OFFICE OF THE INTEGRITY COMMISSIONER OF ONTARIO

ANNUAL REPORT

2020
2021

ENCOURAGING A CULTURE OF INTEGRITY

Legislative Assembly of Ontario

Assemblée législative de l'Ontario

Office of the Integrity Commissioner
The Honourable J. David Wake, Commissioner

Bureau du commissaire à l'intégrité
L'Honorable J. David Wake, Commissaire

June 2021

The Honourable Ted Arnott
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, 2020, to March 31, 2021.

Sincerely,

The Honourable J. David Wake
Integrity Commissioner

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About the Office of the Integrity Commissioner

The Office of the Integrity Commissioner of Ontario was established in 1988. It is independent of government and works to reconcile private interests and public duties to encourage a culture of integrity among Ontario's elected officials and public servants.

The Office has seven mandates under five pieces of legislation.

Members' Integrity

Advising MPPs on conflict of interest matters and ethical behaviour

Ministers' Staff Ethical Conduct

Advising and directing ministers' staff on conflicts of interest, political activity and post-employment obligations

Public Sector Ethics

Advising and directing senior public servants on the Conflict of Interest Rules and political activity restrictions

Expenses Review

Two mandates to ensure accountability and encourage prudence in travel expense spending

Disclosure of Wrongdoing

Ensuring a meaningful response when public servants make allegations of wrongdoing

Lobbyists Registration

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

YEAR IN REVIEW

265 MPP inquiries

3 agencies released from expenses review

3,239 active lobbyists

198 public sector ethics matters addressed

19 disclosures of wrongdoing filed

30 outreach, training and speaking events

18 lobbying investigations concluded

47 Ethics Executives trained

23 media inquiries

89 Advisory Opinions to lobbyists

2,464 expense claims reviewed

132 ministers' staff inquiries

9 disclosures of wrongdoing investigated and concluded

Commissioner's Message

The Honourable J. David Wake
Integrity Commissioner

This is my sixth annual report as Integrity Commissioner. On November 30, 2020, the Legislative Assembly reappointed me by unanimous resolution for a further term of five years, commencing on February 1, 2021. I appreciate this demonstration of support from all members both for the work done over the last five years by my Office and for the continuation of that work in the years to come.

Matters Related to the Pandemic

On March 16, 2020, near the end of the last fiscal year, my staff began to work remotely because of the COVID-19 pandemic. Thus, we entered this fiscal year in a state of great uncertainty. I was, however, pleased to see that the members of my staff were able to adapt readily to the new reality. We continued to provide full services to all our stakeholders in all seven of the Office's mandates. We conducted meetings and interviews by video conference, both internally and with stakeholders. Fortunately, a project to upgrade our IT infrastructure and case management system had already begun before the pandemic struck. This made it easier to work remotely.

The pandemic affected other operations in several ways, including the following:

- Inquiries from members and ministers' staff were down in the first half of the year; although, they rose to traditional levels in the second half. I attribute this decrease in inquiries to the fact that many constituency offices, which usually generate inquiries to our Office, were closed and the staff were working remotely. There was also a significant decline in the number of inquiries about the appropriateness of accepting gifts, meals or tickets because many events were cancelled in the past year.
- In the Expenses Review mandates, the workload was significantly reduced because there were fewer claims being made for travel, meals and accommodation. Also, we were unable to select new agencies to review because the likely low number of expense claims made by agency employees and appointees in the past year would not provide an accurate representation of the agency's usual expenses.
- My annual meetings with individual members to review their private financial disclosure statements and obligations under the *Members' Integrity Act, 1994* (MIA) had to be altered this year. Normally these meetings are conducted in person in my office. Due to the reduced number of MPPs required to be at Queen's Park during the pandemic, and out of respect for the concerns of members who were seeking to minimize their social contacts, I gave members the option this year of having their interviews conducted remotely. We also put health and safety measures in place as some members chose to meet with me in our office for their interviews, which I find preferable, particularly if their investments are complex. For the most part, this hybrid arrangement worked satisfactorily, and the public disclosure statements were all released in February, as usual.

- Onboard training of ministers' staff on the Conflict of Interest Rules had to be done remotely. I find that in-person sessions are better in being able to engage with the participants; however, in the circumstances, doing the presentations over video conference was an adequate substitute.
- In the Public Sector Ethics mandate, the volume of queries from Ethics Executives was not appreciably affected by the pandemic, but two of the major initiatives in this mandate, continued from the Office of the Conflict of Interest Commissioner after its merger with my Office, were affected. First, the two Ethics Executive orientation sessions given in person each year had to be converted to a remote presentation. I am grateful to my staff for redesigning the session so that it could be delivered effectively on a remote platform. Both sessions went well, and the March session was oversubscribed, so we are planning a supplementary session in June to accommodate the overflow. Although I prefer in-person training sessions, I recognize that participants often appreciate the remote format because it eliminates travel time. Online sessions also may make it easier to train a large group of people without requiring a large in-person venue. The second initiative affected by the pandemic was the biennial Public Sector Ethics Conference, which had to be postponed from May 2020 to May 20–21, 2021, and delivered remotely.
- My Office belongs to several national and international organizations that bring together people who do the same work involving ethics in each of our mandates. I have enjoyed attending the annual meetings of these organizations from across Canada and the United States, where the organizations involved discuss ethical issues and share best practices. This year my Office was invited to become a member of *Réseau francophone d'éthique et de déontologie parlementaires*, an international network of organizations responsible for parliamentary ethics and conduct in association with the Assemblée parlementaire de la Francophonie. Over the years, I have attended several of the Assemblée's meetings and delivered a presentation at one. I accepted the invitation for the Office to become a member because I think it is important that Ontario, with its large Franco-Ontarian population, be represented in this organization. Like for all other organizations this year, its annual meeting had to be conducted by video conference due to the pandemic.
- Disclosure of Wrongdoing (the whistleblowing mandate) saw a reduced number of disclosures made to our Office this year. I suspect that the lower number is pandemic related, with most public servants working remotely and focusing on doing their jobs under unique and possibly difficult circumstances. It is also possible that fewer public servants were willing to take the step to make a disclosure during an uncertain time.
- In September Derek Lett, our Director, Operations, Outreach and Education, was asked to go on a secondment to the Long-Term Care COVID-19 Commission as Director of Policy. This important work is, of course, directly related to the pandemic, and the Office was pleased to be able to assist the Commission in this way. The secondment involved an increased workload for the Deputy Commissioner, Cathryn Motherwell. I am grateful to her for taking on these responsibilities as well as so many others related to the pandemic, including working on a return to office protocol for when the pandemic is behind us.
- In the Lobbyists Registration mandate, there was no appreciable decline in the workload due to the pandemic other than in the number of investigations conducted. The decline in the number of investigations may have resulted in part from the cancellation of lobby days at Queen's Park. This activity has historically led to some investigations where lobbyists were seen to be lobbying public office holders whom they had failed to identify as targets on their registrations. The pandemic also meant that

investigations had to be conducted remotely, but this did not delay the process significantly. The reduction in investigations may also have been due to the continuing requests for Advisory Opinions by lobbyists, which increased slightly this year. As I have often said, it is preferable to deal with compliance issues by providing an Advisory Opinion that might stave off an investigation than it is to wait for non-compliance to occur and then have to conduct an investigation. In the past three years, I have provided almost 300 Advisory Opinions, which I believe may have helped in situations that would otherwise have led to investigations.

- Lobbying was affected by the pandemic in an interesting way: the newly added "COVID-19/ Pandemic response" became the third-most selected subject matter of lobbying activity in all registrations this year, falling just behind "Economic development and trade" and "Health."

Matters Unrelated to the Pandemic

- The strategic planning initiative that we began last year has continued unabated by the pandemic. We developed a performance measurement framework that will assist the Office in assessing our workload and the resources needed to deal with it effectively in each mandate.
- The Office has struck an internal Election Preparedness Committee to perform a step-by-step analysis for each mandate of the issues likely to arise in the periods before the writ is dropped, during the writ period and after the election. I appreciate that the election is not scheduled until June 2, 2022, but I believe that it is important to begin planning for it now so that I can provide the soundest advice possible on issues such as the appropriate use of the constituency office after the writ is dropped or the use of social media during the campaign.
- I addressed the Standing Committee on the Legislative Assembly about one of the shorter schedules to Bill 254, *Protecting Ontario Elections Act, 2021*, which proposes to amend the MIA to call for the establishment and approval of social media guidelines by both the Legislative Assembly (for MPPs) and by cabinet (for ministers). This is something I recommended in my last two reports under section 30 of the MIA, where I stated that it would be a difficult task for an Integrity Commissioner to determine which generally accepted rules and practices should govern a member's use of social media. This is something best determined by the members themselves so that they can cover more than the ethical obligations and the conflict of interest rules that fall under my Office.

The full mandate reports will follow this message, but I would like to highlight, briefly, certain developments in each mandate.

Members' Integrity

I have already mentioned the social media provisions in Bill 254. These stemmed from the recommendations I made in the last two reports I delivered under section 30 of the MIA. I am pleased that the Legislative Assembly will now turn its attention to setting its own guidelines for the appropriate use of social media consistent with the provisions of the MIA. I have offered not only to provide advice to the members of the standing committee reviewing the bill, but also to advise all members on their ethical obligations in general and with respect to social media in particular.

Ministers' Staff Ethical Conduct

Another recommendation from my last report under section 30 of the MIA was to establish a formalized onboard training process for all ministers' staff on the Conflict of Interest Rules and the ethical obligations that pertain to them. The Premier's Office and the Secretary of the Cabinet support this initiative, and I plan to make it a priority for my Office to bring it to fruition in the coming year.

Public Sector Ethics

During the past year, the number of requests from the Premier's Office for advice on conflict of interest with respect to prospective appointments to agencies, boards and commissions has increased. I always preface my advice regarding prospective appointments by saying that I have no comment on the suitability of the candidate for the position and that my advice is confined to determining whether the appointment could lead to a real or potential conflict of interest. If so, I suggest ways to mitigate the risk of conflict by, for instance, recusals or an ethical screen. When the conflict cannot be mitigated, I recommend that the appointment not be made.

During the past year, I accepted the invitations from several chairs of public bodies to speak to their board members concerning the Conflict of Interest Rules. My Office is always willing to take part in these exercises, which the participants seem to appreciate.

Expenses Review

Last year I set out an ambitious plan for selecting more public bodies for expenses review than we had been doing in the past. Unfortunately, we were unable to take on any new agencies this year because we knew the expense claims numbers would be low across most agencies and not reflect the normal pattern of travel expense claims. I can only request to review the expense claims from the current and two most recent quarters. Selecting an agency for review at this time would result in an administrative burden for the agency, and the review would not be a true representation of the expense culture of the organization, which is the purpose of the review. We hope that at some point in the next year, the pandemic situation will permit the return to a semblance of normal operations for agencies, boards and commissions, increasing the number of expense claims at which point we anticipate selecting more agencies for review.

Disclosure of Wrongdoing

Although the number of disclosures was down this year due to the pandemic, the Office noted that the number of disclosures containing allegations of conflict of interest related to preferential treatment in hiring increased slightly. A similar trend has been noted in past years as well.

Lobbyists Registration

In my message in last year's annual report, I noted that the *Lobbyists Registration Act, 1998* (LRA) was due for legislative review by a committee of the Legislative Assembly. The committee must begin its work before July 1, 2021, and make recommendations within one year after beginning that review concerning amendments to the LRA (section 18.1). During the past year I have written to both the Government and Opposition House Leaders reminding them of this deadline. I have renewed my offer to meet with the committee tasked with the review and provide any assistance it may request. I believe I could provide useful input based on my Office's experience in administering the LRA since the last amendments five years ago. Those amendments gave me the power to conduct investigations and impose penalties, if necessary, if I found lobbyist activity not in compliance with the LRA.

As of the end of the 2020–2021 fiscal year, the statutory review has not yet been referred to a legislative committee. I remain hopeful that some action will be taken soon to address several deficiencies in the LRA. Here are a few examples of areas that should be of interest to the committee:

1. **The yearly 50-hour threshold for registration of in-house lobbyists**
   The existing threshold is difficult to apply and to enforce. I have pursued several inquiries and investigations into unregistered lobbying under the LRA where it is apparent that lobbying of public office holders has taken place, but I have had to cease my investigations where the evidence discloses that the 50-hour threshold

has not been met. This means that if an organization or company devotes slightly less than its whole annual allotment of 50 hours to attempt to influence a policy or bill of interest to it, and it does so in a short period of, for example less than three months, its lobbying activity can have quite an impact but remain unregistered and thus non-transparent.

One suggestion to overcome this problem is to adopt a similar recommendation made by the federal Commissioner of Lobbying that the threshold be tightened so that lobbying that exceeds eight hours in a three-month period would require registration. This would mean that a concentrated lobbying effort over a short period would be captured.

2. **The conflict of interest provisions in section 3.4**

In last year's annual report, I indicated that I had declined to issue an Interpretation Bulletin on the subject of lobbyists' political activity and how it related to the conflict of interest provisions in the LRA. I believed that these situations tended to be case-specific and were best handled by an Advisory Opinion. Nevertheless, this year I decided to issue an Interpretation Bulletin on the conflict of interest prohibition that is consistent with the Advisory Opinions I have provided to individual lobbyists on the topic of political activity and the relevant factors I consider as set out in last year's annual report. In the past, the excuse has been put forward that lobbying a public office holder on whose campaign the lobbyist had worked in a significant way was not specifically prohibited by the LRA or by an Interpretation Bulletin. I have never accepted that excuse, but now I trust it will no longer be put forward. However, I acknowledge that the LRA's conflict of interest provisions in section 3.4 lack clarity, in part because they rely on another statute for the definition of what constitutes a conflict of interest. A legislative review can address this deficiency and confirm or alter the interpretations I have made in dealing with these provisions. For instance, I have interpreted the conflict of interest provisions to require that lobbyists who have engaged in significant political activity be subject to a 12-month cooling-off period before they can lobby the public office holder for whom they worked politically. The 12-month period is consistent with the cooling-off period applicable to ministers, ministers' staff and public servants after they cease to hold office, in relation to the lobbying of former colleagues. The committee may wish to extend, shorten or confirm the 12-month period.

3. **Unpaid volunteers who lobby**

There are examples of volunteer board members or members of professional organizations contributing to an in-house entity's lobbying activity, but because they are not being paid, their time does not count towards the 50-hour threshold, nor is it required to be reported if the entity does register. This also means that certain lobbying activity could be carried out solely by unpaid individuals and not disclosed publicly. Since one of the goals of an effective lobbyist registration regime is transparency, this situation is obviously a problem.

4. **Penalties**

The LRA currently limits the penalties available to me as Lobbyist Registrar. Based on the experience of the past five years, I believe some additional options would be useful. One of the more egregious deficiencies in the penalty section is the lack of a penalty proportionate to the non-compliance of a lobbyist who engages in unregistered lobbying over an extended time. Currently I can name the individual and prohibit the lobbyist from lobbying for up to two years, but this is a hollow sanction given that the lobbyist has conducted the activity without being registered in the first place and there is no meaningful penalty that can be applied if the lobbyist continues to engage in lobbying. Monetary penalties may be more effective.

In addition to the areas noted above, there are a host of other deficiencies in the LRA that my Office has noted over the last five years and that we are prepared to share with the committee upon request.

Conclusion

In my message in last year's annual report, I acknowledged that the pandemic had brought great uncertainty as to what would be accomplished in the year ahead. However, I expressed confidence that my Office would be capable of meeting whatever challenges lay ahead. Looking back over the past year, it is clear to me that the confidence I expressed a year ago was not misplaced. Each member of the Office staff has performed well in the shift to working remotely or to a hybrid of working from home and attending the office as required when safe to do so. In some cases, this meant working even harder than in previous years to deliver the services outlined in this report. I have always been impressed by the skills and professionalism exhibited by the staff of this Office but never more so than in this past year.

One of the challenges the Office will face after the pandemic has subsided is determining what the Office will look like in the future. There are some advantages to working remotely, which have been apparent this past year. It has even led to increased productivity in some cases. Much has been written, however, about the disadvantages of working in isolation and trying to achieve a healthy balance between work and life when working from home. This is not the place to catalogue the pros and cons of working remotely versus in a traditional office setting or a hybrid model, but we will have to consider these issues as we gradually emerge from the current health crisis. I am confident we can approach the new reality with the same spirit and effectiveness that we demonstrated this past year in fulfilling our mandates.

Outreach

This year the Office held or participated in 30 outreach, training and speaking events. Mandate-specific training activities are described in the relevant sections of this report.

While COVID-19 affected the number and type of outreach activities, particularly with international delegations and appearances at conferences, the Office was still able to share information about its work and Ontario's ethical framework at various events, all of which were held remotely.

The Office responded to 23 media inquiries.

The Integrity Commissioner and staff presented to the following groups:

- Interns from the 2020–2021 Ontario Legislature Internship Programme
- Students of York University's School of Public Policy & Administration
- Students of the Seneca@York graduate certificate program in government relations
- The Ontario Chapter of the Public Affairs Association of Canada
- The local chamber and board network of the Ontario Chamber of Commerce

The Commissioner and staff also participated in the annual meetings of the following Canadian jurisdictional networks. All meetings provided important opportunities to discuss emerging issues and share best practices:

- Canadian Conflict of Interest Network
- Lobbyists Registrars and Commissioners Network
- Public Interest Disclosure Conference

The Office became a member of the *Réseau francophone d'éthique et de déontologie parlementaires*, which promotes exchange between French-speaking parliaments and entities interested in ethics rules and frameworks for elected officials. The Commissioner and staff attended the organization's annual general meeting in November 2020.

Members of the Office attended the 2020 Council on Governmental Ethics Laws (COGEL) Conference, which was held online for the first time. The Deputy Commissioner continues to serve on the program committee for this conference, which brings together public sector ethics organizations from across North America and beyond to share updates on their jurisdictions.

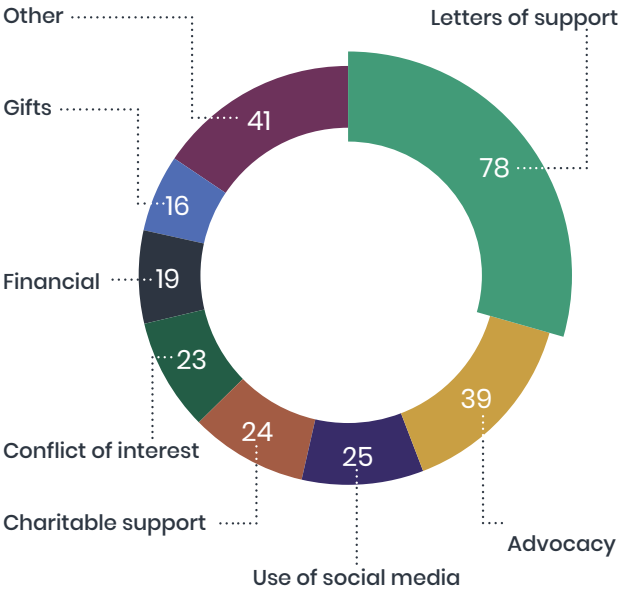
Members' Integrity

Developments

The Integrity Commissioner received 265 requests for advice on ethical issues from MPPs and their staff, a decline from 369 requests received last year. The number of requests slowed down in the early part of the fiscal year, which coincided with the initial wave of the COVID-19 pandemic. However, the monthly average of inquiries steadily increased throughout the summer to near normal levels in the fall. The primary difference between the two years can be attributed to the significant decline in the number of inquiries about the appropriateness of accepting a gift. The Commissioner provided advice on matters about gifts 124 times in the previous year, while he did so only 16 times this year.

265 MPP inquiries

Types of Inquiries



What we do

- Provide advice to MPPs on their ethical obligations
- Meet annually with each MPP and oversee their annual private and public financial disclosure statements
- Conduct inquiries into alleged breaches of the *Members' Integrity Act, 1994* when requested by one MPP about another

The role of MPPs changed during the pandemic, which was reflected in the nature of the inquiries. MPPs sought ways to assist and support their constituents and communities while still meeting their obligations under the *Members' Integrity Act, 1994*. The Commissioner provided advice on such subjects as how to communicate about the fundraising activities of charities and the distribution of donated protective personal equipment. The most popular inquiry topic was about letters of support. This topic and other frequently asked-about subjects are covered in the inquiry samples below.

MPP Financial Disclosures

To comply with pandemic safety measures, the Office adjusted the annual financial declaration process. MPPs submitted confidential disclosures of their personal finances to the Office as they had in past years, but they were given the option of conducting their individual meetings with the Commissioner in person or by video conference. Many MPPs chose to meet with the Commissioner by video conference, which helped reduce the COVID-19 transmission risk within the Office while allowing MPPs to attend their meetings while remaining in their ridings.

Office staff worked closely with the party caucuses and individual MPPs in completing this important obligation of the Act. All submissions are carefully reviewed and analyzed against the requirements of the Act and within the context of each MPP's responsibilities in the legislature. The meetings concluded in December 2020, and follow-ups ran until late February 2021. The public financial statements were filed with the Clerk of the Legislative Assembly and published on the Office website on February 22, 2021. The public statements are a redacted version of the private financial declarations and provide a summary of each MPP's sources of income, their assets (as required by the Act), liabilities and any permissible gifts received with a value greater than $200.

Training

To reach constituency offices located throughout the province, the Office developed online training about the Act and the obligations of MPPs. Constituency staff are employees of each MPP, and because they are the first point of contact for constituents, they often receive some of the more challenging questions and requests on behalf of the MPP. The webinar-style training sessions were held with interested constituency offices in the fall and will continue to be offered going forward.

Amendments to the Act

In February, the government introduced amendments to the Act through Bill 254, *Protecting Ontario Elections Act, 2021*. The amendments confirm that MPPs may have social media accounts in their own name, that they can post partisan content on these accounts and that they may use the accounts after the writ is issued for a general election. The amendments also reaffirm that MPPs abide by the conflict of interest, insider information and influence provisions of the Act when posting on social media, and that social media guidelines may be established and approved by both the Legislative Assembly (for MPPs) and by cabinet (for ministers). The Office has indicated its support for the development of these guidelines, having noted an increase in questions from MPPs about what they can post on social media.

Meeting With Other Jurisdictions

The Commissioner met with jurisdictional counterparts at the annual meeting of the Canadian Conflict of Interest Network, which was held remotely in September, along with an additional update meeting in March. As in previous years, the meeting provided an opportunity to share highlights of the Office's work, including a presentation on the Commissioner's inquiries under section 31 of the Act as well as discussions on best practices in providing ethical advice to elected officials during the pandemic.

Commissioner's Reports Under Section 31 of the Act

Use of Office for Partisan Activity

Re: The Honourable Peter Bethlenfalvy, MPP for Pickering–Uxbridge

The Commissioner received a request for an opinion from Taras Natyshak, MPP for Essex, on whether the Honourable Peter Bethlenfalvy, MPP for Pickering–Uxbridge and President of the Treasury Board, breached the *Members' Integrity Act, 1994*.

Mr. Natyshak alleged that Minister Bethlenfalvy breached section 2 of the Act by using his office to influence a decision to further his private interests and failed to follow parliamentary convention by allowing staff to engage in partisan activities using ministerial resources, which would be contrary to the *Public Service of Ontario Act, 2006*.

In his report published on October 21, 2020, the Commissioner found that Minister Bethlenfalvy did not breach the *Members' Integrity Act, 1994* as alleged. In conducting the inquiry, the Commissioner, counsel, and investigators of the Office gathered evidence through documentary disclosure, interviews with nine witnesses held over video conference, and in writing from an additional four witnesses.

The Commissioner established that Minister Bethlenfalvy's ministerial staff prepared an ad spend strategy to boost his social media presence and that the strategy became a partisan exercise, in part because it targeted likely Progressive Conservative supporters and conservative voters. The strategy also suggested that Minister Bethlenfalvy's riding association fund the ad spend. It is a well-established parliamentary convention that government resources, including salaried time of ministers' staff, cannot be used for a partisan purpose.

The Commissioner, however, found that Minister Bethlenfalvy was not aware of the ad spend strategy and did not approve it and so had not breached parliamentary convention by allowing government resources to be used for a partisan purpose. Further, since a personal interest has been interpreted as a pecuniary or financial interest, and since there was no evidence that such an interest was ever engaged, the Commissioner also found that section 2 of the Act did not apply.

As the report highlighted various issues related to the use of government resources in partisan activities, the Commissioner made five recommendations:

1. Ongoing ministers' staff training on the Conflict of Interest Rules and ethical conduct;
2. A legislative review of the *Public Service of Ontario Act, 2006*;
3. A review of approval processes in ministers' and MPP offices;
4. That MPPs check their constituency websites to ensure that they are not linked to their social media accounts that contain partisan content; and
5. That a legislative committee explore the development of social media guidelines for MPPs and their staff.

Use of Legislative Resources for Partisan Purposes

On March 8, 2021, the Commissioner received a request from Dave Smith, MPP for Peterborough–Kawartha, about Catherine Fife, MPP for Waterloo. The Commissioner was asked to give an opinion on whether Ms. Fife breached the Act by including a political party fundraising link in an email sent from her Legislative Assembly email account. This matter was under review at fiscal year-end. Once it is completed, the report will be available on the Office website.

Use of Government Resources for Partisan Purposes

On March 12, 2021, the Commissioner received a request from Stephen Blais, MPP for Orléans, about Stan Cho, MPP for Willowdale and Parliamentary Assistant to the Minister of Finance. The Commissioner was asked to give an opinion on whether Mr. Cho breached the Act by participating in online meetings with university campus conservative groups and Progressive Conservative riding associations from his Ministry of Finance office. This matter was under review at fiscal year-end. Once it is completed, the report will be available on the Office website.

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, the identities of those involved are anonymized and gender has been randomized. The cases are provided 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.

Advocacy

Participating in a Shop Local Campaign

An organization asked MPPs to participate in a campaign to promote local businesses. It asked MPPs to use their social media accounts to encourage people to shop local and to post pictures of their favourite local businesses. MPPs were also asked to print, display and distribute posters promoting the initiative. An MPP asked if she could participate.

The Commissioner advised that the MPP could participate in the campaign, but in a limited capacity. The MPP could post messages on social media that generally promoted shopping locally, but she was advised to refrain from endorsing specific businesses because this could be seen as the MPP using her position improperly to further someone else's private interest. As such, the MPP was advised not to post pictures of specific businesses or provide recommendations.

The MPP was also advised not to display the posters in her constituency office or use the organization's badges and banners on her constituency office website. These actions would stray beyond the scope of the constituency office's intended purpose and would be contrary to parliamentary convention.

Advocacy for a Constituent

A constituent asked his local MPP to pressure a minister to investigate a ministry decision. The constituent had legal representation. Could the MPP advocate on behalf of the constituent?

The Commissioner advised that while the MPP was free to inquire about the status of the investigation, it would be inappropriate for her to "apply pressure" to the minister. It was also the Commissioner's opinion that asking the MPP to become involved when the constituent was also represented by a lawyer was akin to asking the MPP to use her influence in a manner that would be inappropriate.

Providing a Testimonial

A long-term care home asked an MPP to provide a written testimonial to be included in the organization's marketing materials. Could the MPP provide the testimonial?

It was the Commissioner's opinion that the MPP should not provide the testimonial and referenced section 4 of the Act, which states:

> *A member of the Assembly shall not use his or her office to seek to influence a decision made or to be made by another person so as to further the member's private interest or improperly to further another person's private interest.*

The Commissioner advised that an MPP could welcome an organization to the community and celebrate its achievements; however, an outright endorsement could be seen to be using the MPP's position improperly to further that entity's private interest.

Contacting a Provincial Agency on Behalf of Constituents

An MPP received several requests from constituents to contact a provincial board. The constituents wanted to challenge municipal health orders. The MPP asked if she could inquire about whether the board was hearing cases, the current wait times and if the appeals could be given urgent status. Could the MPP make the inquiries on behalf of her constituents?

The Commissioner advised that the MPP could contact the board to ask about its hearing status and wait times. However, it was the Commissioner's opinion that the MPP should not ask for appeals to be expedited as that could be considered a breach of section 4 of the Act, which covers influence. The board has processes in place to handle its work and should be able to conduct that work without interference from elected officials.

Gifts and Benefits

Gift Received after Speaking Engagement

A minister recorded greetings for a virtual charitable fundraising gala for a stakeholder of the minister's ministry. As a thank you, the organization sent the minister gifts valued at more than $500. Could the minister accept the gifts?

While it is customary for MPPs to receive a token gift after a speaking engagement, it was the Commissioner's opinion that the value of the gifts was significant in this case. Furthermore, the gifts were from a government stakeholder. As such, it was the Commissioner's advice that the gifts be returned.

Assisting charities and community organizations

While the Commissioner has regularly provided advice to MPPs on matters related to supporting charities and community organizations, the pandemic resulted in a higher number of these inquiries than in past years.

MPPs wanted to know whether it was permissible to promote activities of charitable and local organizations and encourage people to participate or donate.

The Commissioner advised that MPPs should be careful not to give the impression that they are using their influence to endorse specific charities or businesses or to urge constituents to participate in the organizations' events. However, MPPs are free to attend charitable events in their ridings and to speak about the good work of an organization as long as they do not solicit donations.

Additionally, since constituency offices are funded by taxpayers, charitable initiatives and events should not be organized or promoted through an MPP's constituency office, and by extension, the MPP's website. The purpose of the office is for MPPs to meet with constituents or to help constituents navigate government programs and services.

It is permissible to post information at the constituency office to inform constituents about government initiatives, such as a flu shot clinic, or about community-driven events such as a local job fair.

MPPs should contact the Office for case-specific advice if they have questions about participating or assisting with a specific initiative or event.

Charitable and Community Support

Promoting a Community Fund

An organization created a community fund in response to the needs of local charitable organizations. It asked an MPP to promote the fund to charitable groups that serve the community. Could the MPP promote the fund?

It was the Commissioner's opinion that if organizations contacted the MPP to seek financial assistance, the MPP and his staff could share information about the availability of the fund. However, the Commissioner also advised that the MPP refrain from publicly promoting the fund through his constituency office, as taxpayer-funded offices should not be used to promote charities or charitable initiatives.

Participating in a Community Outreach Initiative

A community organization asked a minister to assist with its outreach efforts by collecting names of people who need assistance and to appear in a video to promote the charitable initiative. The minister was not asked to solicit donations. Could the minister participate in these activities?

The Commissioner advised the minister not to gather names for the program or to participate in the video because it may be perceived that she is an official representative of the organization. This could be problematic given her ministerial status. However, the Commissioner also advised that the minister could assist in a lower profile role such as preparing and/or delivering meals that the organization distributed in the community. The minister was reminded that no government resources, including staff time, should be used in the effort.

Constituency Office Operations

Hiring a Relative

An MPP asked if he could hire a relative to do construction work in his constituency office. The MPP explained that he had received informal quotes from local firms, but his relative could do the work for less. Could the MPP hire his relative?

The Commissioner advised that the MPP seek formal, written construction quotes from other firms in order to comply with the Act and to ensure that the MPP was not improperly furthering another person's private interest. Once the MPP completed this process and settled on a candidate, the Commissioner further advised that the MPP check with Legislative Assembly finance officials to ensure that this selection was in accordance with its own guidelines and/or rules for expenses permitted in MPP global budgets. If the MPP followed this process and still selected the relative, the Commissioner stated that it was his opinion that the MPP would not be in breach of the Act. However, the Commissioner also noted that even if his advice were followed, there would still be a risk of how the public may perceive this choice. While the Commissioner's advice might not mitigate that risk, it could be relied on if the MPP became subject to public scrutiny of his expenses.

Storing Boxes of Food Donations

An MPP asked if a community group could temporarily use her constituency office to store boxes of food donations. Could the MPP let the community group use her constituency office?

The Commissioner advised that the donations should not be stored in the constituency office since this would be outside the scope of the office's intended purpose and contrary to parliamentary convention.

Letters of Support

Nomination of an Individual for an Award

An MPP asked if he could write a letter of support for the nomination of an individual for an award. The MPP knew the individual. Could the MPP write the letter of support?

The Commissioner noted that the award criteria stipulated that letters of support may be provided from members of the community. As such, the Commissioner advised that the Act did not prevent the MPP from providing the letter. The Commissioner provided his guidelines for such letters:

1. The MPP knows the individual and feels comfortable attesting to her accomplishments.
2. The MPP maintains as much control over the letter as possible — for example, by addressing it to the intended recipient and not "To whom it may concern."
3. The MPP uses appropriate letterhead. If the MPP knows the individual in his capacity as MPP, MPP letterhead can be used. If, however, the MPP knows the individual only personally, personal letterhead should be used.
4. The letter should be as specific as possible to the matter at hand.

Nomination of a Corporate Stakeholder for an Award

A minister was asked by a corporate stakeholder to support its nomination for an industry award by providing a letter. Could the minister write the letter?

Given that the organization was a direct ministry stakeholder, the Commissioner advised that the minister not provide the letter. It would not be appropriate to assist the organization with furthering its interest.

Letter of Endorsement

A community organization requested a letter of endorsement from an MPP, which would be included in the organization's newsletter. Could the MPP provide the letter?

The Commissioner advised that MPPs are free to speak about an organization's good work and community contributions. However, he cautioned that there is risk when an MPP provides a written endorsement that is to be used in an organization's publications as the MPP does not have control over how it may be displayed. As such, there may be a loss of control over the intended message. Furthermore, the requested letter could be used for purposes beyond the newsletter.

The Commissioner recommended that if the MPP is familiar with the organization and comfortable providing the endorsement, that he make it clear that the letter is for the newsletter publication only.

Writing to Another Minister

A minister wished to send a letter to another minister to encourage her to look at expanding the scope of a grant. Could the minister send the letter?

Since ministers are permitted to write letters to other ministers, the Commissioner advised that it was permissible in this circumstance for the letter to be sent. In addition, it is parliamentary convention that ministers have the benefit of raising such issues at the cabinet table.

Award Nomination

An MPP asked if he could nominate someone for a university alumni award. The MPP had worked with the individual on a project in the past year. Could the MPP submit the nomination?

Since the MPP knew the individual and was aware of her achievements, the Commissioner advised that it was permissible to provide the nomination. He also advised that the MPP could make the nomination in his capacity as MPP because that is how he worked with the individual.

Reference Letter for a Volunteer

An MPP was asked to provide a reference letter for an individual who volunteered on his political campaign. The individual was applying for an Ontario government job. Could the MPP write the letter?

The Commissioner advised that the MPP could provide the letter on MPP letterhead. He explained that while ministers face restrictions when writing letters of reference or support addressed to the Ontario government, in many circumstances it is permissible for MPPs to write such letters. The MPP was advised to follow the Commissioner's guidelines for writing letters of reference or support.

Application Before the Courts

A constituent asked an MPP for a letter supporting his child custody application that was before the courts. Could the MPP provide the letter?

The Commissioner advised that the MPP not write the letter as members of the judiciary must be free to perform their duties without concern for elected members attempting to influence them in the performance of those duties. The Commissioner further advised that, barring exceptional circumstances, an MPP should not be involved in a court proceeding unless required to do so by a subpoena or summons.

Political Activity

Commenting on Federal Politics

A reporter asked a minister to comment on a federal political development. Could the minister comment?

It was the Commissioner's opinion that there is nothing in the Act that prevents MPPs from making political endorsements or comments. However, the Commissioner cautioned that any political comments the minister made may be perceived as her representing the provincial government at large given that she is a member of cabinet. As such, the Commissioner advised that the minister make it clear that she was not commenting in her ministerial capacity.

Financial Matters

Acquiring Stock

An MPP who is a parliamentary assistant asked whether he could buy stock for his Tax-Free Savings Account.

The Commissioner advised that only cabinet ministers are restricted from holding or purchasing securities and, as such, it was permissible for the MPP to buy the shares. However, the Commissioner added that the MPP should be mindful of the potential for a conflict of interest should his government work relate to any of his investment holdings. The MPP was advised that if this occurred, he should recuse himself and contact the Commissioner for further advice. The MPP was also made aware that his shares and/or sector-specific mutual funds would be listed on his annual public disclosure statement.

Acquiring Property

A minister was considering purchasing a cottage. She asked whether this would be permitted under the Act.

Cabinet ministers are not allowed to purchase investment properties under section 15 of the Act. Since the cottage was for recreational purposes, it was the Commissioner's opinion that the minister could proceed with the purchase. The minister was reminded to provide details of the property purchase in writing to the Commissioner to document the material change of assets.

Ministers' Staff Ethical Conduct

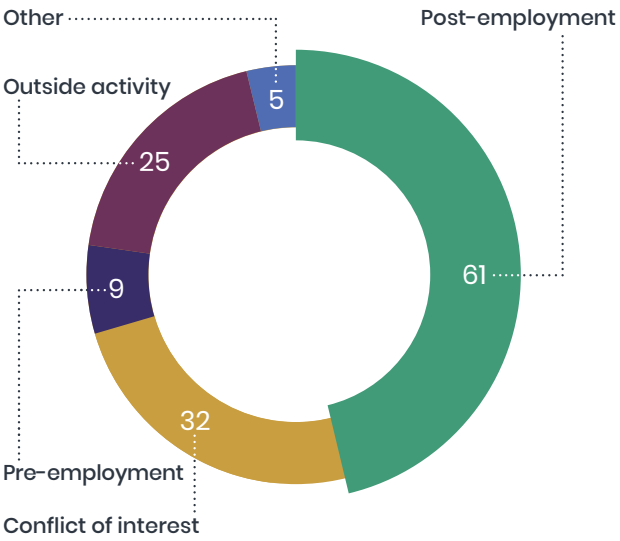
132 ministers' staff inquiries

Developments

The Integrity Commissioner received fewer inquiries and requests for determinations from ministers' staff this year as they responded to the pandemic and supported their ministers during the emergency. The number of inquiries increased in the second half of the year.

The largest category of requests was for post-employment determinations as staff left Queen's Park, a trend which has continued from recent years. These inquiries usually involve an in-person meeting to gather information and provide a detailed briefing on the Conflict of Interest Rules. This year the Office held these discussions over the phone or by video conference instead.

Types of Inquiries



Training

As the pandemic restricted in-person training sessions, the Office reformatted the ethics training for recently hired ministers' staff so that the sessions could be held remotely. The new format was launched in the fall, and six sessions were delivered to a total of 75 attendees. During each training event, the Commissioner and staff provided an overview of the Conflict of Interest Rules and political activity restrictions and presented relevant scenarios to generate discussion about the real-world application of the ethical rules for ministers' staff.

The Commissioner continues to underscore the importance that newly hired ministers' staff be provided with information about the Conflict of Interest Rules and the political activity restrictions soon after starting in their roles. Under the *Public Service of Ontario Act, 2006*, it is each minister's responsibility to promote ethical conduct and ensure their staff are familiar with the Rules. The Office training supports this with a comprehensive overview of the ethical framework so that new staff have a clear understanding of their obligations as public servants.

What we do

- Provide direction to ministers' staff to help them understand and follow the Conflict of Interest Rules
- Answer questions about a variety of topics under the *Public Service of Ontario Act, 2006* and the Conflict of Interest Rules, including gifts, political activity in the workplace, outside volunteer activity and employment, financial conflicts of interest, and post-employment requirements
- Provide training to ministers' offices to assist staff in understanding their obligations

Inquiries

The following inquiry samples are intended to help ministers' staff identify conflict of interest issues. The inquiries are abbreviated, the identities of those involved are anonymized and gender has been randomized. The Commissioner's determinations are provided to raise awareness and should not be considered a substitute for contacting the Office to obtain the Commissioner's direction.

Family/Friend Conflict of Interest

Relationship with a Potential Appointee

A minister's office received a list of candidates from a government agency to be reviewed for a prospective appointment. A member of the minister's staff saw that a friend was on this list and requested the Commissioner's direction.

The Commissioner directed that an ethical screen be put in place to restrict the minister's staff from being involved in decisions regarding her friend's candidacy, as well as any matters that may arise if the friend were appointed. She was also reminded of her obligation under the Rules not to disclose confidential information obtained while employed by the Crown.

Partner is a Lobbyist

A minister's staff advised that her partner was a lobbyist with a government relations firm. The firm was registered to lobby the minister's office.

The Commissioner directed that an ethical screen be put in place to separate the minister's staff from any files, discussions or decisions involving her partner. The minister's staff was also reminded of her confidentiality obligation under the Rules and was advised not to discuss government work with her partner.

What is an ethical screen?

An ethical screen is a written procedure that separates an individual from a matter or file by preventing that individual from working on or learning anything about that matter. It is used to manage both real and potential conflict of interest situations.

The screens include a description of the matter and the stakeholders involved, as well as instructions on how to ensure the individual who is screened is not provided with information or documents about the matter. In most matters, the minister, deputy minister and senior members of staff are made aware of the screen and are responsible for putting it into practice.

Conflict of Interest with Former Employer

Upon joining the minister's office, the minister's staff advised that his former employer was a government stakeholder. The stakeholder was registered to lobby the minister's office. The minister's staff proactively asked for direction to ensure compliance with the Rules.

The Commissioner directed that an ethical screen be put in place to separate the minister's staff from matters involving the former employer. Under the Rules, ministers' staff have an obligation not to provide preferential treatment to any person or entity. They also have the obligation not to create the appearance of preferential treatment. A copy of the ethical screen was provided to the Office.

Post-Employment

Employment with a Government Relations Firm

A minister's staff wished to accept a job with a government relations firm. He did not have any professional involvement with this firm or its clients during the last 12 months of his employment in the minister's office. His new role would require him to lobby the provincial government. Could he accept the position?

The Commissioner determined that the Rules did not restrict the minister's staff from accepting the job. However, the Rules did restrict him from lobbying his former minister, the minister's office and public servants in his former ministry for a period of 12 months after his last day on the job. The Commissioner directed that he should seek further advice if he was asked to work with a client with whom he had interacted during his last 12 months of employment with the government. He was also given advice to help him to comply with the *Lobbyists Registration Act, 1998*, since the Commissioner is also the Lobbyist Registrar.

Joining a Provincial Agency

A minister's staff wished to accept a position with a provincial government agency. She held the file for this agency as part of her role in the minister's office; however, she did not possess any confidential information that could harm the Crown or give unfair advantage if disclosed. Could she accept the job?

Under section 19 of the Rules, future employment can be restricted depending on two factors: if the minister's staff had substantial involvement with the prospective employer, and they had access to confidential information that could harm the Crown if it were disclosed to that employer. In this matter, while the minister's staff had professional involvement with the agency in the last 12 months of her employment, the Office confirmed that she did not hold any confidential information that, if disclosed to the public body, could result in harm to the Crown or could give the public body an unfair advantage. Since the second part of the two-part test did not apply, she was able to accept the job. She met with the Office staff to review her obligations under the Rules.

Post-employment rules

When ministers' staff consider leaving Queen's Park for a new career opportunity, they are encouraged to meet with the Office to learn how the Conflict of Interest Rules will apply to their future employment. Office staff will ask about the responsibilities and files they carried in the minister's office, as well as the new employment they are considering.

The Commissioner reviews this information and prepares a letter of direction for the individual. All ministers' staff are bound by the Rules after they leave government. The Rules cover such obligations as not seeking preferential treatment and ensuring that all confidential information remains so in perpetuity. The Rules also outline lobbying restrictions and give the Commissioner the authority to prevent a minister's staff from taking a job if a conflict of interest is unavoidable.

The Two-Part Test

There is a two-part test within the Rules that restricts former staff from taking a job with a public body, entity, or person if:

1. the minister's staff had substantial involvement with the public body, entity or person while employed in government; and

2. the minister's staff had access to confidential information that if disclosed to the public body, entity or person, could result in harm to the Crown or could give the public body, entity or person an unfair advantage.

This restriction applies for 12 months after leaving government.

Ministers' staff should always contact the Office when considering any new opportunity because of their obligation to avoid the appearance of a conflict of interest when interacting with stakeholders. The new opportunity may mean the minister's staff needs to be screened from certain files related to the hiring entity to avoid the appearance of preferential treatment to that prospective employer.

Outside Activity

Nomination Run

A minister's staff wished to seek the nomination as a candidate for the provincial election in 2022.

The Commissioner determined that seeking the nomination was acceptable and took the opportunity to review the political activity restrictions under the Act. In this situation, any political activity related to the candidacy must take place outside of the workplace, without the use of government equipment or supplies, and outside of work hours. This meant that the minister's staff could not take any campaign-related phone calls or respond to emails during work hours. She was directed to recuse herself if, in the course of her campaign activity, she encountered a situation that conflicted with her government work. The minister's staff was reminded that it would be inappropriate for her to comment publicly and outside the scope of her duties as a public servant on matters directly related to her government work. She was also reminded to abide by her confidentiality obligation.

Investment Holdings

A minister's staff asked about managing her investments and if there are any restrictions on which securities she can purchase.

The Commissioner advised that while ministers' staff do not have explicit restrictions on investing in specific types of securities, certain investments have the potential to conflict with their government work and place them in a conflict of interest. These include stock, sector-specific mutual funds and sector-specific exchange traded funds.

The minister's staff was also told that the Rules were not likely to be at issue if she invested in mutual funds that were broad-based, or in fixed income investments. With respect to investing in stock or sector-specific funds, she was instructed to consider her government work to ensure that no intersection existed between her investments and the matters she managed for the minister. She was also reminded that she had a duty to report her ownership of any securities that could conflict with her government work.

Becoming a Board Member

A minister's staff wished to join the board of a for-profit company in an industry that fell under the ministry. His duties included directing policy. Could he join the board?

The Commissioner determined that this would result in a conflict of interest because of the minister's staff policy role, and his industry-wide knowledge, which could be used to benefit the company and its board members. He was directed not to accept the board position.

Volunteering on a Relative's Fundraising Campaign

A minister's staff wanted to volunteer on a relative's fundraising campaign in support of a local foundation. The minister's staff advised that she had no previous interactions with the foundation through her government work. Could she volunteer on the fundraising campaign?

The Commissioner determined that the minister's staff could support the fundraising effort if she followed these directions:

1. seek her minister's approval;
2. do not get involved in any requests by the foundation for provincial government funding;
3. do not identify herself as a minister's staff while volunteering; and
4. do not use any government resources, including time, for the volunteer activity.

Investing in a Property

A minister's staff wished to invest in a property with a friend. He indicated that the friend had no connection with the provincial government and that neither of them intended to live in the dwelling.

The Commissioner determined that investing in the property was acceptable under the Rules. He advised that the minister's staff should be mindful of his obligations under the Rules, particularly when selecting a tenant. He was told to avoid leasing to a tenant who was a stakeholder of his ministry. If the prospective tenant was a government employee, he was encouraged to contact the Office for further advice.

Fellowship with a Think Tank

A minister's staff asked if it was permissible to participate in an unpaid fellowship that was jointly sponsored by an independent, not-for-profit think tank and the federal government. The government work of the minister's staff could potentially intersect with matters handled by the think tank. Could the minister's staff participate in the fellowship?

The Commissioner determined that it was permissible for the minister's staff to participate in the fellowship if she followed certain conditions. She was required to seek approval from her minister and was directed to recuse herself from any fellowship activity that could potentially conflict with her work with the Crown. She was reminded of her obligations not to disclose confidential information and not to give preferential treatment or create the appearance that she was giving preferential treatment. As well, she was directed not to use any provincial government resources, including time, for her fellowship work. Finally, the Commissioner directed that an ethical screen be put in place in the minister's office to prevent her from being involved in any matters concerning the think tank.

Public Sector Ethics

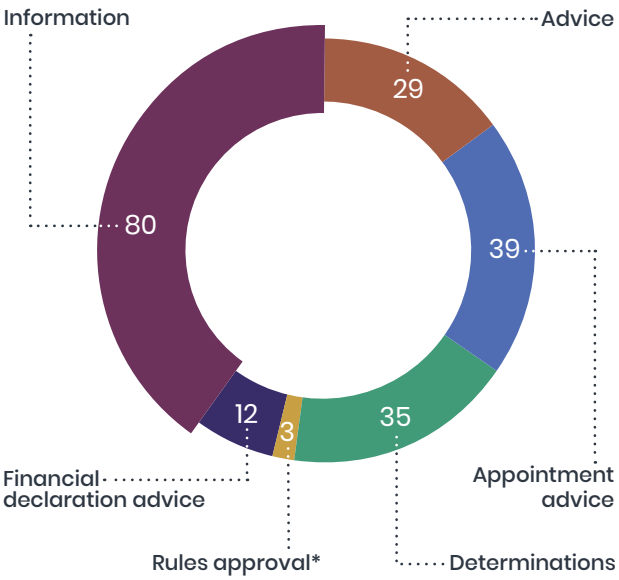
198 matters addressed under the Act

Developments

Ethics Executives and their staff continued to request advice and determinations, as the Office addressed 198 matters. This compared with 217 matters received in the previous year. As in other mandates, the matters were increasingly complex. Ethics Executives sought advice on fulfilling their obligations within their organizations and asked for determinations from the Integrity Commissioner on their personal compliance with the Conflict of Interest Rules.

The volume of financial declarations was lower this year, at 12 declarations submitted compared with 82 the previous year. This was largely for procedural reasons, as public servants who have previously submitted a declaration are required to submit new declarations to the Commissioner only when there have been changes to their position, role or organization, or when there have been substantial changes to their holdings.

Types of Inquiries



* 2 rules approval and 1 ethics plan approval.

What we do

- Provide advice or determinations to Ethics Executives (deputy ministers, chairs of public bodies and other designated individuals) on matters related to the Conflict of Interest Rules and the political activity restrictions in the *Public Service of Ontario Act, 2006*
- Provide post-service determinations to former appointees and employees of public bodies
- Review financial declarations submitted by public servants working on matters that involve the private sector
- Educate and train Ethics Executives about the Conflict of Interest Rules, the political activity restrictions, as well as their responsibilities under the Act
- Provide conflict of interest advice, upon request, to the Premier's Office regarding appointments to public bodies and other entities
- Approve new or revised conflict of interest rules for public bodies and ethics plans for administrative tribunals

The Commissioner responded to 39 requests for conflict of interest advice from the Premier's Office regarding appointments to public bodies and other entities. This was a substantial increase compared with eight requests for advice in the previous year. These matters require careful analysis of the intersection between a prospective appointee's personal and professional activities, in the context of the contemplated board role. The Commissioner's advice is based only on the Conflict of Interest Rules, and not on the suitability of the appointee. The advice includes mitigation strategies, wherever appropriate, to assist the appointee in complying with the Rules.

Training

Due to the pandemic, the Office transformed its half-day in-person orientation for Ethics Executives into a two-hour online program, which was held in November 2020 and March 2021. The sessions covered the Conflict of Interest Rules, political activity restrictions, the disclosure of wrongdoing framework and the Expenses Review mandate. Staff presented case studies and anonymized examples to generate discussion on the application of the Rules. The two sessions were well attended by Ethics Executives and the staff who assist them in carrying out their responsibilities under the *Public Service of Ontario Act, 2006*.

The Commissioner and staff also delivered online presentations directly to seven boards of public bodies, focusing on the Conflict of Interest Rules and the disclosure of wrongdoing framework. The Commissioner also presented to newly appointed deputy ministers. In total, the Office provided training to 47 Ethics Executives.

Inquiries

The following are examples of the advice and determinations the Commissioner provided to Ethics Executives of public bodies. These summaries are abbreviated, and the identities of those involved are anonymized and gender has been randomized. They are published to assist Ethics Executives and other public servants in consistently interpreting and applying the Conflict of Interest Rules and political activity restrictions found in the Act.

Conflict of Interest — Previous Employment

An Ethics Executive referred a question about a newly hired senior employee of a public body. The individual was previously employed with an organization that provides services to the public body. The employee had been involved in the preparation of responses to requests for proposals (RFPs) and had negotiated agreements with the public body on behalf of the organization. The Ethics Executive confirmed that there would continue to be frequent intersections between the public body and the organization.

The Commissioner determined that there was a risk that the organization would appear to receive preferential treatment from either the employee or the public body more broadly but recognized that this risk diminishes as time passes. He suggested that for 12 months the employee be cautious about participating in discussions and decisions that could be seen to benefit the organization exclusively. The Commissioner clarified that the employee could participate in broader discussions and decisions related to the service the organization provides, and he directed the employee to take the following steps:

- Disclose the former employment relationship, on the record, at the beginning of any meetings where matters related to the organization or its business are discussed or decided.
- For a one-year period, the employee should recuse themself from discussions and decision-making related to any new RFPs in which the organization may participate. The employee could, however, participate once an agreement was reached with the successful vendor.

Conflict of Interest — Interaction with Service Providers

The chair of a public body requested advice about an appointee's involvement in matters involving a service provider to the public body. The service provider was a major customer of the appointee's business.

The Commissioner assessed how the Conflict of Interest Rules apply to public servants' activities, with particular focus on the Rules related to benefit, preferential treatment and outside activities. His approach was to consider the potential for intersections between the public servant's role as an appointee and their professional or personal activities. In this matter he agreed with the chair that there were some conflict of interest concerns, and he suggested that they could be mitigated by implementing the following strategies:

- Have the appointee recuse himself from discussions and decision-making related to the service provider and the public body;
- Remind the appointee not to use or disclose any confidential information obtained through his duties on the public body's board;
- Remind the appointee that he cannot provide individuals connected to his business, including the service provider, with assistance in dealing with the public body, other than assistance that he would ordinarily provide to anyone as an appointee; and,
- Have the appointee seek advice from his Ethics Executive before participating in public body discussions or decision-making that may be related to his business or its customers.

Political Activity — Public Comment

The chair of a public body wished to sign a letter advocating that a public institution reconsider its approach on a matter. The chair asked for the Commissioner's advice about the application of the political activity restrictions.

The Commissioner first considered whether the chair's activities could be considered political activity under section 72(d) of the Act, specifically whether the chair would be:

1. commenting publicly and outside the scope of her duties as chair on matters that are directly related to those duties; and,
2. that are dealt with in the positions or policies of a political party.

It was the Commissioner's view that although there was some possibility that the institution could appear as a party before the public body, the substance of the initiative being supported by the chair was not directly related to her duties at the public body. Since the first part of the political activity definition did not apply, it was not necessary to apply the second part. As the activity did not meet that definition of political activity, the Commissioner determined that the Act did not prohibit the chair from signing the letter in support of the initiative.

Political Activity — Appointee Endorsement of a Candidate

The Ethics Executive of a public body sought the Commissioner's advice on whether an appointee to that public body could endorse a friend who was seeking a provincial party nomination. The appointee was not a specially restricted public servant.

In his consideration of the matter, the Commissioner provided context around the political activity restrictions in the Act and advised the Ethics Executive to consider:

- Whether the endorsement fit within the definition of political activity as set out in section 72 of the Act. In this situation, the endorsement was captured in section 72(1)(b) as an activity in support of a candidate in a federal, provincial or municipal election.
- Whether the endorsement would fit within the scope of the permitted forms of political activity. The Act distinguishes between two types of activities: section 77, "prohibited political activities," and section 79, "restricted political activities." In this situation, there is no specific rule that prohibits or restricts appointees to this public body's board from personally endorsing an individual who is seeking a provincial party nomination.

The Commissioner further advised that the Ethics Executive has the discretion to decide if the endorsement is appropriate based on whether 1) it could interfere with the performance of the public servant's duties; and 2) it conflicts with the interests of the public body. The assessment of whether an appointee could endorse a provincial nominee would depend on the specific circumstances surrounding the endorsement.

Political activity restrictions for public servants

Public servants are permitted to engage in political activity; however, there are restrictions depending on the individual's responsibilities and role in the public service. These restrictions strive to balance the neutrality of the public service with an individual's ability and right to engage in political activity.

When reviewing these matters, the Commissioner considers the following:

Does the activity meet the definition of political activity?
Political activity includes the following:

- Doing anything in support of or in opposition to a political party or a candidate;
- Becoming or seeking to become a candidate in a federal, provincial or municipal election; or
- Making public comments on any matter dealt with in the position or policy of a political party or candidate if comments are outside the scope of the public servant's duties and the matter is directly related to his/her duties (for example, publicly criticizing a political party's platform as it relates to a file the public servant is working on).

What is the public servant's role?
If the activity meets the definition, the Commissioner then considers the individual's position. The *Public Service of Ontario Act, 2006* breaks this into two types:

- most public servants
- specially restricted public servants

In ministries, specially restricted public servants include directors, assistant deputy ministers, associate deputy ministers, deputy ministers, the Secretary of the Cabinet, Crown attorneys, deputy directors of legal services branches, and commissioned OPP officers and commanders.

In public bodies, specially restricted public servants are appointees to the tribunals listed in Ontario Regulation 377/07 of the Act.

The political activity restrictions are outlined on the next page.

The political activity restrictions

What restrictions apply, based on the public servant's position?
All public servants must not:

- conduct political activity in the workplace;
- use government premises, equipment or supplies for political activity;
- associate their position as a public servant with political activity (unless they are a candidate, and then only to a limited extent); or
- conduct any political activity while wearing a government uniform.

Most public servants must be on an unpaid leave of absence to do the following:

- be a federal or provincial candidate during the writ period;
- comment publicly on matters dealt with in the position or policy of a political party or candidate if comments are outside the scope of the public servant's duties and the matter is directly related to his or her duties;
- solicit funds (if the public servant supervises others or deals directly with the public); or
- be involved in activities that could interfere with the public servant's duties or conflict with the interests of the Crown or public body.

Specially restricted public servants, such as senior officials in ministries and appointees to tribunals, have more restrictions. Their activity is limited to being able to do the following:

- vote;
- attend an all-candidates meeting;
- be a member of a political party;[1]
- donate money to a party or candidate;[1]
- be a municipal candidate;[2] or
- campaign for a municipal candidate.[2]

The Integrity Commissioner may authorize part-time specially restricted public servants to participate in other activities.

The political activity restrictions are outlined in sections 77 through 106 of the Act.

[1] This does not apply to deputy ministers and the Secretary of the Cabinet.

[2] Authorization must be given by Ethics Executive.

Expenses Review

822 minister & opposition leader expense claims reviewed

1,642 agency expense claims reviewed

Developments

While the pandemic affected all the Office's mandates and activities, the effect on the Expenses Review mandates was unique because when government employees travel less due to public health measures and restrictions, there are fewer expense claims to review. The Office received fewer claims in both the ministers and agencies expenses review mandates, which made it easier to transition to an electronic submission system. The switch to an electronic submission process for ministers, the Opposition leader and their staff members was instituted in January 2020, which was well timed given the abrupt shift to remote work two months later. Office staff worked with the agencies during the year to accelerate an electronic submission process. This has eliminated the transfer of paper documentation to the Office, which is more efficient overall.

While working remotely, Office staff continued to work individually with their contacts in ministers' offices and the Opposition leader's office and with the agencies under review to explain the expenses rules and requirements and to seek more information about the claims they were reviewing.

In examining the expenses claimed during the pandemic, the Integrity Commissioner considered the specific measures taken that lowered the risk of transmission while ministers and public servants were travelling for work. The Travel, Meal and Hospitality Expenses Directive allows for health and safety considerations when making travel plans. For example, while the Directive states that for longer trips, public servants should rent a car rather than use their personal vehicle, the Commissioner allowed mileage claims for the use of personal vehicles to support efforts to limit contact with other individuals.

What we do

- Review the travel, meal and hospitality expenses of:
  - cabinet ministers, parliamentary assistants, Opposition leaders and their respective staff; and
  - senior executives, appointees and the top five employee expense claimants at agencies, boards and commissions
- Ensure that expenses comply with the Allowable Expense Rules and the Travel, Meal and Hospitality Expenses Directive
- Determine whether repayment is required if an expense does not comply with the Rules or the Directive

This year the Office focused on reorganizing and updating the website content for both Expenses Review mandates. The new layout is easier to navigate. It clearly highlights the information and resources for the offices of both ministers and the Opposition leader and those for agencies. The Office also added descriptions of the submission processes for both mandates to the website, along with other resources and tips.

Cabinet Ministers' and Opposition Leader's Expenses Review

This year the Office reviewed 822 expense claims from 185 ministers, parliamentary assistants, the Opposition leader and their respective staff. The number of claims reviewed is 55% lower than last year.

All expense claims examined during the fiscal year were deemed to be compliant with the Allowable Expense Rules and passed review. This was reflected in the written report that the Commissioner submits annually to the Speaker of the Legislative Assembly as required by the *Cabinet Ministers' and Opposition Leaders' Expenses Review and Accountability Act, 2002*. When necessary, the Commissioner can name in the report any person who does not comply with an order to repay or a recommendation for other remedial action.

Agency Expenses Review

The Office reviewed 1,642 expense claims from designated senior management employees, appointees, and the top five employee expense claimants[1] of the 22 agencies, boards and commissions selected for review by the Commissioner. The number of claims reviewed is 40% lower than last year.

Office staff provided training about the expenses review requirements under the *Public Sector Expenses Review Act, 2009*, as well as information about the selection and submission process at the two orientation sessions for Ethics Executives that were held in November 2020 and March 2021. The Commissioner also provided information about the expenses review process when he spoke to agency boards.

The Commissioner may review the expenses of any public body listed in Ontario Regulation 146/10 under the *Public Service of Ontario Act, 2006*, as well as Ontario Power Generation and the Independent Electricity System Operator, which are also subject to review.

When an agency is found to be fully compliant with the Directive on a consistent basis, the Commissioner may release the agency from the requirement to submit expenses for review. This year the Commissioner released three agencies from the review process:

- Death Investigation Oversight Council
- Education Quality and Accountability Office
- Northern Ontario Heritage Fund Corporation

Releasing these public bodies reinforces the effectiveness of the expenses review process and outreach efforts as agencies strive to attain full compliance.

The Commissioner will select agencies to add to the review list once public servants in agencies begin to travel more and claim expenses at a more usual rate.

The list of agencies under review, as well as the list of those previously under review, are available on the Office website. The Commissioner has reviewed the expenses of 39 public bodies since the Act came into force in 2009.

[1] The top five employee expense claimants are those with the highest cumulative expenses in a six-month period, as compared with the expense claims submitted by all other employees of the organization.

Expenses Review Process

The expenses review process comprises the following five steps.

Submission of claims
Expenses that were paid during the specified review period are submitted to the Office of the Integrity Commissioner.

Review
The Office reviews claims for completeness and compliance with the Directive or the Rules.

Information request
The Office requests more information if clarification or supporting documents are required to complete the review.

Results
The Office provides the expenses review results to the:

- Expenses Officers of the agencies under review
- President of the Treasury Board*
- Speaker of the Legislative Assembly**

Public posting
The agency under review, Treasury Board Secretariat* or Speaker of the Legislative Assembly** post the relevant expenses online.

* For ministers and their staff
** For Opposition leaders and their staff

Disclosure of Wrongdoing

42 contacts from public servants

19 disclosures received from public servants

Developments

While working remotely this year, Office staff continued to provide information and assistance to public servants seeking information about the disclosure of wrongdoing framework. Staff also worked with public servants who made disclosures to understand their concerns and allegations. The staff's objective is to establish the allegations clearly to determine if the Integrity Commissioner can accept jurisdiction under the *Public Service of Ontario Act, 2006* to accept the disclosure. This thorough review of the information provided also helps establish the basis for a potential investigation — conducted by a senior official in the Ontario Public Service following a referral from the Commissioner or conducted independently by the Commissioner and Office staff.

This year the number of inquiries from public servants decreased slightly: the Office received 42 inquiries, compared with 47 last year. Staff noted an increase in the number of inquiries or complaints from members of the public, who are not able to make disclosures of wrongdoing under the Act. Whenever possible, the Office redirects members of the public to other entities that may be able to assist them with their concerns.

The Office received 19 disclosures this year, which is notably fewer than the number of disclosures received in the past three years. As with other mandates, it is possible the lower number can be attributed to the pandemic and the significant number of public servants working remotely.

What we do

- Receive disclosures of wrongdoing from current or former public servants who witness misconduct at work
- Determine whether the Integrity Commissioner has jurisdiction over a disclosure of wrongdoing
- Refer disclosures to the appropriate senior official in the Ontario Public Service for investigation
- Review investigation reports to determine if the Commissioner is satisfied with the work and response
- Conduct investigations initiated by the Commissioner

Training

As in past years, staff provided training on the disclosure of wrongdoing framework to Ethics Executives, who are responsible for receiving internal disclosures within their ministries and agencies and for overseeing investigations of referred disclosures from the Commissioner. This training is important because it ensures that senior officials are aware of their obligations under the Act and have the tools to address disclosures of wrongdoing appropriately and efficiently. During the Ethics Executive orientation sessions held in November 2020 and March 2021, the Commissioner and staff provided participants with information about the framework and examples of fictionalized or anonymized cases to assist them in recognizing and addressing allegations of wrongdoing.

In addition, the Commissioner presented on disclosure of wrongdoing to the chairs and boards of seven public bodies, as well as to newly appointed deputy ministers. In total, 47 Ethics Executives received training about the framework.

The Commissioner and staff participated in the remotely held Public Interest Disclosure Conference in September. This annual conference of the provincial, territorial, and federal offices that have disclosure of wrongdoing mandates provides a forum to discuss emerging issues and legislative updates, as well as to share best practices. Along with the federal office, eight provinces and two territories participated in the meeting.

The Disclosure Process

The Commissioner considers three elements when a disclosure is received:

- whether the disclosure was made by a current or former Ontario public servant;
- whether the allegations raised in the disclosure concern an Ontario public servant, minister or parliamentary assistant; and
- whether the allegations are in the nature of a "wrongdoing" that may be accepted by the Commissioner. When considering a disclosure of wrongdoing, the Commissioner assumes the allegations are true for the purposes of determining jurisdiction under the Act.

Wrongdoing refers to specific conduct of a public servant, minister or parliamentary assistant and includes:

- contravention of a law;
- acts or omissions that create a grave danger to the life, health or safety of people or the environment;
- gross mismanagement in the work of the public service of Ontario; or
- directing or counselling wrongdoing, as outlined above.

After each individual allegation has been assessed to determine if it is potential

wrongdoing under the Act, the allegations that amount to potential wrongdoing are assessed to determine if the Commissioner is prevented from accepting them for a reason outlined in section 117 of the Act.

The Commissioner must decline jurisdiction in certain instances, usually if there is a more appropriate way for an allegation to be addressed or if the allegation is already being addressed elsewhere. For example, the Commissioner cannot accept jurisdiction over employment or labour relations matters that can be dealt with through a grievance procedure under a collective agreement or through a dispute resolution process under an act. The Commissioner must also decline jurisdiction over allegations that are being dealt with as a matter of law enforcement or that relate to a court or tribunal decision or a public policy decision.

If none of the circumstances in section 117 apply, the Commissioner accepts jurisdiction over the disclosure of wrongdoing, and he informs the public servant who made the disclosure that he is doing so.

The Commissioner then refers the matter for investigation to the Ethics Executive in the ministry or public body concerned. The Ethics Executive must provide the Commissioner with the results of the investigation, which the Commissioner reviews to ensure that the matter has been addressed in an appropriate and meaningful way. If satisfied with the investigation, the Commissioner may make recommendations and monitor corrective action. Alternatively, the Commissioner may commence an independent investigation.

If the Commissioner conducts an independent investigation, a report will be sent to a senior official within the Ontario government and the responsible minister. In some circumstances, a report about a disclosure may be made public.

The Act prohibits reprisals against anyone who has sought advice about or made a disclosure of wrongdoing. The Act also protects public servants who cooperate in an investigation related to a disclosure of wrongdoing.

Disclosure Activity

	2019–2020	2020–2021
Total contacts from public servants	**47**	**42**
Requests for information	19	23
Disclosures of wrongdoing submitted	28	19

	2019–2020	2020–2021
Disclosures under assessment for jurisdiction (including matters carried over from the previous fiscal year)	**31**[1]	**23**[2]
Disclosures referred by the Commissioner to appropriate senior official for investigation	12	6
Matters not received as a disclosure of wrongdoing because the allegations could not possibly reveal a "wrongdoing" as that term is defined in the Act	3	4
Matters received as a disclosure of wrongdoing, but the circumstances were outside the Office's jurisdiction (e.g., an employment or labour relations matter)	10	8
Files closed for a miscellaneous reason (e.g., it proceeded as an internal disclosure or there was insufficient information for the Office to pursue the matter)	2	3
Disclosures remaining under assessment at fiscal year-end	4	2

[1] This includes 28 disclosures received in 2019–2020, plus three matters remaining under review at year-end 2018–2019.

[2] This includes 19 disclosures received in 2020–2021, plus four matters remaining under review at year-end 2019–2020.

Case Summaries

The following are anonymized summaries of the disclosure of wrongdoing matters concluded by the Office this year. This year the Office closed nine matters, of which one was an investigation commenced by the Commissioner. Wrongdoing was identified in three matters and the Commissioner made recommendations in three additional matters.

9 matters investigated & concluded

Alleged use of employment for self-benefit (Referral)

A discloser alleged that a ministry employee breached the Conflict of Interest Rules by using his position as a public servant to receive benefits from a government vendor. The discloser also alleged that the employee's supervisor failed to act when the employee's conduct was brought to her attention. The Commissioner asked the deputy minister to investigate the disclosure of wrongdoing. The deputy minister advised that the ministry received an internal complaint about the employee and had already investigated the matter. The internal investigation substantiated the allegation about the employee and led to disciplinary action. The allegation about the supervisor was unfounded because appropriate action was taken when the supervisor learned of the employee's conduct. The Commissioner was satisfied that the investigation substantiated the allegation of wrongdoing and that sufficient steps were taken by the ministry to address the wrongdoing.

Alleged misuse of administrative responsibilities for self-benefit (Referral)

A discloser alleged that a ministry employee breached several Conflict of Interest Rules. The discloser also alleged that the employee's supervisor failed to act when the employee's conduct was brought to her attention. The Commissioner referred the matter to the deputy minister who found that the ministry employee had not breached the Rules. It was also determined that no findings could be made regarding the employee's supervisor, who was on a leave of absence from the workplace. The Commissioner was not satisfied with the conclusions reached by the deputy minister but chose not to commence his own investigation into the matter. Rather, a number of recommendations were made to, and accepted by, the deputy minister with respect to conflict of interest training, as well as steps to address the supervisor's alleged failure to act, should that supervisor return to the public service.

Alleged mismanagement of public servant responsibilities (Referral)

A discloser alleged that a ministry employee engaged in gross mismanagement by requiring employees without the requisite level of expertise to complete the work of an individual who was a member of a regulated profession. The Commissioner referred the matter to the deputy minister who found that the allegation was unsubstantiated because the regulatory body for the profession did not require the work in question to be performed by a regulated professional. Further, the investigation found the ministry did have regulated professionals in place to deal with complex matters requiring additional oversight. The Commissioner was satisfied with the conclusion reached by the deputy minister and chose not to commence his own investigation into the matter.

Alleged misuse of ministry vehicle fuel card for self-benefit (Referral)

A discloser alleged that a ministry employee breached the Conflict of Interest Rules by using a personal loyalty points card whenever they used a ministry vehicle fleet fuel card. It was alleged that this produced a personal benefit and was contrary to the Ontario Public Service Fleet Driver Manual. The discloser also alleged that two ministry managers were aware of the wrongdoing but failed to act. The Commissioner referred the matter to the deputy minister, who found that the allegation against the ministry employee was substantiated. However, the deputy minister found that the allegation against the two managers was unsubstantiated. The Commissioner was satisfied with the investigation and closed the file.

Alleged mismanagement of security resulting in grave danger (Referral)

It was alleged that a public servant engaged in gross mismanagement and created a grave danger to an individual in the handling of a security matter. The Commissioner referred the matter for investigation to the deputy minister. The Commissioner agreed that the investigation could be put on hold to allow for the completion of an external process relating to the events that gave rise to the disclosure. Based on information received following the completion of that process, the Commissioner found that the subject matter of the disclosure was an employment or labour relations matter that could be dealt with through a dispute resolution mechanism and that there were further valid reasons for not proceeding. The Commissioner closed the file.

Alleged use of employment to benefit a family member (Referral)

A discloser alleged that a ministry employee broke several Conflict of Interest Rules because she used her public service role to benefit her spouse's business. The deputy minister investigated and found that the employee did not break the Rules because she was not involved in her spouse's business as part of her public service role and did not provide any preferential treatment to her spouse or the business. The Commissioner determined that the ministry's investigative process could be improved. However, he found that no further investigation was necessary because the issues raised by the discloser were ultimately addressed. The Commissioner made recommendations for dealing with conflict of interest matters and for providing training to investigators. The deputy minister accepted the recommendations, and the Commissioner closed the file.

Alleged failure to comply with lobbying condition (Investigation)

A discloser alleged that a senior public servant engaged in gross mismanagement by directing staff not to act on certain information suggesting that a transfer payment recipient was not complying with a restriction on the use of government funds for lobbying activity. The Commissioner investigated and determined that there was no evidence to suggest that the transfer payment recipient failed to comply with the lobbying condition. He found that the public servant had not engaged in gross mismanagement. The investigation showed that the public servant took appropriate actions when they were made aware of the potential compliance issue, including obtaining legal advice and advising the transfer payment recipient to do the same with respect to the lobbying condition. The Commissioner was satisfied that there was no wrongdoing and closed the file.

Alleged wrongdoing in short-term recruitment process (Referral)

A discloser alleged that two senior public servants working at a public body permitted and directed the misuse of the short-term hiring process designed to fill positions on a short-term basis and hired people outside the usual recruitment process. The Commissioner referred the matter for investigation to the appropriate Ethics Executive, who found that the allegations were not substantiated. The Commissioner had concerns about the initial scope of the investigation and asked for more information. The Ethics Executive provided the additional information and, upon review, the Commissioner was satisfied with the investigation on the actions of the two public servants. The Commissioner recommended that the Ethics Executive review the use of the short-term hiring process at the public body. The Ethics Executive accepted the recommendation, and the Commissioner closed the file.

Alleged breach of Ontario Public Service social media guidelines (Referral)

A discloser alleged that a ministry employee, who was subject to the rules for specially restricted public servants, breached section 86 of the Act by posting partisan comments about the 2019 federal election on social media. The Commissioner referred the matter to the appropriate Ethics Executive, who found that the allegation was substantiated and indicated that corrective action would be taken. The Commissioner was satisfied with the investigation and closed the file.

What is gross mismanagement?

Gross mismanagement is one of the categories of wrongdoing in the *Public Service of Ontario Act, 2006*, but what does that mean?

The Act does not define the term "gross mismanagement." Drawing on the case work of the disclosure of wrongdoing mandate, the Commissioner has established 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, the Commissioner considers a series of factors, including:

- 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 — rather than isolated incidents — are more likely to constitute gross mismanagement.

- 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, stakeholders 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.

The Office applies this definition when assessing whether the Commissioner has jurisdiction over a disclosure. This definition may be helpful to Ethics Executives who receive a disclosure of wrongdoing from a public servant directly, rather than as a referral from the Commissioner. However, as Ethics Executives often have additional flexibility in addressing the concerns of public servants who report to them, the Commissioner advises Ethics Executives to focus on addressing these concerns rather than sorting the allegations into respective categories.

Lobbyists Registration

Developments

The lobbyists registry saw an 11% increase in the number of registrations this year, in addition to a higher rate of activity with existing registrations as the goals and priorities of companies and organizations changed during the pandemic. The *Lobbyists Registration Act, 1998* requires consultant lobbyists and lobbying entities to update their registrations within 30 days of any change in their lobbying activity, which meant the ever-evolving health emergency resulted in frequent updates to registrations.

In July 2020 the Office added the subject "COVID-19/ Pandemic response" to the registration form for lobbyists to select if some or all of their lobbying fell into this category. The new subject became the third-most selected on the registry by early 2021.

3,239 active registered lobbyists

89 Advisory Opinions

The Integrity Commissioner, as Lobbyist Registrar, revised the existing Interpretation Bulletin "How do I report government funding?" after receiving several questions on whether the various types of federal emergency funding needed to be disclosed. The Interpretation Bulletin provides a complete list of the types of funding that need to be reported, and those that do not. It also outlines when funding received in a government's last fiscal year needs to be disclosed in a registration. The Commissioner also issued a new Interpretation Bulletin about conflict of interest, which is described later in this section.

Outreach

The Office published six issues of its newsletter *ON Lobbying*, which contained updates on its operations during the pandemic, resources to assist lobbyists in complying with the Act and tips on how to navigate the registration process. The free newsletter now has more than 700 subscribers.

In October 2020 the Commissioner joined his federal and City of Toronto counterparts at an online event organized by the Public Affairs Association of Canada to provide an update on registration and compliance activity. The Ontario Chamber of Commerce invited the Commissioner to address its province-wide network in January 2021 to speak about the registration requirements for employees who lobby for organizations like chambers of commerce or boards of trade.

What we do

- Administer and maintain an online public record of paid lobbyists and their lobbying activities
- Issue Advisory Opinions and Interpretation Bulletins
- Promote understanding about the *Lobbyists Registration Act, 1998*
- Investigate matters of potential non-compliance

Lobbyists Registrars and Commissioners Network

Lobbyist registrars and commissioners from across Canada held their annual meeting remotely in September 2020 to discuss emerging issues in their jurisdictions and share best practices on lobbyist registration requirements and compliance.

Registrars and commissioners from eight provinces and two municipalities participated in the September meeting. The group also held a shorter online meeting in February 2021, during which they welcomed participants from a province and a territory that have recently implemented lobbyist registration legislation.

Interpretation Bulletin on conflict of interest

The *Lobbyists Registration Act, 1998* prohibits lobbyists from knowingly placing public office holders in a position of real or potential conflict of interest. To explain this prohibition, the Commissioner, as Lobbyist Registrar, issued Interpretation Bulletin #11, *What is a conflict of interest and how does it affect my lobbying?*

A conflict of interest could occur if an individual is lobbying a public holder:

- with whom he or she has or had a personal or private business relationship;
- whom he or she offers a gift or benefit; or
- for whom he or she did political or campaign work (paid or volunteer).

The Interpretation Bulletin provides examples of potential conflict of interest situations and information on how the Commissioner can advise lobbyists to mitigate these situations.

Fact-specific advice is always available in the form of an Advisory Opinion, which is provided directly to the lobbyist who makes the request.

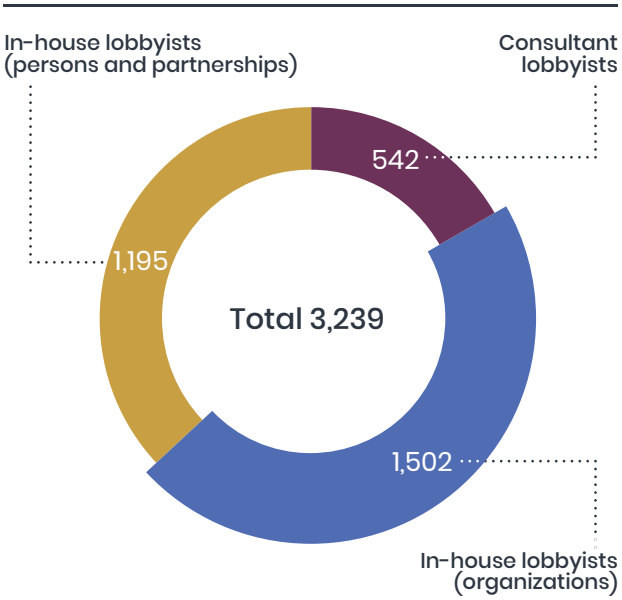
Interpretation Bulletin #11 is available on the Office website.

Registration Activity

Ontario had 3,239 registered lobbyists on March 31, 2021.

Consultant lobbyists are required to have a registration for each client. In-house registrations are filed in the name of the senior officer of the organization or entity and will list the names of all employees who lobby in one registration.

Full lobbying statistics are available in real time on the Office website.



	March 31, 2020	March 31, 2021
Total active registrations	**2,981**	**3,301**
Registrations by type		
Consultant	2,468	2,752
In-House (Organizations)	314	332
In-House (Persons and Partnerships)	199	217

Lobbying Subjects and Targets

Every registration must include the subject matter of the lobbying activity, as well as the MPPs, ministers' offices, ministries and agencies that are being lobbied.

The figures listed here indicate the number of times the subject matter or lobbying target was selected in active registrations as of March 31, 2021.

A new subject matter, "COVID-19/Pandemic response," was added as an option in July 2020.

Top Three Subjects

- Economic development and trade: 1,452
- Health: 1,224
- COVID-19/Pandemic response: 967

Top Listed Members of Provincial Parliament

		2019–2020	2020–2021
1	Office of the Member for Oakville	955	967
2	Office of the Member for Etobicoke North	967	955
	Office of the Member for Nickel Belt	948	955
3	Office of the Member for Mississauga-Streetsville	937	950
4	Office of the Member for Barrie-Innisfil	939	946
	Office of the Member for Etobicoke Centre	953	946
	Office of the Member for Flamborough-Glanbrook	937	946
5	Office of the Member for Burlington	929	945

Top Listed Ministers' Offices

		2019–2020	2020–2021
1	Office of the Premier and Cabinet Office	2,165	2,443
2	Office of the Minister of Finance	1,665	1,861
3	Office of the Minister of Economic Development, Job Creation and Trade	1,386	1,662
4	Office of the President of the Treasury Board	1,269	1,437
5	Office of the Minister of Health	882	1,196

Top Listed Ministries

		2019–2020	2020–2021
1	Ministry of Finance	1,531	1,648
2	Ministry of Economic Development, Job Creation and Trade	1,195	1,425
3	Treasury Board Secretariat	1,052	1,139
4	Ministry of Health	829	1,084
5	Ministry of the Environment, Conservation and Parks	838	859

Top Listed Agencies

		2019–2020	2020–2021
1	Independent Electricity System Operator	252	230
2	Ontario Energy Board	218	219
3	Ontario Health	86	190
4	Metrolinx	154	181
5	Ontario Infrastructure and Lands Corporation (Infrastructure Ontario)	125	170

Advisory Opinions

An Advisory Opinion is a written opinion by the Integrity Commissioner, as Lobbyist Registrar. In an Advisory Opinion, the Commissioner answers questions and provides guidance about an individual's obligations under the *Lobbyists Registration Act, 1998*.

The guidance is specific to the individual and considers the precise facts of the situation and how the Act applies to them. While the Commissioner takes care to ensure Advisory Opinions are accurate, they are not binding and are not a substitute for independent legal advice.

The Commissioner provided 89 Advisory Opinions this year. The most popular topics were:

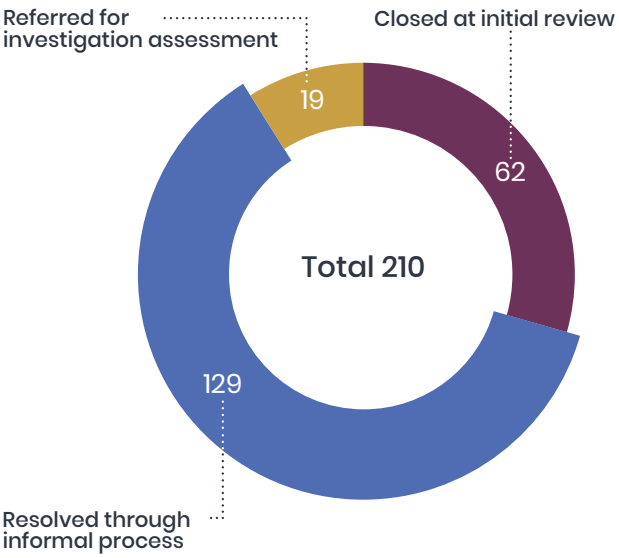
- Government funding
- Registration requirements
- Conflict of interest

Compliance Activity

Ensuring compliance with the Act is an important component of the Office's work. While investigations form a key part of these efforts, a great deal of compliance work is done outside of an investigation. For example, Inquiries Officers regularly follow up with lobbyists to request that more complete information be included in the registrations, or to correct inaccurate or out-of-date information.

The Office does regular compliance reviews to ensure that registrations are submitted, renewed, updated and terminated within the time frames required by the Act. For example, the Office will confirm that consultant lobbyists have registered within 10 days of commencing any lobbying activity on behalf of their client and that senior officers have updated the current and former in-house lobbyists listed on the registration within 30 days. Staff will also check to make sure that lobbyists and senior officers have updated their registrations within 30 days after information has changed, such as changes to the amount of government funding received. When it appears that a lobbyist has missed a deadline, the Office assesses the matter through an informal resolution process. If a deadline was missed by a short period and the lobbyist has not had previous issues with non-compliance, the matter may be resolved with a letter from the Commissioner reminding the lobbyist of his or her responsibilities. The Commissioner may also request an explanation for the non-compliance to ensure the individuals responsible have put procedures in place to meet future deadlines.

Compliance Reviews



210 compliance reviews

18 investigations concluded

If the deadline was missed by a longer period, the lobbyist or senior officer has missed several deadlines in the past, or the Office receives information about non-compliance such as unregistered lobbying, the matter will be referred for investigation assessment.

This year 210 instances of potential non-compliance were identified and 129 — or 61% of these — were resolved through a compliance letter from the Commissioner. There were 62 matters that were closed at initial review because it was determined that the deadline was not missed. Following a compliance review, 19 matters were referred for investigation assessment.

Investigation Activity

	2019–2020	2020–2021
Investigations carried from previous year	15	12
Investigations commenced	26	10
Investigations concluded	29	18
Investigations resumed	0	0
Matters refused for investigation[1]	24	9
Matters referred to another person or body	0	0
Matters remaining under assessment at fiscal year-end	0	0

[1] Generally, matters that the Commissioner decides not to investigate will be dealt with through the informal resolution process in order to ensure future compliance with the Act.

Investigations

This year the Commissioner concluded 18 investigations. Of these investigations, the Commissioner identified 11 cases of minor non-compliance and issued a compliance letter to the respondents to ensure future adherence to the Act. The Commissioner made six findings of non-compliance. When the Commissioner makes a finding of non-compliance, he must then determine if a penalty is appropriate.

The Commissioner imposed a penalty on one lobbyist this year. Summaries of cases in which penalties have been imposed can be found on the Office website.

Completed investigations are anonymized and summarized below. Certain summaries reflect more than one investigation.

CONSULTANT LOBBYISTS

Issue: Placing public office holders in a conflict of interest

The Commissioner investigated whether a consultant lobbyist placed public office holders he was lobbying in a real or potential conflict of interest by giving them free tickets to an event. The Commissioner found that the lobbyist did not personally offer the tickets to any public office holders. However, the lobbyist directed his colleagues to offer the tickets to public office holders they were registered to lobby.

Since the lobbyist accepted responsibility for his actions and cooperated fully with the investigation, the Commissioner ceased the investigation and cautioned the lobbyist to take steps to ensure compliance in future. Additionally, the lobbyist attended a meeting with the Commissioner and Office staff to discuss best practices for ensuring future compliance with the Act.

Issue: Failure to terminate registrations

The Commissioner investigated two matters concurrently to determine whether a consultant lobbyist failed to terminate his registrations for two clients as required by the Act. In relation to one client, the Commissioner determined that the lobbyist had not failed to terminate his registration and ceased his investigation. In relation to the second client, he determined that the lobbyist had failed to terminate his registration as required by the Act, but the Commissioner accepted that this was inadvertent. Since the lobbyist admitted the non-compliance and cooperated fully with the investigation, the Commissioner ceased the investigation and cautioned the lobbyist to take steps to ensure compliance in future.

Issue: Placing public office holders in a conflict of interest

The Commissioner investigated to determine if a consultant lobbyist breached the Act by 1) placing a public office holder whom she was lobbying in a conflict of interest when she offered them tickets to an event as a gift on behalf of a client; and 2) placing a public office holder for whom she had previously worked in a conflict of interest when she lobbied the public office holder for clients.

The Commissioner determined that the lobbyist had not breached the Act in either case. While the lobbyist had offered gifts to several public office holders, she was not lobbying those public office holders. In the case of the former employer, the lobbyist had not lobbied the public office holder despite registering to lobby her office. The Commissioner advised her that lobbyists should not offer gifts to any public officer holders. He also told her to remove the office of her previous employer from her registrations and to seek the Commissioner's advice through an Advisory Opinion if she plans to lobby that public office holder in the future, to ensure compliance with the Act.

Issue: Failure to register and failure to provide information in a registration

The Commissioner investigated five matters concurrently to determine whether a consultant lobbyist 1) failed to register lobbying activities on behalf of several clients; 2) failed to provide the correct business name for one client and to identify all the subject matters for his lobbying activities; and 3) failed to terminate one registration within 30 days as required by the Act.

The Commissioner found that the lobbyist had breached the Act by:

- lobbying for three clients without filing a registration as required by the Act. He lobbied for approximately six months for these clients without registering his lobbying;
- failing to respond to requests for information from the Commissioner on two matters;
- failing to identify his lobbying goals for two clients; and
- failing to provide the correct business name for one client.

The Commissioner found that the lobbyist's non-compliance seriously compromised the Act's goal of transparency regarding lobbyists' efforts to seek to influence the government. Overall, the lobbyist displayed repeated and troubling inattention to his obligations under the Act.

The Commissioner imposed a penalty of publication of the lobbyist's name and a description of his non-compliance. The Commissioner decided that it was not necessary to prohibit him from lobbying because he had no previous incidents of non-compliance with the Act and the investigation arose because he attempted to comply with the Act. In addition, the lobbyist had implemented new systems in his office to ensure future compliance with the Act.

Issue: Failure to register and placing public office holders in a conflict of interest

The Commissioner was referred information that a consultant lobbyist may have breached the Act by:

- failing to register lobbying activity on behalf of a client;
- knowingly placing the public office holders he was lobbying in a real or potential conflict of interest;
- providing paid advice to a public office holder on the same subject about which he was lobbying; and
- lobbying on a subject when he was under contract by a public office holder to provide advice on the same subject.

Following an investigation, the Commissioner found that while the lobbyist was in a position where he could influence the political decision-making of the public office holder and regularly provided advice to the public office holder, he was not under contract or paid to do so. Further, the lobbyist had not engaged in lobbying activity for the client in question, in that he did not have any direct communications with any public office holders. Accordingly, the Commissioner did not have a belief the lobbyist had contravened the Act in relation to all four allegations. The Commissioner ceased the investigation and closed the file.

Issue: Placing public office holders in a conflict of interest

The Commissioner investigated to determine if a consultant lobbyist failed to comply with the Act by knowingly placing two public office holders in a real or potential conflict of interest. The lobbyist held a senior role within a political party and registered to lobby a public office holder who was the leader of the same political party. The Commissioner

found that the lobbyist had not placed the public office holder in a position of conflict because the investigation revealed that, in fact, the lobbyist's role within the party had not granted him direct or increased interactions with the public office holder. In addition, the lobbyist and the public office holder had no meaningful personal or professional relationship, which would have significantly increased the risk of a conflict. The Commissioner found that the lobbyist had not placed this public office holder in a position of conflict.

In relation to the second public office holder, the Commissioner found that the lobbyist had worked on a political campaign for a candidate and maintained his relationship with the individual after the candidate became a public office holder. The lobbyist then proceeded to lobby the public office holder. The Commissioner found that the lobbyist failed to comply with the conflict of interest restriction in the Act. After considering the lobbyist's full and candid cooperation during the investigation, the fact that he did not have any previous incidents of non-compliance, and whether a penalty was a necessary deterrent to the lobbyist or to protect the public interest, the Commissioner decided not to impose a penalty in this matter.

Issue: Failure to register

The Commissioner investigated to determine if an individual was acting as a consultant lobbyist on behalf of a client and failed to register his lobbying activity within the timeline set out in the Act. The Commissioner also investigated whether the lobbyist's payment was contingent on the success of the lobbying. During the investigation, the individual advised the Commissioner that he held a senior executive role with the company he had registered as his client. While the individual had lobbied, the lobbying was carried out as an employee of the company. The Commissioner found that the individual was not a consultant lobbyist and ceased the investigation. The individual was provided with information about the obligations of in-house lobbyists and reminded to seek advice from the Commissioner should he have questions about his compliance with the Act.

Issue: Placing public office holders in a conflict of interest

The Commissioner investigated to determine if a consultant lobbyist knowingly placed a public office holder in a real or potential conflict of interest contrary to the Act.

The Commissioner found that the lobbyist failed to comply with the conflict of interest restrictions in the Act. The lobbyist held a senior and strategic role on a political campaign for a candidate and continued in a strategic role during a second political campaign for that candidate. Shortly afterwards, the candidate became a public office holder, and the consultant lobbied their office for several clients. For these reasons, the Commissioner found that the public office holder may have felt a sense of obligation towards the lobbyist, which could have caused the public office holder to improperly further the private interests of the lobbyist and/or his clients.

Additionally, the Commissioner found that in three instances, the lobbyist did not meet the Act's 30-day requirement to update his registrations with respect to identifying the public office holders he was lobbying. Finally, the Commissioner found that the lobbyist was 46 days late in registering for one client.

The multiple breaches of the Act weighed in favour of imposing a penalty. However, the Commissioner considered the fact that the lobbyist did not have any previous incidents of non-compliance, had been fully cooperative during the investigation and that a penalty was not required to deter the lobbyist from being non-compliant in the future or protect the public interest. Therefore, the Commissioner decided not to impose a penalty.

Issue: Late to register

The Commissioner investigated cases concurrently to determine whether three consultant lobbyists were late to register their lobbying activity for one client.

The evidence indicated that one lobbyist was five days late to register his very limited lobbying activity. Because the period of non-compliance was short, the lobbyist had self-disclosed the non-compliance and had cooperated fully with the investigation, the Commissioner ceased the investigation for that lobbyist and cautioned him to take steps to ensure compliance in future.

In relation to the other two consultant lobbyists, the case was more complex. The evidence indicated that they initially managed a municipally focused campaign on behalf of the client, then later pivoted to a grassroots lobbying campaign targeting provincial public office holders. The lobbyists registered their grassroots lobbying in accordance with the Act. However, during the earlier municipal campaign, a single tweet was sent to a provincial public office holder that triggered the Act's 10-day registration requirement. However, the tweet appeared to have been a singular event in response to a public tweet from the public office holder, and the lobbyists may not have recognized that it triggered the registration requirement. Further, any periods of non-compliance were relatively short, the lobbyists had no prior record of infractions, and they cooperated with the investigation. Accordingly, the Commissioner ceased the investigations and cautioned the lobbyists to take steps to ensure compliance in future.

IN-HOUSE LOBBYISTS

Issue: Placing public office holders in a conflict of interest

The Commissioner investigated to determine if a company's senior officer, who is also an in-house lobbyist, failed to comply with the Act by placing public office holders, whom he was lobbying, in positions of real or potential conflict of interest by offering them tickets to an event as gifts while lobbying them.

The Commissioner determined that the lobbyist did not breach the Act, because he had not personally offered any gifts to the public office holders. However, the investigation showed that the company's consultant lobbyists had given gifts to public office holders on the company's behalf. (The Commissioner commenced separate investigations of the consultant lobbyists.) While the Commissioner concluded his investigation of the company's senior officer, he reminded him that lobbyists should refrain from offering gifts, such as event tickets, to public office holders.

Issue: Failure to register

The Commissioner investigated whether the senior officer of an organization failed to register the organization's lobbying activity, which included meeting with public office holders during two lobby days. After reviewing the organization's lobbying activity over the year, the Commissioner found that the organization's in-house lobbyists did not surpass the 50-hour threshold required to submit a registration, and he ceased the investigation on this basis.

Financial Statement

	2020–2021
Salaries and Benefits	$ 2,871,992
Transportation and Communication	$ 49,353
Services	$ 856,091
Supplies and Equipment	$ 60,412
Total	**$ 3,837,848**

The Office of the Integrity Commissioner's fiscal year runs from April 1 to March 31.

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

You can find information about the Office's reporting under the *Public Sector Salary Disclosure Act, 1996* at www.ontario.ca/page/public-sector-salary-disclosure.

Proactive Disclosure

You can find expense claims for travel, meals and hospitality for the Office's senior management and for employees with claims exceeding $5,000 at www.oico.on.ca.

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)

OFFICE OF THE
INTEGRITY COMMISSIONER
OF ONTARIO

Suite 2100, 2 Bloor Street West
Toronto, ON M4W 3E2

Telephone: 416.314.8983
Toll-free: 1.866.884.4470
Fax: 416.314.8987

www.oico.on.ca
Twitter: @ON_Integrity