation on public office holders to disclose information about lobbyists with whom they have had contact.

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

MINISTERS' STAFF

MINISTERS' STAFF

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

The Office received 133 inquiries this year, of which 90 were about post-employment matters as people left their positions in ministers' offices. A significant number of people requested information in advance of their planned departures.

Ministers' staff are bound by strict post-service rules that have an impact on their employment options after working in government, especially when they look to work in a field related to their former ministry. Advanced planning allows them to meet with Office staff to discuss how their post-employment obligations may restrict their work in some jobs.

The remaining 43 inquiries related to conflict of interest issues such as activities outside of work and financial holdings. To address some of these issues, the Commissioner directed that ethical screens be implemented in ministers'

offices to ensure that staff are fully insulated from working on files that may place them in a position of conflict.

Training was a priority, as the Commissioner held a government-wide briefing for ministers' staff highlighting their obligations under the rules. In addition, individual training sessions were offered to staff in ministers' offices.

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.

GIFTS

Inquiry

A minister's staff employee was offered tickets to a Toronto International Film Festival screening from an organization that is a government stakeholder but does not have dealings with the individual's ministry. Can the tickets be accepted?

Determination

The Commissioner directed the employee not to accept the tickets for the following reasons:

1. although the organization does not interact with the employee's particular ministry, the organization does have dealings with the Crown;
2. a reasonable person may conclude that accepting the tickets could influence the public servant in their duties to the Crown; and
3. attending the film festival does not fall within the public servant's duties and responsibilities.

OUTSIDE ACTIVITIES

Inquiry

A minister's staff employee wishes to sit on the board of directors of an organization that is not a stakeholder of their ministry. The organization receives government funding.

Determination

The Commissioner determined that the public servant could accept the board position under the following conditions:

1. that they inform the minister, and the minister approves;
2. that they not become involved in board discussions regarding provincial government funding or any other issues that could potentially conflict with their work with the Crown;
3. should any issues arise relating to the organization with their ministry work, they will not become involved in those discussions; and
4. that they not use any government resources, including time.

POST-EMPLOYMENT

Inquiry

A former minister's staff employee is currently employed by a stakeholder of their former ministry. The cooling-off period for the individual has ended. Are they subject to any further post-service obligations?

Determination

The former employee is no longer subject to a lobbying restriction; however, they have ongoing obligations to not disclose confidential information or seek preferential treatment. Since the former public servant is employed

by a stakeholder of the ministry where they used to work, they should also take care when making contact with officials from that ministry to ensure that they are in compliance with the preferential treatment obligation.

Inquiry

A minister's chief of staff accepted employment with a ministry stakeholder. The chief of staff's new job was announced. They would like to attend the minister's office holiday party. Can they attend the event?

Determination

The soon-to-be former public servant will be subject to a lobbying restriction against their ministry. In order to avoid a perceived conflict

of interest, the Commissioner determined that the public servant could attend the party as long as they had not started the new job.

Inquiry

A former minister's staff employee wishes to communicate with a government agency that falls under the jurisdiction of their former ministry. The cooling-off period has not ended. Can the public servant make this contact?

Determination

The former public servant is not restricted from lobbying agencies that fall under the jurisdiction of their former ministry; however, care needs to be taken to ensure that they comply with the rules not to seek preferential

treatment or privileged access from public servants. The Commissioner recommended that the former public servant seek case-specific advice from the Office before contacting the agency.

Encouraging prudence and accountability



EXPENSES REVIEW

EXPENSES REVIEW

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

In March 2014, the government introduced measures to amend the *Public Sector Expenses Review Act* with the goal of increasing the transparency and accountability of how tax dollars are spent on travel, meals, hospitality and accommodation. Under Bill 179, the *Public Sector and MPP Accountability and Transparency Act, 2014*, the government proposed that the Commissioner could select which agencies would be required to submit their travel, meal, hospitality and accommodation expenses for review. The number of potential agencies available for review would increase to 201 (including four Hydro entities) from the current 21. The Office welcomed these proposals, as they would provide an opportunity to further

the goal of educating these public bodies and to work with them to ensure compliance with the rules. The proposal provides a mechanism to review agencies on a rotational basis. Agencies that show a clear understanding and compliance with the rules would graduate from the review process and would be removed from the working review list but would remain available for review at any future time.

The Office believes these proposed measures are a positive step in supporting culture change within the organizations.

The bill also proposes amendments to the *Cabinet Ministers' and Opposition Leaders' Expenses Review and Accountability Act, 2002*. The Act would be renamed the *Politicians'*

Expenses Review Act, 2002, and would make mandatory the posting of expenses for all political staff.

Cabinet Ministers' and Opposition Leaders' Expenses Review

The Office reviewed 882 claims for ministers, parliamentary assistants, Opposition leaders and their respective staff.

Through the year, training sessions were held with staff in the offices of all ministers. The meetings focused on explaining the rules as well as providing assistance with the mechanics of submitting the materials for review. The Office has taken a proactive approach, promoting education and guidance and fostering a collaborative environment for all stakeholders. The result is a more efficient and effective expense review process with greater compliance.

The Commissioner is required to provide the Speaker of the Legislative Assembly with a written report on the review conducted under the Act. 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 3,585 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.

As with its other expenses mandate, the Office has fostered a collaborative environment with its stakeholders. Education and guidance have resulted in increased compliance with the rules.

The Commissioner is a strong proponent of making changes from the top down, and this has increasingly become evident in the entities being reviewed.

Feedback received from our stakeholders confirms that the review process has resulted in positive changes in the corporate culture with respect to travel, meal and hospitality expenses, and our Office looks forward to continuing this work in a larger arena.

The Commissioner and expense review staff thank all of our stakeholders for their continued cooperation in the review process.

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

DISCLOSURE OF WRONGDOING

An abstract graphic in the bottom right corner of the page. It features several concentric, overlapping arcs in various shades of green and yellow. Within these arcs are geometric patterns, including rows of small squares and larger triangles pointing in different directions. The overall effect is a complex, layered, and somewhat organic-looking design.

DISCLOSURE OF WRONGDOING

Mandate

Ontario public servants who witness serious misconduct at work can take action by making a disclosure of wrongdoing. A public servant has a choice: disclose the information internally to their Ethics Executive or to the Integrity Commissioner, an independent third party. The Commissioner's authority to receive and deal with allegations of wrongdoing is set out in the *Public Service of Ontario Act, 2006*.

Overview

The Commissioner's focus this year was on casework. Five cases (referrals and investigations) were concluded. There was a finding of wrongdoing in one case referred by the Commissioner. Mismanagement and systemic problems were uncovered in other cases, and the Commissioner made recommendations to prevent future wrongdoing. The Commissioner also welcomed the Minister of Government Services' report regarding the five-year review of the disclosure of wrongdoing legislation and, in particular, the commitment by the government to provide more information to public servants about internal disclosures and to raise awareness through annual training. The Commissioner will continue to push for change on many of the issues that remained unaddressed after the statutory review.

Definition of Gross Mismanagement

Through casework, the Commissioner has developed a definition of "gross mismanagement in the work of the public service," which is one of the categories of wrongdoing. This definition

is shared in this report to assist public servants and ethics executives with assessing and dealing with allegations of gross mismanagement. While the Commissioner recognizes the value of clarity in the terminology, the Commissioner advises ethics executives to spend more time addressing the good faith concerns of public servants rather than categorizing their allegations into respective categories.

Gross mismanagement is described in the Act as "gross mismanagement by a public servant, a minister or a parliamentary assistant in the work of the public service of Ontario." An important component of this definition is that the conduct alleged must be attributable to one or more individuals, not the government as a whole. A finding of wrongdoing is serious and can have a significant impact on a person's reputation.

The Act does not define "gross mismanagement in the work of the public service of Ontario." It is the Commissioner's view that "gross mismanagement in the work of the public service of Ontario" can manifest itself in two ways: (1) conduct motivated by bad faith or improper purpose, such as personal gain or an abuse of authority; or (2) conduct that, while

not motivated by improper motive, constitutes gross mismanagement.

To assess whether particular conduct, while not motivated by bad faith or improper purpose, is gross mismanagement (category 2), the Commissioner considers a series of non-exhaustive factors:

- The seriousness of the conduct.
For instance, mere errors will not constitute gross mismanagement, but an error that is serious and not debatable among reasonable people could.
- The frequency or systematic nature of the conduct. Patterns of conduct are more likely to constitute gross mismanagement than are isolated incidents.
- The public interest. Gross mismanagement is more likely to exist if the conduct is something that would shock or concern a reasonable member of the public.
- The impact on the organization and/or the program area. Gross mismanagement is more likely to exist if the conduct has significantly affected, or could significantly affect, the organization's ability to carry out its mandate, the organization's employees, clients or the public trust.
- The conduct of the public servant. Gross mismanagement is more likely to exist if the conduct is reckless or wilfully disregards established policies, practices and procedures.

Activity

	2012–13	2013–14
TOTAL CONTACTS FROM PUBLIC SERVANTS	33	16
Request for information	25	8
Intention to file a disclosure of wrongdoing	8	8
	2012–13	2013–14
Disposition of matters where a public servant sought to make a disclosure of wrongdoing (including matters carried over from the prior fiscal year)	11¹	9²
Referred to appropriate senior official for investigation or under investigation by the IC	2	3
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	3	1
Received as a disclosure of potential wrongdoing, but the circumstances were outside the Office's jurisdiction	3	0
File closed for miscellaneous reasons (e.g., discloser decided not to proceed, insufficient information to determine jurisdiction)	2	5 ³
Remaining under review at fiscal year-end	1	0

¹ 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.

² Includes eight inquiries in which the public servant expressed an intention to file a disclosure of wrongdoing, plus one inquiry remaining under review at year-end 2013.

³ In four of these cases, the Commissioner provided the information to an appropriate Ontario Public Service official for review.

CASE SUMMARIES

Please note: Section 112 of the *Public Service of Ontario Act, 2006*, requires the Commissioner to protect the identities of those involved in investigations. To assist with adhering to the obligations in section 112, the generic masculine has been used to protect the identity of those involved.

Case 1

Allegation of gross mismanagement due to improper influence by a stakeholder over public servant staffing (Integrity Commissioner Investigation)

Introduction

The discloser is a public servant who is also a member of a designated profession. He alleged that he had been restricted from dealing with certain files at the request of stakeholders who viewed the discloser as an impediment to achieving desired goals.

If the discloser was inappropriately restricted in his job duties, the public servant(s) responsible for the decision could have engaged in gross mismanagement in the work of the Ontario Public Service within the meaning of the *Public Service of Ontario Act, 2006*. The Integrity Commissioner investigated the matter rather than referring it because of a possible conflict of interest. The investigation did not find wrongdoing, but it revealed that the circumstances led to a perception of wrongdoing that had a corrosive effect on the integrity of the public service. The Commissioner made recommendations to prevent similar events from occurring in the future.

Context

The OPS, the executive branch of the Ontario government, is required to adhere to unique and high standards in carrying out its work. Principal among these standards is that the public service be “non-partisan, professional, ethical and competent.” The issue of inappropriate influence over staffing decisions cuts to the very core of a professional public service.

It is to be anticipated that external stakeholders will attempt to influence government about staffing decisions by providing feedback. The circumstances of this investigation confirm that it is important that such feedback be received and addressed in a transparent way. Senior public servants must be clear with stakeholders that while feedback is welcome, it remains within the control of the officials within the OPS to make decisions about which public servants work on which files.

Findings

The investigation found that the discloser was restricted from working on certain files at various times in his career. The decision to restrict the discloser was made by a senior official within the ministry and continued by others, even beyond the tenure of the senior official who had made the decision. While the senior official had received feedback from stakeholders about the discloser, directly and indirectly, the main reason for his decision was his own observations and views about how the discloser carried out his work. Assessing the merits of the senior official's determination was beyond the scope of the investigation.

The investigation established that the senior official and another senior manager, the two public servants with the most responsibility for the restriction (i.e., making the decision and implementing it, respectively), had no private interests in relation to the stakeholders and that there was no conduct motivated by bad faith or improper purpose.

The senior official failed to communicate the reasons why he held the view that the discloser should not be involved in front line activities. This failure to communicate created a vacuum that was filled with speculation. The decision had lasting effects, spanning almost 10 years. This caused three problematic outcomes.

First, it created a reasonably held perception among senior public servants in the OPS that a well-placed phone call to senior government officials by stakeholders could result in an otherwise qualified and respected public servant being removed from a file without any scrutiny or due diligence. If the perception existed inside the public service, it may well have existed outside of the OPS.

Importantly, this perception had a damaging impact on the integrity of the public service.

Second, the discloser may have been removed from his job duties without the opportunity to challenge the reasons why.

Third, the government was not able to benefit from the discloser's advice. However, the investigation showed that the government was not deprived of necessary professional advice. Regarding this issue, the Commissioner observed that there appeared to be insufficient clarity within the ministry about the proper roles and responsibilities of regulated professionals within the decision-making process.

Although the evidence revealed three problematic outcomes, the Commissioner concluded that the respondents did not engage in gross mismanagement in the work of the OPS because a perception of improper conduct could not form the basis of a finding of "gross mismanagement of a public servant ... in the work of the public service of Ontario." Given the gravity of the concern, however, and the corrosive effect on the independence of the public service of such perceptions, steps must be taken to minimize the risk of something like this happening in the future.

Other Issues

The evidence in this investigation showed that there may be lobbying activity ongoing in a particular sector that was not reflected on the Ontario Lobbyists Registry. The Commissioner has since taken steps to raise awareness of the obligations under the *Lobbyists Registration Act, 1998*, in the particular sector at issue.

Conclusion

There was broad consensus among all of those who gave evidence that the public service must guard against intrusions that threaten its integrity and impartiality, and that it would be wrong for a stakeholder to direct a staffing decision. There was no debate about this core principle.

This case illustrates that failing to address the perception of improper stakeholder influence over staffing decisions has a corrosive effect on the OPS. The Commissioner called on the senior leadership of the OPS to take the lessons learned from this case and demonstrate to public servants that it agrees with the core principle of integrity and impartiality and that intrusions will not be tolerated. To address the broader issues raised in this investigation, the Commissioner made three recommendations to the Secretary of the Cabinet, all of which have been accepted and acted upon:

1. That the Secretary of the Cabinet communicate the key findings of this investigation to deputy ministers to raise awareness about the risks of a perception of improper stakeholder influence over staffing decisions.
2. That, if none exist, guidelines be established for senior managers within the OPS about how to manage stakeholder feedback regarding the assignment and removal of public servants from files.
3. That the Secretary of the Cabinet and other appropriate officials convene a working group, or other appropriate forum, to consider the issues that were raised in this investigation relating to the role of professional public servants.

Case 2

Alleged criminal use of a computer (Referral)

It was alleged that a public servant was using a work computer for a criminal purpose. The matter was referred to the Ethics Executive for investigation. The investigation concluded that the public servant was not using a work computer for any improper purpose, criminal or otherwise. The Commissioner was satisfied with the investigation and closed the file.

Case 3

Alleged gross mismanagement for management's failure to address bullying and harassment in a particular work unit, and preferential treatment of a vendor (Referral)

It was alleged that a vendor was bullying and harassing employees in a particular work unit and that management had not addressed these allegations. There were also concerns about whether management improperly favoured the vendor in the procurement process. The matter was referred to the Ethics Executive for investigation.

The investigation established that there was no gross mismanagement for the following reasons:

- the vendor was not engaging in bullying or harassment, but there were issues with how the vendor communicated with employees;
- management was aware of the issues and had taken steps to address employee concerns; and
- the services were procured in accordance with procurement policies, but there could be improvements made to the process in the future.

Although no wrongdoing was found, the investigation shed light on important issues that required correction. The Ethics Executive took further steps to address the issues established by the investigation.

The Commissioner was satisfied with the investigation and its findings. The file was closed.

Case 4

Allegation of conflict of interest (Referral)

It was alleged that a public servant's outside activities conflicted with his duties to the Crown and resulted in a particular stakeholder being given preferential treatment, contrary to Ontario Regulation 382/07, the *Conflict of Interest Rules*.

It was also alleged that the public servant's manager engaged in gross mismanagement for failing to deal properly with the conflict of interest.

The Commissioner referred the matter for investigation to the appropriate Ethics Executive. The investigation found no evidence of actual preferential treatment being given to the stakeholder. It further found that a conflict of interest declaration had been made and steps had been taken to address the conflict.

The Commissioner was satisfied with the investigation and closed the file. Although there was no wrongdoing or any improper conduct found, the Commissioner recommended that the Ethics Executive seek guidance from the Conflict of Interest Commissioner to ensure that the conflict of interest processes in place are optimum. The Ethics Executive agreed with the recommendation.

Case 5

Allegation of cover up of loss of evidence held pursuant to court order (Referral)

The discloser alleged that evidence held pursuant to court orders was lost or stolen and that managers covered up the loss. Before making the disclosure to the Office, the matter had been investigated but the discloser was not satisfied that appropriate corrective actions had been taken.

The Commissioner referred the matter, requesting information about the prior investigation and corrective actions first. The prior investigation substantiated that evidence had gone missing, although it had subsequently been returned, and that two managers responsible for dealing with the missing evidence had engaged in wrongdoing for failing to report the loss to superiors and to other appropriate authorities. The ministry/agency took corrective action including disciplining employee(s) and revising the procedures for handling similar evidence.

The Commissioner was satisfied that the ministry/agency had investigated the allegations meaningfully and taken the misconduct seriously. However, the Commissioner recommended additional corrective action including: informing the court and the parties about the loss of evidence, informing police authorities of the circumstances, and conducting a further investigation relating to the conduct of another individual. All of the additional recommendations were completed and the Commissioner closed the file.

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

LOBBYISTS REGISTRATION

LOBBYISTS REGISTRATION

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 government proposed long-awaited amendments to the Act in March when it introduced Bill 179, the *Public Sector and MPP Accountability and Transparency Act, 2014*. The Commissioner has asked for amendments to the Act for a number of years, believing that it was outdated and out of sync with the changes that have taken place in other jurisdictions.

Among the proposed changes:

- increase enforcement provisions, giving the Commissioner, as Ontario's Lobbyists Registrar, investigative powers as well as the authority to impose non-monetary sanctions if the Act is breached;
- combine the in-house lobbyist categories into one so that they complete the same registration form and follow the same rules with respect to the threshold at which they would be required to register;
- require lobbyists to specify which MPPs and ministers (by office) they are targeting;
- prohibit contingency fees;

- prohibit a consultant lobbyist from providing paid advice to a public office holder and then lobbying on the same subject matter; and
- provide the Commissioner with the discretion to consult with members of the lobbyist community and introduce a code of conduct.

The Commissioner welcomes the proposed amendments. While they do not address all of the issues raised by the Commissioner, she looks forward to a thoughtful discussion of how Ontario's legislation should be updated.

Operations

As part of the Office's ongoing efforts to promote transparency and monitor compliance with the *Lobbyists Registration Act*, the Commissioner monitors lobbying activities and identifies possible noncompliance with the Act. In addition, the Commissioner occasionally receives information from the public alleging unregistered lobbying activity.

Although the Act does not contain a formal complaint or investigative process, the Commissioner has established a practice to conduct informal inquiries. The main objective of the practice is to raise awareness and encourage compliance. This year, the Commissioner wrote to a number of companies in the development industry to ensure that any individuals who communicate with public office holders are aware of the Act's registration requirements.

The Office spent much of the year finalizing a new online registry system and website. The features include a simplified registration process that presents questions in a page-by-page format with explanatory tips throughout.

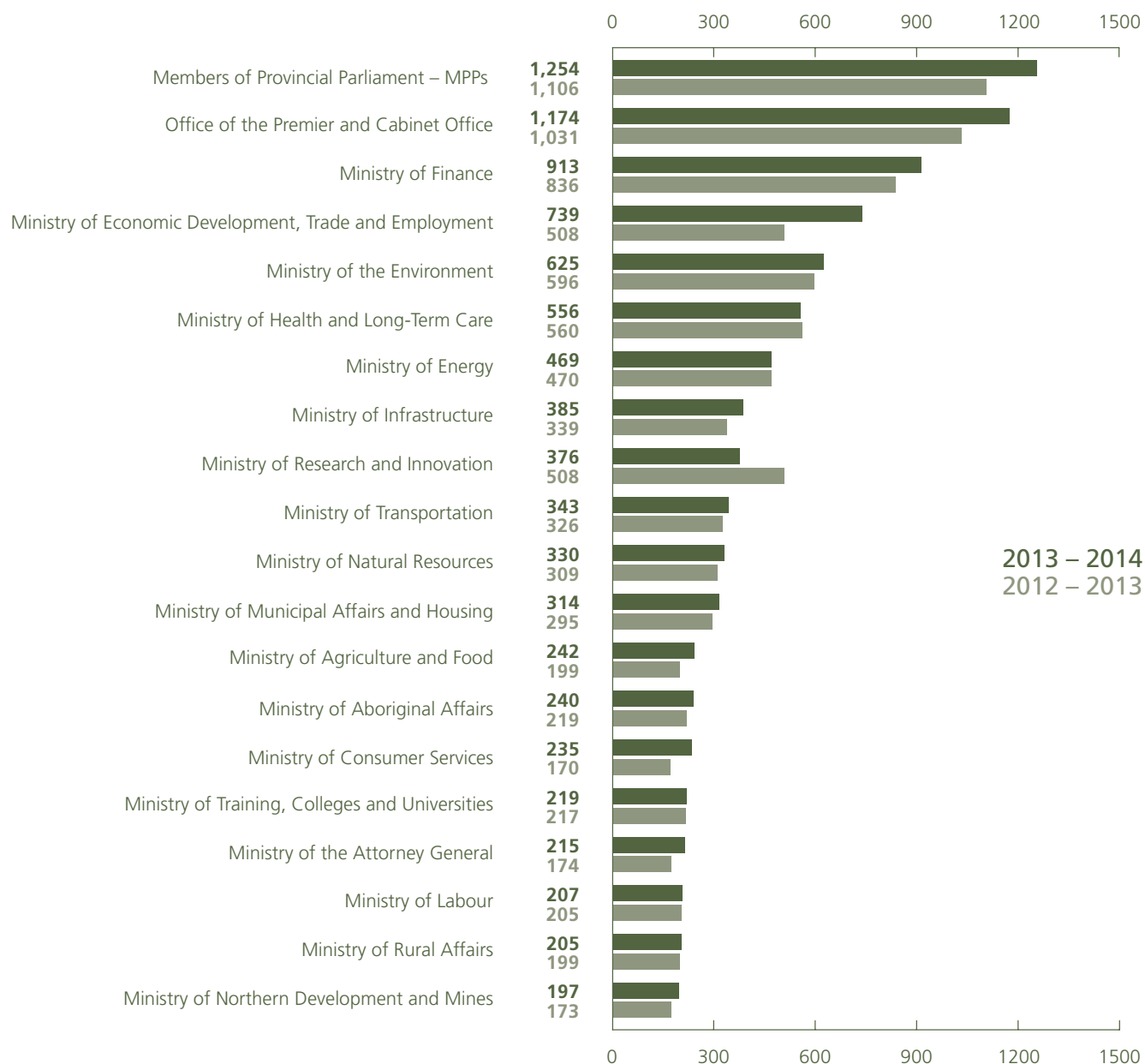
The system will also have increased security features and clear navigation to guide lobbyists through the process.

Registration Activity

As of March 31, 2014, there were 1,863 active registrations on the registry and 1,663 lobbyists, an increase from last year.

	March 31, 2013	March 31, 2014
Total Registrations	1,735	1,863
REGISTRATIONS BY TYPE		
Consultant	1,313	1,449
In-House, Organizations	220	227
In-House, Persons & Partnerships	202	187

Lobbyist Activity by Ministry/Agency



Lobbyist Activity by Subject Matter





FINANCIAL STATEMENT

FINANCIAL STATEMENT

Salaries and Benefits		\$ 1,197,958
Transportation and Communication		82,372
Services		492,808
Supplies and Equipment		15,007
TOTAL		\$1,788,145

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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This report is also available at www.oico.on.ca.

Cette publication est aussi disponible en français.

ISSN 1205-6391 (Print)

ISSN 1918-0357 (Online)

June 2014

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